



The Judgment was delivered in private, but the Judge hereby gives leave for it to be published. 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 Judgment 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.

**Neutral Citation Number: 2025 CIGC (Fam) 11**

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

**FAMILY DIVISION**

**BETWEEN:**

**FF**

**Petitioner**

**AND**

**MM**

**Respondent**

**IN CHAMBERS AND IN PRIVATE**

**Appearances:** Mr David McGrath of McGrath Tonner for the Petitioner  
Ms Yvonne Mullen and Ms. Stacyann Stewart of Hampson and Company for the Respondent

**Before:** The Hon. Justice Marlene Carter

**Heard:** 7, 8, 10 and 11 April 2025

**Draft Circulated:** 14 November 2025

**Judgment Delivered:** 5 December 2025

**Anonymised and released  
For publication:** 10 December 2025

*Family Law- Application for a sole residence order- allegations of alienating behaviour*

[2025] CIGC (Fam) 11 - FF v MM - Final

### JUDGMENT

1. The hearing of the application took place over four days. The Court had the benefit of the Welfare Report, the Updated Report, the evidence of the welfare officer, the evidence of both parties and their various affidavits filed in the proceedings and specifically for the instant application and the written submissions of counsel for each party. It is useful to remind the parties and their counsel that this judgment does not seek to relate all the matters and issues raised at the hearing and is confined to those issues and matters directly pertinent to the present application.

### Background

2. The parties were married in 2009 and separated in May 2021. Divorce proceedings were instituted in August 2021. There are two children of the marriage with which the instant application is concerned, A born on the 1 July 2011 and B born on 02 April 2013.
3. Upon their separation and with the assistance of mediation, the parties largely agreed a working schedule regarding arrangements for the children (“the Shared Care Arrangement”). On 1 July 2024, acting outwith shared care arrangement, the Respondent did not take the children to the Petitioner, as previously arranged. The Petitioner issued a summons seeking the return of the children to his care. Upon the court hearing that application, apart from its order requiring the return of the children to the Petitioner, the court ordered a Welfare Report be prepared to aid its further understanding of the status of the children.
4. The Welfare Report was filed on December 2024 (the Welfare Report). The summons before the court was filed by the Petitioner on 9 January 2025 seeking the following:
  - “1. *There be a sole residence order in favour of the Petitioner in respect of the minor children, “A” (DOB 1 July 2011) and “B” (DOB 27 April 2023) (“the Children”).*
  2. *The Respondent do have contact with the Children as directed by the Court.*
  3. *Such other consequential orders as may be necessary.*
  4. *Costs.”*
5. At a directions hearing on 16 January 2025 the court set hearing dates for that summons and sought the further assistance of the welfare officer by ordering that an updated Welfare Report covering the period leading up to the hearing be prepared. That updated Welfare Report was filed on 28 March 2025 (the Updated Report).

**The Petitioner's evidence.**

6. The Petitioner's affidavit in support of the summons incorporated prior affidavits, sworn on the 27 January 2023 and 8 July 2024. In his affidavit dated 27 January 2023 the Petitioner related:

*"I had not previously considered that it may be in the girls' best interest to ask for a sole residence order however if MM does not immediately cease her psychological abuse towards the girls by attempting to alienate them from me, I will have no choice but to request a sole residence order in the best interests of the girls."*

7. The Petitioner refers to this statement upon this application to support his position that the need for the instant application was something that he had recognized some time ago and to refute any suggestion that the instant application is an extension of his controlling behaviour as has been suggested by the Respondent. The Petitioner contends that the contents of the Welfare Report lends much weight to the need for the application being made at this point. The Petitioner took the contents of the Updated Report as confirming that there has been parental alienation and says that the matters set out in that report now make it urgent that the court make a sole residence order in his favour.
8. The Petitioner states that the Respondent has engaged in a sustained and deliberate campaign of parental alienation causing significant emotional and psychological harm to his daughters. He commended the welfare reports and the second of these in particular as providing what he refers to as a comprehensive overview of the nature of the Respondent's actions and their alignment with parental alienation and the psychological harm caused to A and B.
9. Within the body of his affidavit in support of the instant application, specifically at paragraphs 26 to 29, the Petitioner noted the aspects of the Respondent's alienating behaviour which he states included the Respondent's getting drunk and falsely telling his daughters that he had hit her, interrogating and encouraging the girls to report back to her after visits with him, the negativity journal that the girls were asked to keep, the undressing ritual described in the Updated Welfare Report and the Respondent coaching scripted rejections of him as evidenced by what was stated to him by the children when they were kept from him in July 2024.

10. The Petitioner states that these actions have placed the girls in an impossible position of having to choose sides between their parents. He related his own observations. At paragraph 32 of his affidavit in support he noted:

*“Both X and I have seen A develop a compulsive habit of picking and biting her lips until they are bruised and bleeding. I have repeatedly told A that this is a form of self-harm that she needs to be conscious that she is doing. However, she has told me it helps her stay calm when she feels overwhelmed. B on the other hand has become increasingly withdrawn. While she was once bubbly and open, she now hesitates to share her feelings particularly regarding her time with her mother.”*

11. The Petitioner's position is that the actions of the Respondent have created an environment in which the children have an immense emotional burden upon them. He raised the risks of permanent damage to them. He also suggested that the Respondent's actions and alienating behaviour have rendered any meaningful co-parenting relationship impossible and have negatively impacted the previous shared care arrangement for the girls.

12. The Petitioner states that the sole residence order is needed at this stage to protect the girls. At paragraph 56 of his affidavit in support he noted:

*“This application for the sole residence order is driven by one overriding concern, the urgent need to protect A and B from the emotional and psychological harm caused by MM's actions. The evidence outlined in this affidavit demonstrates that the current shared care arrangement has failed to safeguard the girls from the toxic dynamics created by MM's deliberate campaign of parental alienation. Without intervention the harm caused by these behaviours will become irreversible. Although Ms. C's recommendations in the second DCFS report include a maintenance of the shared-residence arrangement on page 34 of that same report she warns:*

*“If left unchecked the damage in the children's lives will be irreparable.”*

*The second DCFS report also contained the recommendation that MM attend individual counselling sessions. However, I have no confidence that such counselling will have any effect whatsoever on improving MM's psychologically abusive behaviour towards our daughters. in the words of Ms. C in her report:*

*“MM appears to be oblivious to the negative impact these proceedings are having on her children.”*

13. The Petitioner states:

[2025] CIGC (Fam) 11 - FF v MM - Final

*“A sole residence order is the only way to ensure A and B are protected from further harm and given the opportunity to heal and is the only hope for allowing them to heal and thrive in their environment that prioritizes their well-being. It will provide them with the stability and support they need to rebuild their confidence and emotional security.”*

14. In his evidence at the trial the Petitioner expressed that he felt that he had done his level best to establish and maintain a coparenting arrangement with the Respondent. He expressed that he had always been his view that this did not need to involve the children and to impact on them and that he done everything that he could up to this point to shield them. However, he was now concerned about the extent of psychological harm and damage being inflicted on the children.
15. The Respondent stated regarding why he had stopped counselling that when he first reached out to Dr E, she had suggested him in July 2024 that if he can talk to the girls himself, it would be best to keep them out of counselling he noted that he had previously tried to talk to them, but it did not go well, and he felt that he needed therapy and therapeutic advice. He noted that he had attended some counselling sessions, even with his partner, a total of four sessions.
16. Regarding why he had brought this application the Petitioner noted that he did not take it lightly. However, he was concerned about the children and the emotional psychological harm that they seem to be receiving at their mother’s hands he stated that he wanted to do everything he could to make sure they were safe that they were in a neutral environment, where they could receive the love of both parents and also have the chance to be healthy functioning adults. For this reason, he says he delved into cases of parental alienation, and this is how he had come to the psychologist, Dr B, a therapist who specializes in that area.
17. The Petitioner accepted that the sole residence application may cause significant upheaval for the children and it was for this reason that he had gone ahead and contacted the psychologist asking her to develop a course of treatment and therapy so that there would be a soft landing for them. He agreed that he had not discussed this with the Respondent. He agreed that the proposals he had made seem to go further than those set forward by Ms. C in the welfare reports because he felt that these were matters which had been left open ended regarding therapy and he was seeking to provide a structure that could benefit the children.

### The Welfare Reports

18. In the Welfare Report of December 2024, Ms. C, the welfare officer recommended that the previous court order, which the parties had agreed regarding contact, should remain in place. Her reason for so recommending was her belief that any changes to this contact arrangement of ‘one week on, one week off’ could further erode the father/daughter relationship between the Petitioner and each of the girls. As such, her recommendation was that the *status quo* should remain: the children should spend alternate weeks with their father, and all holiday periods at Christmas, Easter and summer should be shared equally. She also recommended individual counseling for both girls, continued support at school and that both parties engage in parenting training with the Respondent having ongoing individual counseling.
19. When Ms. C submitted the Updated Report, the recommendations had changed in a very material way. The major change was her recommendation the Petitioner receive sole residence of the children with the following being observed:
- (i) in-depth therapeutic services for each child;
  - (ii) direct contact with the Respondent to be suspended for a period of six weeks;
  - (iii) the Respondent should have daily contact via telephone and video call which should be done in the presence of the Petitioner’s partner, X;
  - (iv) the children to continue having counseling support at school;
  - (v) the Respondent to engage in parenting training;
  - (vi) both parties to seek individual counseling.
20. In the Updated Report Ms. C stated that she had noted fundamental changes regarding the children. At paragraph 3 of that Report, Ms. C states:
- “From the outset of this case both girls were given the opportunity to provide reasons for their reluctance to remain in their father's care. The girls expressed that they did not feel power authorized by their father as they perceived him to choose X over them. Additionally, it was reported that particularly A did not feel truly happy when in their father's care. These grievances constitute the entirety of the children's concerns which, in my opinion, while valid are disproportionate to the situation.”*
21. Ms. C outlined what she considered to be the key events in the case starting from 1 July 2024. The first of these was the incident on 1 July 2024 when both girls contacted their father to inform him that they would no longer be returning to his care, would have had both an emotional and psychological impact on the children.

[2025] CIGC (Fam) 11 - FF v MM - Final

22. The second issue noted was the idea introduced by the Respondent that children should have separate belongings such as their iPads and other personal items. It was noted that the Respondent asked the children to dress down at the door when they returned from a visit with their father. Ms. C indicated that there were emotional and psychological impacts of these actions. She stated that *“The need to divide possession serves only to create a division in the mind of a child which could potentially lead to conflict.”* Ms. C related that it may also make a child less comfortable in one place or the other with regard to where particular items were kept. She noted that the girls moving to teenage years in particular would have formed attachments to their personal belongings and that it could be challenging for them if they were not permitted to make the transition from house to house safely with their personal possessions.
23. A third issue which was the filing of a report by the Respondent in 2024 to the Multi Agency Safeguarding Hub (MASH) in which the Respondent stated that the children were unhappy in their father's care. This she coupled with what has been described as ‘the negativity journal’ which the Respondent encouraged the children to have. Ms. C related that as far as she could discern the negativity journal arose from the Respondent providing the children with a daily journal for them to record anything they were unhappy with. She noted that the Petitioner had stated to her that he believed that this was with the intention to target him. Ms. C related that a journal of this kind can have significant consequences on the parent/child relationship leading to mistrust of the other parent. It can also serve as a subtle emotional manipulation encouraging negative views of the other parent and turning the children into spies in the other parent’s home. As such, the children may begin to internalize negative thoughts or feelings about the other parent and they may also feel confusion and guilt when asked to document negative experiences that they don't generally or genuinely feel.
24. The fourth issue noted related to reports of mold on A’s toothbrush at her father's home. Ms. C also reported that it appeared that A had decided that she would eavesdrop on her father and X and report that information back to her mother. On the issue of eavesdropping, Ms. C noted that this typically occurs when one parent encourages the child to observe or to listen to private conversations of the other, often with the intention of gathering information or influencing the child's perception of the other parent. She related further that there appeared to be a *“debrief”* of the children when they returned from their father. She felt that this was a form of manipulation because the alienating parent may be gathering negative information or subtly influencing the child's perceptions.

25. The children's involvement in court proceedings by way of the Respondent having shared with the children the previous Welfare Report was the other major issue noted by the Welfare Officer. She regarded the children's involvement as having the potential to affect the children emotionally, psychologically and developmentally, noting the effects that the children can become anxious and fearful, loyalty conflicts and ultimate damage to the parent/child relationships.
26. In the Updated Report Ms. C spoke extensively as to what she understood parental alienation to be. She described it as a significant mental disturbance based on the false belief that the alienated parent is a dangerous and unworthy parent. She noted that she understood removing a child from an alienating parent is never an easy decision and should always be considered a last resort. She felt that when removed from an alienating environment a child can begin to rebuild their relationship with both parents and heal from any trauma caused by the alienating parent. She related that the child will also have the opportunity to live in a more emotionally neutral environment which will help to restore their sense of stability, security and mental clarity. Additionally, the child will be able to develop healthier coping mechanisms and better emotional regulation as they recover from the toxic dynamics they were exposed to.<sup>1</sup>
27. It was Ms. C's view, as expressed that paragraph 13 of the Updated Report, that there are also significant benefits for the alienated parent when a child is removed from an alienating environment:
- “They will have the opportunity to restore their role in the child's life and reverse the long-term negative effects of parental alienation, particularly through therapy. By creating distance from the alienating parent, the child can begin to experience the emotional support, guidance, and nurturing that they have been lacking due to the alienation. If no action is taken, however, this harmful behaviour will persist, causing further damage to both the child and the parent-child relationship.”*
28. Ms. C noted various interactions with relevant persons in compiling the Updated Report. She had spoken to the school counselor. She related that the school counselor had in fact contacted her on 04 February to inform her that the children were struggling with the current contact arrangements. The counsellor related to her that these were now affecting them emotionally at school and leading to A feeling unsettled. The counselor related to her that during the weeks when the children are with their father A had been requesting to see her mother, that she was usually comforted by her mother's visits as the school had allowed the Respondent to visit A on several occasions and on a

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<sup>1</sup> See paragraphs 9 and 10 of the Updated Report.

few occasions the counsellor spoke to them together. However, the school was not prepared to continue to facilitate these visits.

29. Ms. C stated that A's unsettled behaviour at school was a reflection of the level of emotional dependency that is being fostered by the Respondent. Her opinion was that while it was natural for children to miss their parents at times, given A's age, her attachment to her mother suggested a possibility of emotional regression.
30. With respect to the Respondent, Ms. C was not able to meet with her to compile the Updated Report. Ms. C did, however, review the Respondents' various affidavits in which she related her feelings with regard to matters raised by the Respondent. In the Updated Report she noted these as follows:
- (i) air tags which the Respondent considered as tracking devices provided to children by their father.
  - (ii) That the Respondent had raised concerns regarding both girls being afraid of their father. Ms. C noted that in her experience there was no indication that the girls were afraid of their father. She said that they had shared with her on various occasions that they did not wish to live with him, but that they had never expressed fear. She noted that despite this the girls remained open to going on vacations which their father and X.
  - (iii) The Respondent's concern that both girls, A in particular, hesitated to raise matters or approach her father. This became more apparent after the initial report was made to MASH. Ms. C noted that the Petitioner had acknowledged his mistake in his approach and handling of that matter and, when a similar issue arose thereafter, he proactively reached out to Dr E for support.
  - (iv) Ms. C related other issues raised by the Respondent including the fact that the girls were developing anxiety issues which she felt were concurrent with an adjustment disorder. Ms. C felt that this type of behaviour, if noted, is usually the result of children being impacted by parental alienation because the child then tends to find it difficult to regulate their feelings.
  - (v) Ms. C noted another concern of the Respondent, that the children felt that no one was listening to them. Ms. C stated to the court that she had listened very carefully to the children. At paragraph 24 of her affidavit, she said:

*"I want to assure the court that I have listened carefully to the children particularly A who made a firm request to leave her father's care and remain with her mother however in my professional opinion the reasons they have*

*provided for not wanting to stay with their father do not meet the threshold for taking action to remove them and place them in their mother's care both girls are being adequately cared for by their father and my primary concern is that there may negatively influenced by their mother to return to her."*

31. Ms. C position is that the Respondent remains an important part of the children's lives, that they love her and she is consistently available to cater to their needs. She expressed that the Respondent should continue to be involved in the children's care. Importantly however, Ms. C felt that when the Respondent in her affidavit in response to the application that she would never use her children as a ploy:

*"...I believe there is sufficient evidence to suggest otherwise. The Respondent has involved the children in these proceedings with her most recent actions occurring after the welfare report was submitted to the court, where she shared with A contents of my report. the Welfare report therefore the Respondent's statement that paragraph 34 of her affidavit claiming that the children knew nothing of this application is simply not accurate."*

32. She stated that there was no indication that the Respondent had supported the girls in having a relationship with their father and she felt that the Respondent, although she loves and cares for her children deeply, had let her personal feelings cloud her ability to remain balanced and child centered. With regard to B, the Respondent had expressed the concern that she appeared to be suffering in silence. Ms. C also indicated in her report that she had seen evidence where it appeared to her that B was not eating. She wondered whether B had also been exposed to her report which could manifest a change in her eating habits.

33. At Paragraph 29-30 of the Updated Report Ms. C related:

*"I've maintained a good relationship with both girls however for the first time I noticed that A seemed upset with me regarding what she believed I had written in my report. She was unhappy that I included information she felt was inaccurate for example she pointed out that I wrote she bites her lips in response to anxiety, and she insisted that my findings were completely false, stating I had misrepresented her in the report. She clarified that she bites her lips all the time and it was not her response to anxiety A was clearly unhappy about what she perceived as a misrepresentation of her in my report to the court. Additionally, A pointed out that the statement I made in my report about X being a stabilizing factor in the home is not true.*

*A spoke about not getting what she wanted which was to live with her mother full time. She described her feelings as a flip flop feeling. She explained that the only way to stop this feeling was to live with her mother. A also shared that her mother*

*sends her picture of her clock every day displaying the time she had left until she returns to her this raised some level of concern for the Petitioner, as well as this writer. The Petitioner believes that the Respondent is using this method to lure A. He feels that this is contributing to the girls feeling unsettled and I am in agreement with his conclusion”.*

34. Ms. C related that although A is showing fewer overt signs of being impacted by parental alienation it should not be assumed that she is not being directly impacted by it. *“if B was aware of what was stated in my report about her secret eating there is a strong possibility that she could revert to extreme measures of not eating.”*
35. Ms. C noted on her home visit with the Petitioner and X that she observed the family engaged in watching television. Both children along with the Petitioner and X played with the baby and engaged in a fun interactive game to see who the baby would choose if they stood at a distance and called out to him. She noted that there was much laughter and anticipation as to who the baby could choose and from all indications both girls seemed to enjoy themselves.
36. Ms. C’s conclusions after reviewing the affidavits and having conducted further visits and meetings with the relevant parties was: *“there is clear evidence that the Respondent is engaging in behaviours that appeared to be alienating the children from their father. ...the Respondent has consistently shown an unwillingness to co-parent with the Petitioner. I am concerned that a lack of co-parenting would prevent the children from experiencing a stable and secure environment in both homes, which is essential to them leading a balance and healthy life.”*
37. For Ms. C, any alienating behaviour reached its peak when A disclosed that her mother shared with her the contents of the Welfare Report to the court. This was especially so because during the last court appearance it was clearly stated that the children would not be exposed to any information related to this court matter. She was therefore left to question whether the Respondent’s ultimate intention was to alienate her from the children in an effort to gain leverage in these proceedings. Her conclusion was that *“it is now clear that the Respondent cannot be trusted to protect her children from the emotional and psychological harm of being exposed to these proceedings. This demonstrates not only a disregard for the court process but more concerningly a lack of regard for the children's well-being. A and B are not emotionally prepared to handle the complexities in this case.”*

Counsel's submissions

38. Counsel for the Petitioner commended the Updated Report to the court. Ultimately the Petitioner asks the court to go further than Ms. C's recommendations for the children based on these reports and the Petitioner's evidence. I will return to the proposals which seek to buttress the application for sole residence below.
39. Counsel for the Petitioner asked the court to view Ms. C as "*an honest, forthright, competent and independent witness.*" Counsel accepted that the court was not bound by her opinion. He noted however that the court must be mindful that it should not depart from same without adequate and cogent explanation for disagreeing with the expert's opinion.
40. Counsel also accepted that Ms. C did not directly reference the welfare checklist but asked the court to consider that she was familiar with it and noted that the matters on the checklist appeared to be addressed in the content of her report.
41. Counsel for the Petitioner stated the following concerning the Respondent's evidence:  
*"It is submitted that M's evidence and her case is lacking in any credibility and the Court should reject M's evidence. The Court is invited to approach the whole of her evidence and her case with caution, circumspection and cynicism."*
42. Counsel for the Respondent submitted that the Updated Report was wholly deficient. She submitted that Ms. C had failed, refused and neglected to consider and apply the welfare checklist. Counsel noted in her submissions that this failure to consider and apply the welfare checklist was not remedied in oral examination. Counsel submitted that it appeared at times during Ms. C's testimony at court that she appeared or needed to be reminded of the contents of the statutory welfare checklist. Counsel submitted that Ms. C appeared to be guided more by her own personal views than what was required, which was a clear structured analysis guided by the welfare checklist. She described that it appeared that Ms. C had reached what she referred to as "*a snap decision*" after meeting with the children.
43. Counsel submitted that because Ms. C had not consulted with Doctor E when she was compiling the Updated Report, she had no basis for stating that Doctor E was conflicted and should not be continued to be involved with the children. Counsel submitted that this failure meant that Ms. C had denied herself the opportunity to consider potentially differing perspectives from her own fixed

view regarding the issue of parental alienation. Counsel's other complaints against the approach taken by Ms. C can be summarized as follows:

- (i) She did not appear to have a single critical observation of the Petitioner.
- (ii) The Petitioner was afforded 24 hours' notice prior to a home visit whereas in contrast the Respondent was only offered a meeting very shortly before the report was due.
- (iii) In her assessments she appeared to have treated the children as one unit rather than two separate individuals. On this point she noted that Ms. C seemed to be unaware that B had never had individual therapy and had only done so as part of family therapy; that quite apart from B's weight loss being as a result of an eating disorder, that B had had some serious illness during the period between the reports. Counsel cautioned that it appeared that Ms. C had made serious assumptions drawn from minimal and highly circumstantial observations regarding B and that it was premature and potentially misleading to rely on such assumptions.
- (iv) Ms. C seemed to ignore the financial aspects of the divorce which were still outstanding and failed to take into account its toll on the family.
- (v) She did not appear to have taken into account of any replies or responses of the Respondent to the issues raised by the Petitioner and in that regard, she appeared to have ignored explanations which were offered.
- (vi) She appeared to have misunderstood some issues. Regarding the air tags, it was unclear that she understood on whose insistence, whether Petitioner or Respondents, that the air tags were provided to the children.
- (vii) On the issue of separation, the children's possessions at the two houses, she appeared to ignore the fact that the Petitioner did not allow B to take her birthday presents to her mother's house.
- (viii) Counsel characterized these matters and responses of Ms. C during cross examination as going beyond procedural errors: *"They raise a reasonable apprehension of bias, particularly when taken cumulatively."*

44. Counsel for the Respondent offered that Ms. C's recommendation regarding contact was an extreme one. She asked the court to note that parts of it appeared quite vague in terms of what would happen after the initial six weeks of no contact with the children except by phone. She submitted that it appeared that there was a failure to consider the risk of harm to the children by removing them

from their mother especially when reunification is not considered important enough to warrant thought and planning.

45. She asked the court to note that it appeared that there were no objective criteria for judging when reunification would be allowed. There was a vague suggestion of the delegation to an unknown person regarding when it might be appropriate. Counsel suggested that this fracture for six weeks on an open-ended basis could not be supported. Counsel pointed to one of the troubling aspects of the recommendation which was that any proposed contact for indirect contact could be supervised by the Petitioner and/or his current partner. She suggested that contact on that basis would be inimical to the best interests of the children in that it would put the children in an untenable and conflicted position caught between the adults in this case. She countered that such supervision either by the Petitioner or his partner would significantly impede the children's ability to express themselves openly and honestly in any communication intended for their mother.
46. Regarding the Petitioner's evidence, counsel renewed her objection to much of what the Petitioner had set in his affidavit in support of the application stating that much of it including his reply was repetitive prolix and non-responsive. She asked the court to note, in particular, the Petitioner's pronouncements, making psychological commentary about the Respondent and the children, which appeared to be the Petitioner trying to give expert advice. She also asked the court to note that it appeared, as well, that the Petitioner was giving speculative commentary regarding the Respondent's affidavit and that this also amounted to improper commentary rather than evidence. For this reason, counsel suggested that the court should afford much of the Petitioner's affidavit no real weight.
47. For the avoidance of doubt the court has considered the objections by counsel for the Respondent on this issue. The court is very cognizant of Counsel's submissions regarding the Petitioner's evidence on issues such as parental alienation. The court's position is that the court will direct itself to the factual evidence given by the Petitioner in this case. Reliance will be placed on his observations regarding various matters concerning the children but certainly the court is quite aware that the Petitioner is not qualified to give expert evidence in this case.
48. At paragraph 49 of the written submissions on behalf of the Respondent the following is expressed.

*“The crux of the MM's case is that the children are frightened of their Father, who exhibits controlling tendencies. She also expresses concern over a failure to co-*

*parent, and compromise, which she characterized in oral evidence as part of the controlling behaviour. She has said at all junctures that the parties' children repeatedly expressed their unhappiness to her and she is simply trying to have their voices heard."*

49. Counsel characterized the Petitioner's evidence as only emphasizing his need to control events. She stated that throughout his evidence he *"offered no quarter, offered no glimmer of a soft approach. He was markedly angry, and he twice voluntarily offered that this was not revenge."* Counsel referred to a previous affidavit of the Petitioner where she stated he had *"expressly threatened an application for sole residence order. Even at that point FF's mind appeared to have been hardening. He was noted to have sat the Children down and read portions of their Mother's affidavit to them, asking them to comment upon it. It was particularly flagged up that this had greatly upset the Children. Ms. C in her oral evidence said that she believed that this was the "original fracture". That fracture has never healed."*

#### **The Respondent's evidence on the application**

50. The Respondent describes the children as: *"the most beautiful beings to enter the universe, humble, kind and helpful. They have "a beautiful energy, aura, infectious to everyone."*
51. She described an unorthodox relationship between herself and the Petitioner as one in which the Petitioner broke her heart. She would like the litigation to end. *"Both FF and I need to move on from our lives"*. The major issue concerning the Petitioner is that he *"has an unhealthy control problem, a huge issue, a level of control that is perplexing and very unhealthy,"* which affect the Respondent and the children.
52. She described instances of the Petitioner not informing her of medical appointments and sharing medical information concerning the children as an example of this. Specifically in relation to B and her loss of weight, Petitioner related no discussion between the parties in relation to that. *"I feel like the hostility between FF and I has gotten so big, it is this monster thing and incapable of kindly speaking to one another. Girls should be neutral ground."* She described the Petitioner's refusal to compromise as an element of him exerting control.
53. The Respondent stated her position: *"I believe that both of girls love both me and their father. I think that there is a preference to live with me, never not to not see their father. They want a relationship with their father, and I want that relationship for them with their father."*

[2025] CIGC (Fam) 11 - FF v MM - Final

54. The Respondent described the children as not always wanting to visit their father. She described A being anxious about this and her having to go to the school to see her, although she the Respondent was reluctant to go in as she knew it was not helpful.
55. The Respondent described of A:  
*“She kept saying how tired she is and B as well. Saying she was exhausted of going back and forth. They are in high school and they both want a place that they call home ... a main point of contact, residence.”*  
*“I keep hearing this fear of their dad, they are terrified about their dad. Exhausted about going back and forth.” She described instances of the children being afraid to be open with their father. It was her opinion that this “Fear ...stems from interrogation years ago and relationships have never fully fixed.”*
56. She related that when the children contacted their father at A’s 13<sup>th</sup> birthday about no longer coming to him home,  
*“I tried to give them what they wanted... I took it upon myself to facilitate what the girls had been asking for, for quite some time. I am very regretful for how I handled it. ...I am sorry that the girls went through that and finally I am sorry to FF that I handled it in such a manner.”*  
*“I thought as a mom I was doing right by girls by giving them what they wanted. ...I would never attempt to eradicate their father and take away contact and I am sorry for how I did that.”*
57. The Respondent stated that there was no truth to the allegations of her abusing alcohol and opioids.
58. Responding to matters raised in the Updated Report:
- (i) Regarding the allegation that she forced the children to dress down at front door – the Respondent stated that did this not happen. She explained that when the children came back from their grandparents with cat hair on them, she did have them dress down at that point. She did not appreciate that it was a problem until Ms. C brought it up with her. She stated that the children usually shower when returning from either parent and they also do so at home before handover so as not to have to be do so when they go to the other parent’s home.
  - (ii) She stated that she had never asked A to eavesdrop for her at the Petitioner’s home.

- (iii) Unsanitary Toothbrushes – The Respondent stated that she realized that the children were not rinsing their toothbrushes properly and pointed this out. After she had sanitised them, she inquired if they were in the same state at their father’s home and told them to do the same thing there. It was an issue that started on her end, and she considered it a teaching moment.
  - (iv) The Respondent admitted: *“I did tell the children what was in some of the DCFS reports. I did regretfully repeat that social worker believed that I was alienating them against father.”* She apologized to the court and acknowledged that she knew that this was something the children should not have been aware of. She stated to the Court that she took full responsibility for that behaviour and promised it would never be repeated. She Recognised that *“Those comments I made exacerbated a level of stress that they should not have undergone.”*
59. The Respondent is not in agreement with the application. She feels that if granted it would be traumatizing for the children. Her main concern continues to be that they feel that they have really not been listened to especially by their father and if the application were granted it would be detrimental to them. She also has fears and concerns of the effect leading to *“eradicating me from their lives.”*
60. When the Respondent was cross- examined she denied that she had tried to fracture the relationship between the Petitioner and the children over a number of years. She stated that she did not at the time consider that her actions in July 2024 at the time of A’s birthday were alienating behaviour.
61. She agreed that in July 2024 when she had the girls call the Petitioner to say that they did not want to go to him that she did not take his feelings into account. She noted that she wished that she had approached it differently. When it was suggested to her that her actions had been malicious, she stated that the shared contact arrangement was only a de facto agreement between herself and the Petitioner that there was never an official agreement. It was never something that had been signed. She agreed, however, that she had unilaterally stopped adhering to it by her actions. She stated that what she wanted was for the legal teams to be able to sit down and come up with a contact agreement, which to her mind would incorporate more of the children’s wishes. She stated that it was not malicious, and she is remorseful and regretful about that incident.

62. With regard to comments where she had said that she was going to make sure that the Petitioner regretted his actions after the separation and divorce, and it was suggested to her that her actions since then in seeking to harm the relationship between the Petitioner and the children were examples of that, the Respondent maintained that those were comments said in the context of the separation and divorce and nothing more.
63. On the issue of the negativity journal, the Respondent maintained that it was only introduced for the children to record happy things they could, of course, as well have recorded unhappy things or things that have been told to them. She stated that it was only a coincidence that it seemed that the only things in the negative journal were negative or unhappy things mainly in relation to the Petitioner and what happened when they spent time with him. She insisted that the girls did not call it that, they had never called it that to her.
64. The Respondent was challenged about a therapeutic session with Dr. J at Aspire Clinic on 18th March 2024 and A at which she was present. She noted that she remembered the session. The object of it was A having a supportive, loving and caring relationship with her father. She denied that she had denigrated the Petitioner at that session. She stated that she had no idea why the doctor would have written words to that effect. She says that she would never say anything to indicate that she did not want girls to have a relationship with their father and she would never intentionally do anything to harm that relationship. She maintained that the note was inaccurate, that she never said that she would be happy if the girls did not see their father again. She maintained that she had never said anything to the effect that she did not care anymore. It was suggested to her that her actions seem to be an example of her taking what was to be a therapeutic session for A and making it instead what counsel for the Petitioner referred to as “*a forum for malevolent toxicity*”. The Respondent denied that that is what had been done or that she had hijacked the session.
65. The Respondent stated that she remained desirous of the girls having a great relationship with their father. However, she thinks that the children were suffering from not being heard and from having to go back and forth to different homes and not being settled in either home. When questioned by counsel for the Petitioner, the Respondent agreed that if the court determined that the children were suffering and required protection, the court should intervene as it saw fit. She agreed that the children needed intensive therapy.

### The Law

66. Section 3 of the Children Act states:

“3 (1) where the court determines any question with respect to –

- (a) the upbringing of a child or
- (b) the administration of a child's property or the application of any income from it, the child's welfare shall be the court's paramount consideration.”

67. In the case of ***Gillick v West Norfolk and Wisbech Area Health Authority and Department of Health and Social Security***<sup>2</sup> the court noted as follows:

“... parental rights to control a child do not exist for the benefit of the parent. they exist for the benefit of the child and they are justified only in so far as they enable a parent to perform his duties towards the child.”

68. In the case of ***X v Y***<sup>3</sup> Williams J. also referred to observations of Baroness Hale made in the case of ***In re G (Children) (Residence: Same sex Partner)***<sup>4</sup> where she said states:

“The statutory position is plain: the welfare of the child is the paramount consideration. As Lord McDonald's explained in *J v C* 1970 AC 668, 711 this means that it “rules upon who determines the course to be followed”. there is no question of a parental right.”

69. It is therefore plain that the question on the summons, whether the court should accede to the Petitioner's application for sole residence, the central issue for the court's consideration is whether or not such a move would be in the best interests of the children.

70. Counsel for the Respondent has also pointed the court to the case of ***Re: M***<sup>5</sup> in which the court stated:

“60. At the risk of repetition, we draw attention to and emphasize two principles which in our judgment are central to the issues before us. The first is the core principle that the function of the judge in a case like this is to act as the “judicial reasonable parent” judging the child's welfare by the standards of reasonable men and woman today...

61. The second, which goes to the heart of the issue ... is the principle that the judge has a positive duty to attempt to promote contact; that the judge must

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<sup>2</sup> 1986 AC 112

<sup>3</sup> Unreported, 26th of August 2020

<sup>4</sup> 2006 UK HL 43

<sup>5</sup> 2017 EWCA Civ. 2164

*grapple with all the available alternatives before abandoning hope of achieving some contact; that the judge must be careful not to come to a premature decision; and that “contact is to be stopped only as a last resort and only once it has become clear that the child will not benefit from continuing the attempt”... We add that the duty of the judge is not circumscribed by the way in which the parties choose to identify the issues or argue the case. the judge has a free hand.”*

71. The court was reminded that in each case, *“The mutual enjoyment by a parent and child of each other’s company constitutes a fundamental element of family life, even if the relationship between the parents have broken down, and domestic measures hindering such enjoyment amounts to an interference with the right protected by Article 8 of the Convention.”*<sup>6</sup>

72. In the case already cited *X v Y*, Williams J. noted at paragraph 296:

*“The range of the powers available to the court in these proceedings are wide. I have the jurisdiction to make the orders sought by both parents namely a residence order to that parent with supervised contact to the other parent or even as suggested by M during cross examination of no contact order. when making my determination I have considered whether such orders would be in the best interests of Z in the circumstances.”*

### **Court’s conclusions**

73. The parties agree that the burden of proof of any allegations is on the balance of probabilities and that burden rests on the applicant, the Petitioner. Counsel for the Petitioner has suggested that the court could approach the issue in the following manner:

#### **“A suggested route to verdict**

1. *We respectfully submit that the Court will likely want to pose four foundational questions in this case:*
  - (i) *Has FF satisfied me on the balance of probabilities that A and B have been subjected to alienating behaviour?*
  - (ii) *If yes, has FF satisfied me on the balance of probabilities that that behaviour was conducted by MM?*
  - (iii) *If yes, has FF satisfied me on the balance of probabilities that the children have suffered harm as a result of MM’s behaviour?*

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<sup>6</sup> Quoted from the European Court of Human Rights Decision in *Kosmopolito v Greece* 2004 1 FCR 427

(iv) *If yes, am I satisfied that, unless I act, the children are likely to continue to suffer emotional or psychological or physical harm?*

2. *If the answer to each of these questions is 'yes', we submit that the Court should then turn to what is likely to be the decisive question: what action is necessary and proportionate in accordance with the paramountcy principle embodied in section 3(1) Children Act (2012 Revision) to protect and secure the children's welfare?*

74. I agree that this is an approach to the issues raised that could assist in their resolution.

75. The Respondent's evidence has sought to paint a picture of the Petitioner as being overbearing and controlling with the specific criticism that he did not move to therapy when suggested at speed. It is obvious that the children and the Respondent share a close relationship. However, contrary to what has been expressed by the Respondent and having heard the evidence of both parties I am satisfied that there is also a close relationship with the Petitioner.

76. I note the observations of Ms. C in this regard:

*" [the Respondent] cited concerns regarding both girls being afraid of their father.... However, there is no indication that the girls are afraid of their father. They have shared on several occasions that they do not want to live with him, but they have never expressed fear. Furthermore, they remain open to go on vacations with him, which would include X.*

77. Ms. C also noted: *"Additionally, A has mentioned some discomfort in addressing her father, particularly concerning issues related to contact and trusting his judgment to arbitrate fairly when there is a disagreement between her and X."* The fact that there is disagreement on some issues between the Petitioner and the children which will ultimately need to be resolved does not equate to the relationship being as broken as it was sought to be portrayed on this application.

78. It has not been suggested to the Petitioner that there was some specific action on his part that has caused both girls to exhibit the level of damage that each party admits is now manifest. The Respondent does admit that there is damage, and it is evident that the children are in need of assistance. It is noteworthy that she was exceedingly hesitant in naming it as such when she was cross examined. It appears that the Respondent while voicing to the court that she takes responsibility for some of her actions that may have damaged the children, still does not fully appreciate the degree of harm that has resulted from some of her actions even the ones for which

she has now apologized. This is a factor that weighs strongly in this court's determination of this application.

79. Despite this lack of full acknowledgement on the part of the Respondent, Ms. C notes the following positively. In the Updated Report Ms. C states:

*“MM outlined in paragraph 13 & 32 that the girls are developing anxiety issues concurrent with adjustment disorder. This type of behaviour is usually the result of children who are being impacted by parental alienation; the child tends to find it difficult to regulate their feelings. In light of her discovery, I do not believe that MM would hesitate to support any help the children may need to address their concerns. I would also point out that in my initial report (SW Report para 42) MM said that she would do everything she could to support them.”*

80. I have considered carefully the criticism of Ms. C's report asserted by counsel for the Respondent. I had the benefit of hearing Ms. C and noting her responses to the criticisms as well as her explanations for her conclusions and the methods that she employed in coming to these conclusions. While she did not employ what may be termed a rigid application of the Welfare Checklist it is apparent from the Reports and her evidence before the court that she was very thorough in her approach and that, as she stated in evidence, she well had the welfare checklist in mind as she explored the options presented and as she met with the parties and the children and considered the various issues in this case. This is an experienced Social Worker who has had a fairly lengthy association with the children and the parties. There is nothing that has been presented that causes this court to have concerns that she has made arbitrary assessments and based her suggestions on matters with which she had no familiarity. While one may point to the fact that she was unable to present suggestions going well into the future, it is clear that she was more concerned as to the need for action given her observations.

81. I do bear in mind some of the concerns raised by mother and articulated by her counsel of instances where Ms. C may have misapprehended the facts. These I have referred to above. These do not however cause me to have such concerns as to discount her ultimate findings.

82. The Respondent has admitted to serious lapses in judgment regarding the children. I refer especially to her showing them the welfare report(s) when the Court had specifically indicated that the parties were not to do so. I am mindful of the effect of this lapse not only on the children but

also on their relationship with Ms. C and the impact on the trust between her and the children. This impact may also be reflected in the relationship with the Petitioner.

83. Similarly, the Respondent's actions in July 2024 referred to at paragraph 2 herein. While the Respondent sought to emphasize that the Petitioner did not follow through with all the therapy/counselling sessions that were advised following this incident, this should not cloud the fact that the Respondent's actions contributed to the necessity of such sessions in the immediate fallout from that incident. There can be no doubt that the manner in which that incident unfolded itself damaged the relationship between the children and the Petitioner. I highlight these not to denigrate the Respondent. I believe that she is sincere in recognising now that she was at fault for these actions. However, that acceptance does not provide all the salve necessary to heal the wounds that were deepened as a result.
84. As with every application concerning children the court must be mindful and consider the Welfare Checklist.

The Welfare Checklist: s.3(3) **Children Act** states as follows:

*“In the circumstances mentioned in subsection (4) a court shall have regard in particular to:*

- (a) the ascertainable wishes and feelings of the child concerned (considered in the light of his age and understanding);*
- (b) his physical, educational and emotional needs;*
- (c) the likely effect on him of any change in his circumstances;*
- (d) his age, sex, religious persuasion, background and any characteristic of his which the court considers relevant;*
- (e) any harm which he has suffered or is at risk of suffering;*
- (f) how capable each of his parents, and any other person in relation to whom the court considers the question to be relevant, is of meeting his needs; and*
- (g) the range of powers available to the court under this Law in the proceedings in question.”*

85. It was suggested by counsel for the Petitioner that on the instant application some of these factors would be more relevant and so carry more weight than others. Counsel therefore submitted that on the court's consideration of factor (a) would be negligible if the Court accepts that there has been alienating behaviour so that *“any wishes they the children purport to express have been supplanted*

by, and are the transferred sentiments of MM.” So too factor (b) since, if the court was satisfied that there was alienating behaviour on the part of the Respondent, it must be that she cannot meet their emotional needs.

86. As to factor (c) counsel states that the Petitioner accepts that if he is successful on this application the children’s current emotional state will inevitably mean that they will initially be unhappy to go and live with FF and have contact with MM limited. The matters at factor (d) counsel suggested are not likely to weigh greatly in the Court’s consideration.

87. The most important of the factors to be considered counsel for the Petitioner submitted was factor (e), any harm which the children have suffered or are at risk of suffering

*“It is submitted that this must be the magnetic criterion in the judicial determination. If the Court finds that the children are suffering harm and will continue to do so, then we say that it must act to protect children from harm. That cannot be a controversial proposition.”*

On the matter at (f) counsel suggests that the court consider the views of Ms. C that the Petitioner is capable of meeting the children’s needs while the Respondent is not. As to the range of powers available to the court counsel invited the court to note the pronouncements in the cases referred to at paragraph 71 above concerning the court’s wide powers on the application.

88. I bear in mind the submission of counsel for the Respondent regarding her reservations about Ms. C’s adherence to the Welfare Checklist in reaching her conclusions in the Welfare Reports. I have also considered Counsel for the Respondent’s submission regarding the Welfare Checklist:

(a) Ascertainable wishes and feelings of the Children in light of their age and understanding:

*“The Children have consistently, and as far back as 2022, expressed a clear and enduring wish to live with their mother, while maintaining contact with their father. They are now aged 12 and 13; Both Children have been assessed as mature and capable of forming their own views. “... the Children’s views have not been meaningfully acknowledged by either DCFS or H.”*

*“...there is independent and objective evidence supporting the Children’s concerns.”*

(b) The physical, educational and emotional needs.

*“The Children’s basic need for accommodation, food and enrolment in educational facilities are met in both households.”*

*“Both B and A must receive psychological assessment and treatment from an independent person. In A’s case this is also required to allow her educational needs to be fully met.”*

- (c) The likely effect on them of any change in circumstances.

*“The removal of the Children from their mother’s case would represent a profound and destabilising disruption to their emotional security and psychological wellbeing. Moreover, the absence of any demonstrated willingness or ability on H’s part to engage constructively with the support services – coupled with his failure to act upon professional recommendations – raises serious concerns about the emotional environment to which the Children would be exposed were they placed in his sole care.”*

- (d) Age, sex, religious persuasion, background or any characteristic that appears relevant.

*“Nothing striking occurs under this section save and except to repeat that the Children’s ages are a heavy factor in listening to their wishes, feelings and concerns.”*

- (e) Any harm which they are suffering or are at risk of suffering.

*“Beyond any doubt, both Children are currently suffering harm as a direct consequence of being drawn into adult conflict – conflict that is neither of their making nor, indeed of any relevance to them. W fully accepts her role in the dynamics that have contributed to this situation and acknowledges that it is wholly unacceptable for the Children to be placed in such an environment. She has expressed regret for the impact her actions have had on the Children and remains committed to ensuring that their emotional welfare takes precedence moving forward.”*

*“However, it is crucial to recognise that M does not bear sole responsibility for the current impasse. H’s continued refusal to engage constructively with the recommendations of professionals, his failure to secure and provide therapeutic support for the Children (indeed it was actively discouraged), and his pursuit of actions that undermine W’s involvement in the Children’s lives, have all exacerbated the tensions between the parents.”*

*“Finally, for this section and has been set out earlier, the Court must consider the risk of harm should the Children be removed. This is not insubstantial, particularly if H, as history suggests, does not engage in therapy. (including family therapy and therapy for himself) or persists in excluding W from the healing process.”*

- (f) How capable each of their parents are in meeting their needs?

*“Each parent has their strengths and weaknesses. Certainly, both are capable of meeting the Children’s physical and educational needs.*

*It is submitted that both parents have had difficulties meeting their daughters’ needs. However, only W has any insight to her own actions. H is adamant that he is “exceptional”*

(g) The range of powers available to the Court under this Law in the proceedings.

Counsel acknowledged that the Court’s powers were wide ranging and include the orders sought by both parents.

89. The Petitioner seeks

- (i) *“A sole residence order*
- (ii) *a structured plan to address the children’s emotional needs including a temporary, 3-month period during which contact with their mother is carefully managed to prevent further attempts at alienation and to allow for emotional stabilization with Supervised visits being considered thereafter.*
- (iii) *Order a comprehensive psychological assessment of MM and if this assessment identifies concerns, that the Court mandate therapeutic intervention prior to considering any return to contact.*
- (iv) *Authorization for the Petitioner to travel with the children to access specialist therapeutic services with specialists who are experienced in reunification therapies for children who have suffered parental alienation.*
- (v) *Prohibition of any discussion of legal proceedings with the children*
- (vi) *Comprehensive drug and alcohol testing for W to ensure the Children’s continued well-being.”*

90. The Social Worker makes the following recommendations:

*“I am therefore recommending that FF receives Sole Residence of his children A and B with the following recommendations being observed:*

- *In-depth therapeutic services for A and B*
- *Direct contact with MM to be suspended for a period of 6 weeks*
- *MM should have daily contact via telephone and video call, which should be done in the presence of FF or X.*
- *Children are to continue having counselling support at school.*
- *FF and X are to engage in parenting training*
- *It is also recommended that both MM and FF seek individual counselling.”*

91. It may well be that, as counsel for the Respondent suggested, the court would have been assisted by a psychological assessment. Counsel for the Respondent submitted to the court, when the instant application was first made by the Petitioner, that the appointment of an expert psychologist was warranted to assist the court. However, it is evident from the evidence of both parties that the children need some intervention. The difficulty is in deciding what is the best environment for them as they get the assistance and intervention that they need. Each party needs to be mindful of the children being afforded the opportunity to get the assistance they need and the need to focus on that objective even if some compromise may be necessary on their part.
92. There is now in place a Shared Residence Agreement whereby the children are with the parties for one week on and one week off during the course of one month. I am concerned at the level of change sought by the Petitioner and that any disruption caused thereby may lead to further harm in the case of the children. To this end I had considered whether instead of a one week on one week off arrangement that the children stay with each parent for a two-week period with the Petitioner having some access during the two weeks that the children are with the Respondent. However, given the relationship between the parties I am not convinced that this will allow the children's needs to be addressed in the manner and with the necessary space or freedom to facilitate the therapeutic intervention that they each seek for the children.
93. I return to the suggested route to verdict.

**“A suggested route to verdict**

3. *We respectfully submit that the Court will likely want to pose four foundational questions in this case:*
- (i) *Has FF satisfied me on the balance of probabilities that A and B have been subjected to alienating behaviour?*
  - (ii) *If yes, has FF satisfied me on the balance of probabilities that that behaviour was conducted by MM?*
  - (iii) *If yes, has FF satisfied me on the balance of probabilities that the children have suffered harm as a result of MM's behaviour?*
  - (iv) *If yes, am I satisfied that, unless I act, the children are likely to continue to suffer emotional or psychological or physical harm?*
4. *If the answer to each of these questions is 'yes', we submit that the Court should then turn to what is likely to be the decisive question: what action is necessary and proportionate in accordance with the paramountcy principle embodied in*

*section 3(1) Children Act (2012 Revision) to protect and secure the children's welfare?*

94. I find that the answer to each of the questions posed is in the affirmative. The following actions of the Respondent are found to be instances of alienating behaviour to which the children have been subjected.
95. The Respondent caused the children to keep a journal, what had been referred to as a negativity journal. This court was not persuaded by the Respondent's explanation surrounding this journal, that it was only a coincidence that it seemed that the only things in the negativity journal were negative or unhappy things mainly in relation to the Petitioner and what happened when they spent time with him, It was telling that the Respondent never indicated that she tried to engage in what was written with the children, leaving negative views and impressions to fester and thereby causing damage to the relationship between the children and the Petitioner. This attitude seemed to be reflected in the therapy session on 18 March 2024 where it was recorded that the Respondent's attitude was that she did not care anymore.
96. I find that the Respondent's actions on the 1<sup>st</sup> July 2024 to be another instance of alienating behaviour. In building up the children's expectations that they could unilaterally determine not to have contact with the Petitioner and having them communicate that fact to him, the Respondent thereby damaged the relationship between the children and the Petitioner. Her actions caused the Petitioner to have to seek a court order to ensure contact, an action which in the context of what the children were told on this issue, could only have resulted in the Petitioner being viewed in a negative light by the children.
97. The Respondent's actions in defying the court's orders regarding exposure of the children to the welfare reports prepared in this matter is another example of alienating behaviour. Without context in the form of the Petitioner and the welfare officer having knowledge of the fact that the children had been exposed to those reports, it is obvious from the evidence of Ms. C that there was a resulting impact on the relationship between the children and Ms. C. One can extrapolate from this that it would also have affected the children's interaction with the Petitioner, without him having the benefit of knowledge of this exposure. I find that the Respondent could only have been seeking to damage the relationship between the children and the Petitioner. There is no other explanation for her showing them these reports. As I have stated above, the Respondent has not fully grasped that her actions have had alienating consequences. The fact that the Respondent considers that she did

[2025] CIGC (Fam) 11 - FF v MM - Final

not intentionally seek to alienate the children from the Petitioner does not equate to her actions not having that effect.

98. I am satisfied that the children have suffered from this behaviour. I am also satisfied that they may continue to suffer emotional or psychological harm if not action is taken. As to the action necessary that is proportionate to ensure the children's welfare, each party agrees that the children need to attend counselling. The Petitioner has indicated that there is difficulty in that there are no doctors on Island with the specialist training or experience to deal with parental alienation but more pertinently that there may not be agreement as to any counsellor/psychologist/psychiatrist on Island.
99. I have considered proposals submitted by the Respondent including that the court's order should be for joint residence to continue much as it has done to this point with some minor amendments. By way of therapy, the Respondent also proposed a psychological assessment, individual therapy for everyone and family therapy with the establishment of clear communication protocols between the parties with a review after a six-week period. I am also mindful that the Respondent has repeatedly emphasized that the Respondent's seeming aversion to therapy for himself and meaningful therapy for the children should give this court pause in making any order in his favour on this application.
100. I have considered the structured plan submitted by the Petitioner "*to address the children's emotional needs.*" While the Petitioner's proposed plan is more detailed, it is noteworthy that it is not wholly different in terms of the nature of the intervention proposed from that suggested by the Respondent. The difference lies in where emphasis lies regarding the level of communication between the Respondent and the children while they are in therapy and the scope of the intervention. It is also apparent that this plan addresses some of the repeated concerns raised by Respondent that of the Petitioner's willingness or ability to engage with the therapeutic process, and too "*H's continued refusal to engage constructively with the recommendations of professionals, his failure to secure and provide therapeutic support for the Children...*"
101. There is precedent for a protected placement period as suggested by the Petitioner. In **Re H**<sup>7</sup> a sole "lives with" order was made in favour of the father in respect of his 12-year-old child. An initial 3-

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<sup>7</sup> 2019 EWHC 2723 (Fam)

[2025] CIGC (Fam) 11 - FF v MM - Final

month period of no contact with the mother, due to the emotional abuse/alienation which the children had been subjected to.

102. In **Re S**<sup>8</sup> another case of parental alienation, a sole “lives with” order was made in favour of the father of a 9-year old child, with there being an initial period of no contact with the mother, due to the emotional abuse/alienation which the children had been subjected to.
103. In **X v Y**, where mother had continually made unfounded allegations of sexual abuse by father upon their child, Williams J transferred residence to father, ordered no contact for 3 weeks and thereafter direct unsupervised contact on alternate weekends and certain weekdays, plus indirect contact.
104. Mindful of the above, the evidence of the parties, the submissions of counsel, and the evidence of Ms. C and also given my findings above, my order is as follows:

#### **Sole Residence Order**

- (i) There shall be a sole residence order in respect of the Children in favour of the Petitioner/Applicant until further order of the Court.

#### **Appointment of Lead Family Therapist**

- (ii) Dr B shall be appointed as the Lead Family Therapist. She shall have discretion to:
- (a) Direct and oversee all therapeutic work concerning the Children;
  - (b) Delegate elements of the therapeutic process to suitably qualified professionals under her supervision; and
  - (c) Determine the structure, frequency and delivery method (including remote participation) of all therapeutic sessions.

#### **Appointment of Court-Appointed Social Worker**

- (iii) Ms. C shall be appointed as the court-appointed social worker. She shall:
- (a) Monitor the Children’s emotional and psychological welfare throughout the duration of this order;
  - (b) Liaise regularly with the lead family therapist and any other professionals involved in the therapeutic process;
  - (c) Submit written reports to the Court at bi-monthly intervals for the first six months or as otherwise directed by the Court; and

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<sup>8</sup> 2020 EWHC 1940 (Fam)

- (d) Thereafter file written reports at intervals of six months, as she considers appropriate in consultation with the Lead Family Therapist, or as directed by the Court.

### **Protected Placement Period**

- (iv) The first six weeks of the Children's residence with their father shall constitute a protected placement. During this period:
- (a) The objective of the protected placement shall be to stabilise the Children's emotional state, reduce psychological distress, and begin the process of therapeutic reintegration with their father.
  - (b) The mother's contact with the Children during the Protected Placement Period shall be determined following consultation between the Lead Family Therapist, the mother's treating psychologist, and the Court-appointed social worker, with any proposal subject to Court approval as necessary.
  - (c) All communication between the mother, the father and the Children shall take place via the Our Family Wizard app (or similar app).

### **Notification to the Children**

- (v) The court-appointed social worker shall meet with the Children to explain the residence change and protected placement.

This explanation shall:

- (a) Be delivered in an age-appropriate and emotionally supportive manner;
- (b) Emphasise that the decision has been made by the Court to protect and support the Children;
- (c) Avoid attributing fault or blame to either parent; and
- (d) Be scheduled as soon as practicable following the Court's determination, in coordination with the Lead Family Therapist.

### **Oral Permission Statement**

- (vi) Within the first seven days of the protected placement, the mother shall deliver an oral permission statement to the Children, facilitated and supervised by the Lead Family Therapist/court-appointed social worker. The statement shall affirm clearly and unambiguously that the Children are free to enjoy a relationship with their father without guilt, conflict, or pressure.

### **Therapy – Mother**

- (vii) The mother shall engage in individual therapy with a psychologist approved by the Lead Family Therapist. The treating psychologist shall report to the Lead Family Therapist as directed.

- (a) The frequency, structure, and content of the mother's therapy shall be determined by the Lead Family Therapist.
- (b) The Lead Family Therapist may make recommendations for the resumption of contact.
- (c) the Lead Family Therapist will also determine whether and what level of therapeutic supervision may be necessary during any period of such contact.

### **Therapy – Father**

- (viii) The father shall engage in ongoing individual therapeutic support and complete a structured parenting programme, as directed by the Lead Family Therapist. The programme shall include content relevant to:
  - (a) Therapeutic parenting,
  - (b) Emotional regulation in high-conflict parenting situations, and
  - (c) Supporting reintegration for Children recovering from disrupted attachment.

### **Reintroduction of Contact**

- (ix) No contact between the Children and the mother shall resume unless and until the court-appointed social worker has reviewed the recommendation of the Lead Family Therapist and filed a supporting report to the Court.

An interim report will be filed at the end the protected placement period to include comments/recommendations regarding contact.

### **School-Based Support**

- (x) The Children shall continue receiving emotional support through their school-based pastoral care or counselling services.

The father shall facilitate communication and coordination between the school, the Lead Family Therapist, and the court-appointed social worker to ensure joined-up care.

### **Parenting Programme**

- (xi) Both parents shall complete a six-module parenting programme approved by the Lead Family Therapist. The programme shall include content on therapeutic parenting, the psychological impact of parental conflict, and strategies to support Children recovering from disrupted attachment or relational harm.

### **Confidentiality and Safeguarding**

- (xii) Neither parent shall:
  - (a) Discuss the substance of these proceedings, therapeutic arrangements, or the Children's contact schedule with the Children;

[2025] CIGC (Fam) 11 - FF v MM - Final

- (b) Disclose or show the Children any court documents, therapeutic reports, or communications relating to this matter;
- (c) Permit any third party to do so, whether directly or indirectly, including via electronic means or overheard conversations.

### **Non-Disparagement**

- (xiii) Neither parent shall make negative or disparaging remarks about the other to, or in the presence or hearing of, the Children. The Children shall not be drawn into adult matters or exposed to blame, hostility, or commentary that undermines their emotional safety or relationship with either parent.

### **Parental Communication Protocol**

- (xiv) Communication between the parents shall be limited to matters directly concerning the Children's welfare.
- (xv) The parties shall communicate regarding all matters concerning the Children exclusively via the Our Family Wizard ("OFW") platform ([www.ourfamilywizard.com](http://www.ourfamilywizard.com)), unless the matter is an emergency or requires immediate in-person response.
- (xvi) Communications via the OFW platform shall be treated as a permanent and auditable record. Neither party shall delete or alter any communication. Each party shall preserve their message history in full and make it available to the Court or any professional appointed in these proceedings upon reasonable request.
- (xvii) In the event of a genuine emergency, direct verbal communication may take place but must remain brief, factual, and civil.

### **Health and Education Decisions**

- (xviii) During the protected placement period, the father shall have day-to-day decision-making authority over matters concerning the Children's health care and educational arrangements.
- (xix) The mother shall be kept reasonably informed of any major health or educational decisions and may request clarification through counsel.
- (xx) In the event of a dispute concerning a significant health or educational matter, either party may apply to the Court for specific directions.

### **Travel Authorisation**

- (xxi) During the protected placement period, the father shall be authorised to travel internationally with the Children for periods of up to 28 consecutive days without the consent of the mother.

(xxii) For any proposed trip exceeding 28 days, the father shall give the mother reasonable advance notice in writing, including the dates and destination.

(xxiii) Neither party may unreasonably withhold consent or attempt to frustrate lawful travel authorised by this order.

#### **A's US passport**

(xxiv) The Respondent shall deliver up forthwith A's US passport to the Petitioner.

#### **The Children's Personal Effects**

(xxv) The Respondent shall forthwith deliver up the Children's effects and possessions to the Petitioner in order that they can be retained at his home during the currency of this order.

#### **Costs of Therapy and Travel**

(xxvi) The mother shall contribute fifty percent (50%) of the reasonable costs of:

- All therapy undertaken by the Children, whether individual or joint;
- Travel and accommodation expenses reasonably incurred in connection with the Children's therapy, including international travel, if required.

(xxvii) Each parent shall be responsible for the costs of their own individual therapeutic work.

#### **Exclusion from School and Residence**

(xxviii) During the protected placement period, the mother shall not attend at or approach the Children's home, school, or any location at which the Children are residing or receiving therapy, except with the written consent of the father or pursuant to a further order of the Court

#### **Provisions for Variation or Discharge**

(xxix) This order shall not be varied or discharged unless:

- (a) The Court receives a written report recommending a change in the Children's living arrangements, in consultation with the mother's treating psychologist, the Lead Family Therapist and the Court Appointed Social Worker; or
- (b) A material change in circumstances occurs which justifies a review of the residence arrangement.

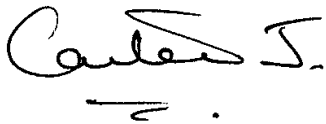
#### **Enforcement and Penal Notice**

(xxx) This order shall be endorsed with a penal notice. Any breach of its terms may be referred back to the Court for enforcement.

[2025] CIGC (Fam) 11 - FF v MM - Final

(xxxii) In the event of non-compliance, the Court may consider the imposition of costs, restrictions on contact, or such other sanctions as may be just and appropriate.

105. For the avoidance of doubt, counsel for each party will receive any reports that will be filed for the court's consideration, and the court will consider comments thereon.

A handwritten signature in black ink, appearing to read "Carter J.", with a horizontal line underneath.

**Hon. Mrs. Justice Marlene Carter**  
**Judge of the Grand Court**