

The judgment in this matter is being distributed on a strict understanding that in any report no person other than the attorneys (and any other person identified by name in the judgement itself) may be identified by name or location and in particular the anonymity of the child and the adult members of their family must be *strictly preserved*.

**IN THE GRAND COURT OF THE CAYMAN ISLANDS
FAMILY DIVISION**

**CAUSE NO. FAM 228 of 2020
CAUSE NO. FAM 158 of 2019**

BETWEEN:

AND



W

Applicant

C

Respondent

Appearances: Mrs. Cherry Bridges of Ritch & Connolly for the Applicant
Ms. Lynne Mooney for the Respondent

Before: Hon. Justice Richard Williams

Heard: 18th May 2021

Transcript circulated: 19th May 2021

HEADNOTE

Family Law - Children - s.15 Children Law application for leave to permanently remove child from jurisdiction – father wishing the child relocate to Canada – Application for the child to return to Canada at end the school year prior to decision being made in substantive relocation application – specific issue order concerning schooling pending determination of substantive relocation application – contact to father pending determination of substantive relocation application

TRANSCRIPT OF EX TEMPORE RULING

1. The Court is concerned with the welfare of one child, a 6 year old girl born in St John's, Newfoundland and Labrador, Canada. For purposes of anonymisation, I will refer to her as "the child" and to the parents as "the mother" and "the father". She is the only child of the parties - respectively W "the father" aged 40 and C "the mother" aged 41. The child and the parents are all Canadian citizens¹. The

¹ The parents were both born in St John's, Newfoundland and Labrador, Canada.

child is habitually resident in the Cayman Islands, having resided here for the vast majority of her life, from the early age of about 19 months.

2. There are currently no s.10 Children Act (2012 Revision) ("the Act") orders made in relation to the child. That said, almost three weeks of court time has recently been occupied in relation to an application by the father for the child to relocate to Canada. In that part of these proceedings, the father seeks an order that the child return to live in Canada (spending equal time with each parent). The mother opposes the application, contending that it is in the child's best interests to remain in the Cayman Islands. However, if the Court orders that the child is to relocate to Newfoundland, Canada, then the mother indicates that she would also return to Canada and that the child should primarily reside with her and have contact with the father. The mother indicates that if she were to return to Newfoundland, Canada with the child, it may well not be to St John's and the child would likely not attend Vanier School, but a school in Newfoundland where she was able to reside.
3. The oral evidence in the relocation proceedings has concluded. However, a child psychologist's report was placed before the Court at that hearing. Unfortunately, the author was unable to attend the hearing and the parties agreed that they would each send her a series of questions to which she could give written answers which would then be placed before the Court as part of the evidence. Regrettably, I have been informed today that the psychologist has now refused to answer those questions, saying that most are outside of her expertise and that her involvement was therapeutic and had not been to prepare material for court proceedings. The parties have today indicated that the Court should simply proceed to write the relocation judgment without the answers. The parties are due to file their written submissions on 24 May 2021.
4. In the interim, the father filed a Summons on 10 May 2021. Due to certain issues raised in the Summons, this urgent hearing date has been given. Some of the

issues raised in the Summons and supporting evidence relate to the arrangements for the child pending the determination of the substantive relocation application. Some of the issues raised in the Summons and in the evidence do not require determination at this stage, but more appropriately fall within the scope of the matters that may require determination in the substantive relocation application.

5. As certain issues raised require a prompt decision, I set out my decision with brief reasons in this Ex Tempore Ruling. Due to the nature of the matters to be resolved today and time constraints upon me, I do not intend to provide a detailed background in this ruling, as they are best left to the substantive judgment. I will provide a copy of the perfected copy of the transcript of this ruling to the parties.

The Present Summons

6. The Summons has primarily arisen due to concerns expressed by the father in relation to events at the child's present school. As his Counsel fairly stated, if it was not for those recent events, the matter would not be before the Court today. There has been recent news coverage in relation to the conduct of the Principal of the school with allegations that she conducted non-consensual 'exorcisms' (which involved the forced ingesting of a foreign liquid) on a significant number of children between the ages of 9-11 on 5 and 6 May 2011 without the knowledge of any parent. Although, thankfully, the child of this family was not one of the affected children, the father forcefully demands that the child be immediately removed from that school. He is concerned because the mother does not share a similar view and because she works closely with the school as a part of her contractual responsibilities. He is also concerned because the mother refused his initial suggestion that the child be placed in a private school until the end of term, although I note that both parents say that they cannot afford to pay any private school fees. He also has a concern because the member of staff of the school designated to be the Special Needs/Service Coordinator, has along with the Principal and a school nurse, been removed from the school due to possible involvement in the alleged activities. He is concerned that, even post her removal,

the coordinator may have been included in decision making about the child's care and her supportive programmes at the school.

7. As a consequence, the father seeks an order that the child return to Canada on a repatriation flight on 26 May 2021. His proposal is that the child will reside with him and his fiancée pending the outcome of the final judgment relating to the relocation application. He also seeks an order that the child spend the whole of the summer holidays in Canada with him and his fiancée. It is not clear whether he would support the child spending a week with the mother during that period in Canada. He indicates that tutoring would be put in place whilst the child was being quarantined in Canada and thereafter the child would attend Vanier Elementary School in St John's. He indicates that the child would receive any extra tuition and/or therapy that she may need.
8. In the alternative, the father contends that the child should be moved from the current school into a private school at the wife's expense until the end of the summer term and that thereafter she should spend the entire summer holidays with him from 2 July 2021 to the middle of August 2021.
9. In support of his application, the father highlights a concern that the ABA input from Ms. Anoush Pal has not been able to start at the school. It does appear that the school had wished to see how they could meet the child's needs internally without third party outside input. The mother says that the Acting Principal has told her that Ms. Pal will be allowed in. I am unable on the evidence before me to ascertain what the actual position is at this time.
10. Other evidential issues raised by the father in the Summons are more relevant to the substantive relocation application. These relate to the content of the child's recent school report, her latest Behavioral Intervention Plan, the child's ongoing difficulties and to the content of meetings the parents have had with the professionals. The parents have different views about how the content of each of

these should be interpreted. The father also raises concerns about longer term issues such as the standard of conduct in the high schools and the public education system in the Cayman Islands. I permitted the father to raise these issues at this hearing and what has been shared with the Court at this hearing will form part of the material being considered by the Court in the substantive relocation application.

11. The father also mentions in support of his present applications the limited contact that he has had, as the child has not resided with him for eight months.

Brief Background

12. As mentioned, due to the nature of the issues for determination today, I will only briefly touch on the background.
13. The parents were married on 3 August 2013 in Newfoundland, Canada. The parties separated in August/September 2017. On 1 October 2017, the father left the Cayman Islands to Canada. Thereafter, the father lived and worked in various places in Canada. He is currently posted to work in Gander but has applied for a posting to St John's Newfoundland where he lives with his fiancée with whom he has been in a relationship with since July 2019.
14. The mother and the child have resided in the Cayman Islands since 1 November 2016 when the family moved here from Nunavut Canada to enable the mother to take up her post as a speech therapist with the Department of Education on a fixed term contract with the Cayman Islands Government which expired on 6 July 2018. The mother has since renewed that contract and is currently on a third contract that comes to an end in July 2022.
15. The father claims that the agreement had always been that the move to Cayman was a temporary one as the family would leave Grand Cayman at the end of the mother's contract in July 2018 to return to Canada with the child, and that the

mother had reneged on that agreement. The father contends that the mother's refusal to return to Canada with the child amounts to a breach of their agreement and that the child's continued residence in the Cayman Islands has been against his wishes since 2018. That is not an issue for determination today.

16. The child visited Canada during the school holidays in December 2018, Summer 2019, December 2019 and Summer 2020. There is a dispute about the amount of time that the child has spent with the father whilst in Canada during those periods. There is a dispute about the level of indirect contact that has been provided to the father by the mother. For the purposes of today's hearing, I need not make a finding in relation to that. However, I am satisfied that this child has had no direct contact with the father since September 2020. Therefore, no matter what determination the Court makes in relation to the substantive relocation application, the child must have substantive contact with the father over this summer. It is clear that this child loves both of her parents and that the father would be able to properly care for the child for extended periods over the summer.

Evidence

17. The parties agreed not to call the father or the mother to give oral evidence, but invited the Court, to rely upon the content of their written evidence. The parties were afforded, and took up, the opportunity to cross examine a representative from the Department of Education Services ("the Department"). Written and oral submissions were made on behalf of the father and oral submissions were made on behalf of the mother. In reaching my decision today, I have considered all of the above, as well as having in the background the rest of the evidence presented in the substantive relocation hearing. It is not necessary, nor possible due to time constraints on me today, to address every point raised in the evidence and materials placed before me today.



18. Having regard to the concerns raised by recent events, the parties were informed that a representative from the Department with knowledge of the events at the school must attend this hearing. I am grateful to Mr. Wayne Roberts, the Designated Safeguarding Lead and Behaviour Support Service Manager in the Department for attending Court this afternoon on such short notice. He also provided a helpful Statement dated 18 May 2021, the content of which he confirmed as being accurate this afternoon.
19. Mr. Roberts confirmed that the allegations that were circulated in the media (a number of such media releases were exhibited to the affidavit of the father), were the ones under investigation. He indicated that the Multi-Agency Safeguarding Hub (**MASH**) were investigating the events. He could not give a precise date of when the investigation would be completed, but he felt it would be months away and would be after the end of the current academic year.
20. He outlined the actions that the Department had taken. They have appropriately removed the three members of staff who were purportedly involved in the alleged incidents. I am satisfied from what Mr. Roberts has told the Court that the individuals will not be back at the school prior to the end of the school year. The Department, by its actions, has promptly removed the immediate risk from the school. I accept that there may remain an ongoing question as to why these alleged actions may have taken place without other members of the school body seeing any warning signs. Mr. Roberts indicated that they happened at the end of the school day and that the teachers in the school were simply told that the children were to report to the Principal's office.
21. An Acting Principal has been appointed at the school. Mr. Roberts informed that there would be a replacement for the Special Needs/Service Coordinator, probably within a week. He noted the concern of the father that the suspended Coordinator may have had some involvement with the child's affairs post her suspension, but he believes that this was limited to handing over her file rather

than making any substantial decisions about the program to be put in place for the child.

Law

22. When carefully considering the Act orders sought, I am also conscious that, pursuant to s.3(3)(g) of the Act, I must have regard to the range of powers available to the Court under the Law in the current proceedings.
23. I remind myself of the paramountcy of the welfare of the child, as s.10 is governed by the welfare principle in s.3(1)(a) of the Act. By reason of s.3(4)(a) of the Act, the 'welfare checklist' found at s.3(3) is a necessary part of the Court's analysis on both specific issue and contact applications.

I have considered the welfare checklist and have incorporated it, either directly or indirectly into my analysis in this Ruling. To that I would add the following:

- (a) **The ascertainable wishes and feelings of the child:** Due to the child's age and lack of understanding I am unable to form a view about her wishes and feelings about the interim specific issue order concerning schooling. It is evident that she clearly loves her parents and enjoys her relationship with them when with either parent. There is evidence from professionals in which it was noted that the child expressed a view that she misses her father and I feel this is understandable. Likewise, if she had an extended period of time away from her mother, who is her primary carer, she may well also miss her and I recall the evidence of how excited she became when she found out last summer that her mother was in an airport on her way to Canada.
- (b) **Physical, emotional and educational needs:** I am satisfied that the child's physical and emotional needs would be met by either parent when the child is in their care. This would include if the child was with the father for an extended period of time over the summer. The only proviso



relating to emotional needs, is that each parent must not speak negatively about the other parent in the presence of the child or inappropriately quiz the child about the other parent's actions.

When I consider the child's educational needs, for the purposes of this ruling, I am not considering her long term education needs, but her needs for the limited period between now and the end of the summer term. My consideration of the factors relating to her long term education needs are best left to my review of all of the relevant evidence in my judgment on the substantive relocation application. Despite the very serious nature of the concerns raised concerning the alleged troubling conduct of the Principal of that school and the two others who may be involved, I am satisfied that for the remainder of this school term that the child's basic educational needs can be met at her current school. By this I am not stating in this interim ruling that the child's educational needs are necessarily better met at this school when compared with Vanier or any other school in Newfoundland. Therefore, nothing should be read into my conclusion concerning her longer term educational needs, as it relates solely to the short period between now and early July. The parties differing views about the strengths and weakness of the present school and the reasonableness of the reasons they give for holding them in light of what appears to have happened at the school may well be factors for consideration in the determination of the relocation application.

It would not be beneficial for her education to be moved in the middle of the term to quarantine and then on to a new school. If the Court were not to order relocation to Canada, it could prove to be further disruptive for the child to move to a school in a different country where the education system is different away from a school containing children with whom she is familiar. Again, this should not be read as an indication that the Court has decided not to make a relocation order. The Department has moved

quickly to remove the source of any immediate risk and it is evident that there is currently appropriate observation and monitoring of the current situation at the school.

- (c) **The likely effect of any change in circumstances:** Again, I am just dealing with a short term change of circumstances. As already mentioned the disruption of her education and wider support she receives at this stage of this term would be unsettling for the child. Also, if the child is to relocate to Canada, it should not be so immediate a move. Even if a relocation decision is not made prior to the end of the school term at least some structure and preparation towards such a major change could take place, just in case such an order is made.

I do not view the child spending the majority of the summer vacation with the father as being a change of circumstances. Despite the long gap since their last meaningful contact, even if that was to be regarded as amounting to a change of circumstances, it would not have a detrimental effect on the child and in fact would be something positive which she would be excited about.

- (d) **Age, sex, background and any characteristics the court considers relevant:** The child is a young 6 year old Canadian girl. Although she has spent the majority of her life in the Cayman Islands, she has a bond with her father as well as with her wider family in Canada. It is important that she retains her Canadian roots and summer contact is important when ensuring that bond is retained while and if she lives in the Cayman Islands. It is important that this contact is maintained and if a permanent relocation is not granted, it will become an even more important factor.
- (e) **Any harm which the child has suffered or at risk of suffering:** I have briefly expressed my concerns about the effect of any inappropriate

questioning of the child. The parties must sensitively handle the outcome of the ruling in this judgment, shielding the child from their displeasure about any of the orders made.

I am satisfied that the child has not suffered any harm at her school arising from the recent well-publicised events which are under investigation. I am satisfied the school is being appropriately monitored. When I say this, I fully understand why the father is upset and has reacted to the news in the way that he has.

(f) **How capable are each of the parents in meeting the child's needs?**

Both parents are capable of meeting the child's needs, especially for the limited period up until the mid to end of August 2021. They both are significant figures in this child's life and both should be able to play a significant part in the child's life. They are both able to meet her needs when she is in their respective care. It is in the child's best interests that the parents retain this important input in her life.

(g) **Range of powers available to the Court:** I have considered what orders could be made to ensure that the child and her father maintain a meaningful relationship and to ensure her wellbeing until a final relocation decision is made and/or to the conclusion of the school summer holidays.

Orders

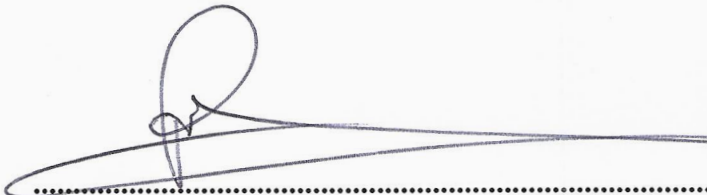
24. Having carefully considered the relevant evidence and the welfare checklist I am satisfied that the following orders should be made:

- (a) a specific issue order that, pending the handing down of the relocation judgment, unless the parents both agree to an alternative schooling arrangements, the child will remain as a student attending Red Bay Primary School;

(b) I order that the child have contact with the father over the summer. I understand that the parties have agreed that the father will pay for the flights out to Canada and, if a relocation order is not made, the mother will pay for the flights back to Cayman. I am told that the parties have agreed that the child can fly to Canada on 2 July 2021. I am also told that the child would have to fly back to the Cayman Islands on 19 August 2021. I am satisfied that the child should, save for one week, have contact with the father throughout that period. If the parties cannot agree the dates for that week, then I order that the contact with the mother will be from midday on Saturday 24 July 2021 until midday on Saturday 31 July 2021. The parties may change the dates of that week if they both agree. I order that week to enable the child to see the mother as well as her wider maternal family members over the summer period.

Costs

25. The parties agree that no order for costs should be made.



The Honourable Mr. Justice Richard Williams
JUDGE OF THE GRAND COURT