



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

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Neutral Citation Number: [2025] CIGC (Fam) 14

CAUSE NO: FAM 66 OF 2014

BETWEEN:

DJ

PETITIONER

AND

BJ

RESPONDENT

Appearances: **Mr. Jamie McGee for the Petitioner**
 Mr. Gareth Jacques for the Respondent

Before: **The Hon. Justice Cheryll Richards KC**

Heard on the Papers
Draft Judgment: **23rd December 2025**

Family Law - Principles on Cost Applications

1 **THE PETITIONER’S SUMMONS**

2

3 6. The Petitioner’s October Summons sought the variation of the FAO so as to allow for the
4 building of a home on land owned by the Petitioner in Patrick’s Island, Block 24C Parcel 43 as
5 an alternative to the purchase of the Bahia Property. It was in the following terms: -

6

7 “1. An order to vary the agreement between the parties in respect of the identity of the J
8 Home in particular to order that the property situated at Block 24C Parcel 43 be designated
9 as the location of the J Home, with a contract to build as shall be agreed by the parties or
10 ordered by the Court.

11

12 2. An order that due to exceptional circumstances that the Final Ancillary Order dated 3rd
13 March 2020 be varied to: -

14

15 a. Provide that the Petitioner shall have the right of first refusal to purchase the J
16 Home in the event of the Determining Event.

17 b. In the event of sale that the proceeds of sale shall be divided to reflect the financial
18 contribution of each party.

19

20 3. Costs.”

21

22 7. The Petitioner’s primary basis for the application for variation was that there had been a nine-
23 month delay in the completion of the Bahia construction which had caused a change in
24 circumstances and that building a standalone home on the land of the Petitioner would be in
25 the best interest of J.

26

27 **THE RESPONDENT’S SUMMONS**

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29 8. By Summons dated 21st July 2021, the Respondent had sought the variation of the FAO to
30 facilitate the purchase of the Bahia Property and to detail various contributions towards its
31 purchase price. By way of the August Summons, the Respondent sought:

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1 “1. That the terms of the order relating to the J Home arising from the hearing which took
2 place on 5 November 2021 be approved by the Court in the terms annexed hereto;

3
4 2. The Petitioner shall pay the Respondent’s costs of this application.”

5
6 9. The Respondent submitted in reply to the Petitioners’ application to vary the FAO that the
7 November order should be treated as a consent order and that the circumstances did not meet
8 the threshold for variation of either the FAO or the Bahia Agreement.

9
10 10. The decision of the Court was that: -

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12 By Summons dated 20th October 2022, the Petitioner seeks (1) an Order varying the
13 agreement between the parties as to the identity of the J Home and an Order that the Home
14 be constructed instead on Block 24C Parcel 43 and (2) that the FAO be varied in two ways.
15 The relevant statutory factors and the authorities cited have been considered.

16 The submissions made by the Respondent are accepted, (no good and substantial ground
17 for concluding that there would be an injustice in holding the parties to the accord reached).
18 The relief sought in the Petitioner’s Summons of 20th October 2022 is refused.

19 The relief sought in paragraph 1 of the Respondent’s Summons dated 26th August 2022 is
20 granted.

21”

22
23 11. The Court set out a detailed chronology of events at para. 34 of the judgment. In summary it
24 was found that the Petitioner had in fact agreed to the purchase of the Bahai property and that
25 there was no good reason to depart from that agreement. Of note the factual circumstances
26 included that the Respondent had already expended sums towards its purchase. The alternative
27 of embarking on another construction project on land owned by the Petitioner where there
28 might be further delay was not likely to be in the best interests of J.

29
30 **APPLICABLE RULES AND PRINCIPLES**

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32 12. Section 24 of the *Judicature Act* (2021 Revision) provides for the costs incidental to civil
33 proceedings to be at the discretion of the Court and for the making of Rules of Court.

- 1 13. The Grand Court Rules (GCR) O. 62 r 4. provides general principles as follows:
2
3 “4. (1) This rule shall have effect unless otherwise provided by any Law.
4
5 (2) The overriding objective of this Order is that a successful party to any proceeding
6 should recover from the opposing party the reasonable costs incurred by successful party
7 in conducting that proceeding in an economical, expeditious and proper manner unless
8 otherwise ordered by the Court.
9
10 (3) A person who claims to be entitled pursuant to a contract to recover the legal fees and
11 expenses incurred in enforcing that contract shall be entitled to judgment for the amount
12 found due under the contract and such amount shall not be subject to taxation pursuant to
13 this Order.
14
15 (4) Except as provided in paragraph (3), no party to any proceedings shall be entitled to
16 recover any of the costs of those proceedings from any other party to those proceedings
17 except under an order of the Court.
18
19 (5) If the Court in the exercise of its discretion sees fit to make any order as to the costs of
20 any proceedings, the Court shall order the costs to follow the event, except when it appears
21 to the Court that in the circumstances of the case some other order should be made as to
22 the whole or any part of the costs.”
23
24 14. By GCR O. 62 r.4 (11) the Court may make an order for costs to be taxed on an indemnity basis
25 only if it is satisfied that the paying party has conducted the proceedings or relevant part thereof
26 improperly, unreasonably or negligently.
27
28 15. In *McTaggart v McTaggart*¹ the Cayman Islands Court of Appeal held that in this jurisdiction
29 in making costs orders under the *Matrimonial Causes Act* (2005 Revision), where funds are
30 available, the starting point is that which is set out in GCR O. 62 r 4. This is that costs follow
31 the event, meaning that generally save where there are special circumstances, a successful party
32 to any proceedings should recover the reasonable costs incurred by him in conducting the

¹ [2015] (1) CILR 123

- 1 proceedings in an economical, expeditious and proper manner. The Appellate Court stated that
2 in applying this principle a court should follow the guidance set out in the case of *Gojkovic v*
3 *Gojkovic (No. 2)*².
4
- 5 16. The Appellate Court noted that in the application of GCR, O, 62 r.4 it is important to bear in
6 mind that the court has a discretion in two respects. Firstly, that the mandatory requirement to
7 order that costs follow the event only arises where the court in the exercise of its discretion sees
8 fit to make an order for costs in any proceedings. Secondly, the requirement is qualified where
9 there appear to the Court to be circumstances in the case which justify the making of some
10 other order.
11
- 12 17. The Court said that the power to make an order for costs pursuant to s.24 of the *Act* must be
13 exercised with regard to the needs, financial and other resources of the parties as set out in s.19
14 of the *Act*.
15
- 16 18. In *Gojkovic v Gojkovic (No. 2)*, the English Court of Appeal considered the appeal of a wife
17 as to costs, in circumstances where the court had awarded her in excess of a *Calderbank* offer
18 made to her by the husband. The Court held that while the starting point was that costs prima
19 facie follow the event, this was more easily displaced in the Family Division than in other
20 divisions of the High Court. One important example is that it is unusual to order costs in
21 children cases. It might be affected by the behaviour of a party and the inadequacy of available
22 assets particularly if children were involved. Butler-Sloss LJ reviewed a number of
23 circumstances which may affect or distort an order for costs before concluding that “the ambit
24 and extent of the discretion of the court is consequently and rightly, far wider than in other civil
25 proceedings.”
26
- 27 19. In *London Borough of Sutton v Davis (Costs) No. 2*³ a local authority appealed an order of
28 costs made against it. It sought to rely on the general proposition that in proceedings between
29 parents it was unusual to order costs in children cases. Wilson J explained the rationale behind
30 the general proposition in the following way:
31

² [1992] Fam.40

³ [1994] 2 FLR 569

1 *“The liability point*
2 The point is based on the proposition, enunciated by Butler-Sloss LJ in *Gojkovic v Gojkovic*
3 (No 2) [1992] Fam 40 at p 57C, [1991] 2 FLR 233 at p 236F and applied every day for
4 many years in the Division, that ‘it is unusual to order costs in children cases’. I call it a
5 proposition in order to obviate sterile dispute as to whether it is a principle or an exception
6 to principle. Where the debate surrounds the future of a child, the proceedings are partly
7 inquisitorial and the aspiration is that in their outcome the child is the winner and indeed
8 the only winner. The court does not wish the spectre of an order for costs to discourage
9 those with a proper interest in the child from participating in the debate. Nor does it wish
10 to reduce the chance of their cooperation around the future life of the child by casting one
11 as the successful party entitled to his costs and another as the unsuccessful party obliged to
12 pay them. The proposition applies in its fullest form to proceedings between parents and
13 other relations; but it also applies to proceedings to which a local authority are a party.
14 Thus, even when a local authority’s application for a care order is dismissed. It is unusual
15 to order them to pay the costs of the other parties. But the proposition is not applied where,
16 for example, the conduct of a party has been reprehensible or the party’s stance has been
17 beyond the band of what is reasonable: *Havering London Borough Council v S* [1986] 1
18 FLR 489 and *Gojkovic v Gojkovic* (no 2) (above) at pp 60C-D and 240A respectively.”

19
20 20. In the case of *R & R v A*⁴, the Court considered the issue of costs following the withdrawal of
21 proceedings by the applicants. The applicants had sought contact and residence arrangements
22 for a young child following the death of her mother. The respondent was the child’s father.

23
24 21. The Court accepted that it was unusual to make an order for costs in family proceedings relating
25 to children but noted that there was a broad discretion under r. 28.1 of the Family Proceedings
26 Rules 2010, to make such an order as was thought to be just.

27
28 22. The Court considered it just to make an order for costs against the applicants in circumstances
29 where the applicants had advanced their claim in a manner which amounted to “litigation
30 conduct”. The Court had been left with the impression that the applicants had made a number
31 of unpleasant and irrelevant allegations about the respondent which he had to defend but which

⁴ [2011] 2 FLR 672

1 had then not been tested in court. Additionally, more dialogue between the parties would have
2 been expected in a case such as this: -

3
4 “24...In my judgment, the applicants should not have instituted these proceedings. In
5 my judgment, much of the applicants’ evidence has little to do with the welfare of K,
6 and amounts to little more than an attack on the father. In my judgment, as I have
7 already said, the respondent had no alternative but to defend the proceedings.

8 25. Ms Harris makes the point, as she is entitled to, that the respondent was mistaken
9 in his opposition to the fact that the court has jurisdiction to entertain the applicants'
10 evidence claim. That point has forensic merit, but little more. This is not, in my view,
11 a typical child case. It seems to me, on reading all the papers, that the applicants were
12 able to use the presence of K in England to make an application which they should not
13 have made. They have now withdrawn it, but not before the respondent has been
14 obliged to defend it – and himself.”

15
16 23. In the case of *JW v SC* the Grand Court was concerned with an application for costs arising
17 from a fact finding hearing. Williams J reviewed the general principles in relation to cost
18 applications in private law children cases citing with approval the judgment of the Court in
19 *London Borough of Sutton v Davis (Costs) No. 2*.

20
21 24. The learned Judge emphasised the special considerations in family proceedings particularly
22 where the interests of a child are at stake and referenced a number of local cases including *G v*
23 *G*⁵ and *DLF v DKT*⁶ before concluding that an even wider exercise of discretion should be
24 adopted in child cases. The learned Judge stated: -

25
26 “66. However, what emerges from the above two cases ruled on by Quin J and Henderson
27 J is their shared view about how the Court may apply its discretion. Henderson J.’s
28 commendable view expressed at paragraph 10 in *G v G* was that:

29 “*The presumption that costs follow the event can be displaced much more easily in*
30 *matrimonial cases than in other civil cases, the discretion of the court regarding costs is*
31 *far wider than in other types of civil proceedings.*”

⁵ [2010] (1) CILR 365

⁶ [2011] (2) CILR 273

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Quin J rightly noted with reference to Henderson J’s observation:

“...The discretion of the Family Division regarding costs is “far wider” than in other types of civil proceedings.”

These views are consistent with what Sir Chadwick P stated at paragraph 21 in McTaggart. Although the views were expressed in matrimonial proceedings, I fully endorse the above views of Henderson J and Quin J when also considering costs in private law children proceedings in the Grand Court Family Division where the best interests of the relevant child is paramount. I do that having regard to the sentiment expressed by Wilson LJ in the first half of his comments at paragraph 19 in *Re J* and the reasoning he also set out at page 570H in *London Borough of Sutton v Davis (Costs) (No2)*. Wilson J’s observations illustrate why a much more flexible and a not rigid ‘costs follow event approach’ should be adopted in private child law proceedings. I believe an even wider exercise of discretion than that advocated by Quin J and Henderson J for the financial proceedings they were dealing with should be adopted in child cases which are very different in nature.”

25. It was stated that there is need for some caution in that even where the approach of a party has been unreasonable, the Court should still bear in mind that normally it is inappropriate for a costs order to be made in child cases. The learned Judge stated: -

“72. When I consider the father’s submissions about the reasonableness of the mother’s approach, I note what Mr Justice Keehan stated when he referred to the meritorious observation of Mr. Justice Munby (as he then was) said at paragraph 47 in *Re N (A Child) v A and Others* [2010] 1 FLR 545:

“...the fact that a parent has litigated in an unreasonable fashion may open the door to the making of an adverse costs order; but it does not of itself necessitate the making of such an order. There is, at the end of the day, a broad discretion to be exercised having regard to all the circumstances of the case. And a judge must be careful not to fall into the trap of simply assuming that because there has been unreasonable behaviour in the conduct of the litigation an order is therefore to be made without more ado. Careful attention must be paid to all the circumstances of the case and to the factors which, on the authorities I have referred to, indicate that normally it is inappropriate to make such an order – factors which do not

1 the claimant to raise and pursue particular allegations and the manner in which the claimant
2 pursued its case and its allegations.

3 (5) Where a claim is speculative, weak, opportunistic or thin, a claimant who chooses to
4 pursue it is taking a high risk and can expect to pay indemnity costs if it fails.

5 (6) A fortiori, where the claim includes allegations of dishonesty, let alone allegations of
6 conduct meriting an award to the claimant of exemplary damages, and those allegations
7 are pursued aggressively inter alia by hostile cross examination.

8 (7) Where the unsuccessful allegations are the subject of extensive publicity, especially
9 where it has been courted by the unsuccessful claimant, that is a further ground.

10 (8) The following circumstances take a case out of the norm and justify an order for
11 indemnity costs, particularly when taken in combination with the fact that a defendant has
12 discontinued only at a very late stage in proceedings;

13
14 (a) Where the claimant advances and aggressively pursues serious and wide ranging
15 allegations of dishonesty or impropriety over an extended period of time;

16 (b) Where the claimant advances and aggressively pursues such allegations, despite the
17 lack of any foundation in the documentary evidence for those allegations, and maintains
18 the allegations, without apology, to the bitter end;

19 (c) Where the claimant actively seeks to court publicity for its serious allegations both
20 before and during the trial in the international, national and local media;

21 (d) Where the claimant, by its conduct, turns a case into an unprecedented factual enquiry
22 by the pursuit of an unjustified case;

23 (e) Where the claimant pursues a claim which is, to put it most charitably, thin and, in
24 some respects, far-fetched;

25 (f) Where the claimant pursues a claim which is irreconcilable with the contemporaneous
26 documents;

27 (g) Where a claimant commences and pursues large-scale and expensive litigation in
28 circumstances calculated to exert commercial pressure on a defendant, and during the
29 course of the trial of the action, the claimant resorts to advancing a constantly changing
30 case in order to justify the allegations which it has made, only then to suffer a resounding
31 defeat.”
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1 **THE RESPONDENT’S SUBMISSIONS ON THE FIRST COSTS APPLICATION**

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30. By written submissions dated 17th February 2025, the Respondent submits that he succeeded in all of the Summonses and there is no good reason to depart from the general principle that costs follow the event in this case. It is further submitted that the Petitioner acted unreasonably and the Respondent is entitled to costs on an indemnity basis.

31. The Respondent submits that following a hearing on the 9th July 2021 at which the Petitioner confirmed agreement to proceed with the purchase of the Bahia home there were negotiations as to the terms of the purchase and the necessary variation to the FAO. Those negotiations did not reach a concluded agreement on the terms of the variation.

32. The Respondent refers to the change in approach of the Petitioner who at various stages after the 9th July 2021, had appeared to suggest that no agreement had been reached on the Bahia Home, that it was an agreement in principle before accepting on the 20th September 2022 that an agreement had been reached but circumstances had changed such that she was now seeking to withdraw her consent.

33. The Respondent’s argument is that the Summonses issued by him were issued because of the stance adopted by the Petitioner. It is urged that in these circumstances to depart from the general principle that costs follow the event would be manifestly prejudicial to the Respondent given the Petitioner’s conduct in opposing the Summonses and that the conduct of the Petitioner meets the threshold of unreasonable litigation.

34. It is submitted that from the Court’s findings, as set out in the judgment, the Petitioner’s Summons was issued in circumstances where she knew that there was a concluded agreement with respect to the J Home and there was found not to be a good reason for the requested variation. The delay which was prayed in aid would likely be exceeded by delays in the new construction project proposed and lead to further litigation.

35. Counsel submits that the Petitioner failed in her application and that the Summons issued by her was “ill-founded and lacked any merit”.

1 36. Counsel submits that the litigation was unreasonable and therefore indemnity costs are
2 appropriate. Counsel references the chronology of events and submits that the Petitioner's
3 original position was wrong and inaccurate and that the Petitioner's conduct has been neither
4 economical, expeditious or proper.
5

6 **THE PETITIONER'S SUBMISSIONS ON THE FIRST COSTS APPLICATION**
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8 37. By written submissions dated 19th February 2025, the Petitioner submits that the proper order
9 in this case should be that there be no order as to costs. Counsel emphasises that these are
10 matters involving the provision of a home for a child and that the usual principle which is
11 applicable is that cost orders are not made in such cases. It is submitted that the Petitioner
12 should not be punished by having costs awarded against her in circumstances where she was
13 acting in the best interest of J in particular seeking to minimise the stress, disturbance and
14 disruption to him.
15

16 38. It is submitted that the Respondent's request for costs on an indemnity basis should be refused.
17 It is submitted that this is not a big money case and the matrimonial assets are not to be regarded
18 as substantial as was the case in *G v G*. The Petitioner is the financially weaker party in
19 circumstances where the Respondent's earnings and asset base are much greater than the
20 Petitioner. It is submitted that: -
21

22 " 24. These proceedings were commenced out of the Petitioner's desire to provide J with
23 the most suitable home in order to allow him to grow and thrive against the background.
24 These proceedings were not commenced in a manner which could be said to be improper,
25 unreasonable or negligent, particularly in light of the inconvenience and disruption which
26 J experienced as a result of the numerous changes in rented accommodations caused by the
27 delayed completion of Bahia where the repeated delays in the Bahia construction had
28 resulted in inconvenience and disruption from numerous changes in rented
29 accommodation."
30

31 39. Counsel says that with the benefit of hindsight, the Petitioner's fears as to delay were in fact
32 realised and that a home which was habitable at the time would have been the ideal option.
33

1 40. Counsel submits that the Respondent is the economically dominant party compared to the
2 Petitioner and that the economic disparity is significant.

3
4 41. Counsel also notes that a number of costs orders have already been made including in respect
5 of the 21st July 2021 Summons and the August 2022 Summons.

6
7 42. Reliance is placed on the case of *G v G*⁸ for the submission that an award of indemnity costs
8 is appropriate only where the matrimonial assets are substantial. In that case the Court held
9 that: -

10
11 (2) The husband would not be awarded costs. In matrimonial cases, costs would *prima*
12 *facie* follow the event. However, the court’s discretion was wide, and costs would only
13 usually be awarded at all if the assets involved were substantial. If a party failed to respond
14 to a *Calderbank* letter—a written offer to settle “without prejudice save as to costs,” only
15 revealed to the court after judgment—offering a settlement equal to or more favourable to
16 the offeree than the court’s award, the court could potentially award the offeror his costs
17 and not require him to pay the offeree’s. This would encourage parties to compromise and
18 settle. However, the parties’ behaviour—including particularly the disclosure of material
19 documents—would be a relevant consideration, and the offeree should be given reasonable
20 time to consider the offer. In the circumstances, although the offer was more favourable to
21 the wife than the court’s award, her failure to respond was reasonable. Since the husband
22 had transferred most of the matrimonial assets to a company he owned without consulting
23 her, and a long time had passed since the separation, he came under a heavy burden of
24 disclosure. However, he had failed to give a satisfactory explanation for certain payments
25 he had made, and some of his disclosure was only provided on the morning of the hearing.
26 Further, the award was not “substantial,” given that it had to support her for the coming
27 years. The husband’s application for costs would therefore be dismissed ([para. 6](#); [paras.](#)
28 [10–14](#)).”

29
30 43. Counsel’s primary submission is that the Petitioner should not be punished by having costs
31 awarded against her in circumstances where she was acting in the best interest of J, particularly

⁸ [2010] 1 CILR 365

1 seeking to minimise the stress, disturbance and disruption experienced by him during the
2 intervening time.

3

4 **DISCUSSION**

5

6 44. While I accept that this is a matter involving a child and the general principle applies, I think
7 there are circumstances which are unusual such that it would not be inappropriate to consider
8 the issue of costs. I do not think that the conduct of the Petitioner saying different things at
9 different stages about whether or not there had been agreement as to the Bahai property can be
10 ignored. A reading of the Respondents' submissions, the chronology, and the judgment makes
11 clear that much time was spent by the Respondent proving that there had in fact been an
12 agreement. Surely it would have been more reasonable and economical to have admitted from
13 the start that there had been a change of heart.

14

15 45. While there had been delays in the construction and clearly it would be in the best interest of J
16 to seek to mitigate any further delays, the alternative option put forward was not a home "that
17 was habitable at the time" as Counsel for the Petitioner suggests but yet another construction
18 project. This was one which had not yet begun with particular issues of difficulty such as
19 ownership of the land. There is every indication that it would have led to further litigation.
20 Plainly the Petitioner was not successful in her application.

21

22 46. In the case of *Three Rivers*, the Court said that the purpose of such an order "*is not to punish*
23 *the paying party but to give a more fair result for the party in whose favour a costs order is*
24 *made: — see Petrotrade Inc v. Texaco Ltd (Note) [2002] 1 WLR 947 ,"*

25

26 47. In the cited case of *JW v SC Williams J* while mindful of one parent feeling punished by the
27 other if a costs order is made and the potential detrimental consequence which could reduce
28 parental co-operation and have a detrimental effect upon the child said this: -

29

30 "78...With that in mind, when determining costs, although a rule that costs follow the event
31 is not disapplied, I am not automatically restricted by a rigid costs follow event approach
32 but may adopt a wider general discretion. An adverse finding or findings of fact may trigger
33 the discretion to make an order. As highlighted by Recorder Dias KC, although not in itself

1 necessitating the making of a costs order, litigating in an unreasonable fashion may open
2 the door to the making of an adverse costs order. I have found that the mother was
3 unreasonable in the manner in which she brought and conducted the fact-finding
4 proceedings and I have regard to that when exercising my broad discretion concerning
5 costs when considering all the circumstances of this case. When exercising that discretion,
6 I have regard to the responsibility of the Court and of the parties to progress and determine
7 the proceedings in a just, most expeditious and least expensive manner. In the Judgment, I
8 did not find that the father, who can be regarded as having successfully defended the global
9 or primary allegation at the fact finding hearing that he had acted in a coercive and
10 controlling manner towards the mother and child over many years, had engaged in
11 unreasonable litigation conduct in the children proceedings as alleged by the mother and I
12 find that the manner in which he has litigated was reasonable when addressing the fact-
13 finding allegations. In fact, he was compelled to strenuously defend the numerous
14 allegations made.”

15
16 48. In this case I have found that the Petitioner’s approach to litigation was unreasonable. The
17 Respondent was forced to defend what he had been led to believe was the agreed position, he
18 having embarked upon a financial course involving the payment of multiple deposits.

19
20 49. I do not think the fact of economic disparity can be used as a cover for unreasonable conduct
21 particularly where, as in this case the Petitioner is an income earner in her own right. The earlier
22 judgments in this case, make this clear. In my view the Petitioner should meet the Respondent’s
23 costs of the October Summons and the August Summons. Given all the circumstances, in
24 particular the fact that a child is at the heart of the issues and the economic disparity, I exercise
25 the wide discretion in matters such as these and do not go so far as to say that it should be on
26 an indemnity basis.

27
28 **THE SECOND COSTS APPLICATION**

29
30 50. The second application by the Respondent for costs following the resolution of the Summons
31 dated 16th June 2025 (“the June Summons”) by way of a Consent Order. The application for
32 costs is opposed by the Petitioner and an order that the Respondent pay her costs is sought.
33

1 51. The June Summons sought the variation of contact arrangements for the child of the marriage
2 J in June 2025 and in particular over the then forthcoming school vacation in July and August
3 2025. By the Summons the Respondent applied for the following orders:

4
5 “1. That time be abridged for the Welfare Officer to conduct a review and submit a report within
6 2 months of the date of the hearing of this Summons to inform any further increase in contact
7 and its timing.

8 2. That the Respondent’s access and custody of J, pending the submissions of the Welfare
9 Officer’s report, be per the Consent Order as filed by the Parties on 19th March 2025, with the
10 following variations:

11 i. For the month of June 2025, the Respondent to have access and custody of J for a
12 further 5 continuous days, the Petitioner having only made J available for 4
13 continuous days;

14 ii. For the month of July 2025, the Respondent to have access and custody of J for
15 the whole month;

16 iii. For the month of August 2025, the Respondent to have video contact with J every
17 third day;

18
19 3. Such further Order, Direction, or Relief as the Court thinks fit; and

20 4. That the Petitioner shall pay the Respondent’s costs of this application.

21
22 52. The Summons was listed for hearing on the 10th July 2025 but was resolved by way of the
23 Consent Order dated 9th July 2025 which provides as follows:

24
25 1. “The hearing on 10 July 2025 is vacated.

26
27 2. The Respondent’s contact with the child of the parties’, J, for July and August 2025
28 shall be as follows:

29
30 a. From 2:15pm on 4 July 2025 until 6pm on 20 July 2025.

31 b. From 12 noon on 1 August 2025 until 6pm on 8 August 2025.

32

- 1 3. Upon J's return to school in September 2025, the Respondent's contact shall continue
2 as per the terms of the Order of 12 June 2025.
- 3
- 4 4. The parties shall instruct a licensed professional from Aspire, as a joint independent
5 assessor of J's needs, who shall prepare a report dealing with how an increase in the
6 time spent between J and the Respondent, as envisaged by the Hon. Justice Richards
7 K.C. in her judgment of 4 February 2025, should take place. The report to be filed by
8 4pm on 5 September 2025 with instructions to be agreed between the parties by 4pm
9 on 18 July 2025.
- 10
- 11 5. The matter be listed for Mention on the first available date after 29 September 2025
12 with a time estimate of 1 hour.
- 13
- 14 6. Costs of the 24 June 2025 Summons reserved to be dealt with on a paperwork basis in
15 accordance with paragraph 7.
- 16
- 17 7. In the absence of agreement on costs by 4pm on 11 July 2025, the parties shall file and
18 serve written submissions as to costs of the Summons by 4pm on 18 July 2025.”
- 19

20 **THE POSITIONS OF THE PARTIES**

21

- 22 53. Each party claims to have been the successful party and says that a costs order should be made
23 in their favour.
- 24
- 25 54. The Petitioner says that the agreement reached by way of the Consent Order was in accordance
26 with the proposal made by her on the 4th July 2025 and that the result is that each parent still
27 has very close to half of July as agreed in May 2025. The Respondent in contrast lost some of
28 his contact time in August and the Petitioner achieved a better outcome than was agreed in May
29 2025.
- 30
- 31 55. The Petitioners' position is that the conduct of the Respondent was unreasonable and
32 unnecessary to such a degree that her costs associated with the Summons should be paid by
33 him. It is asserted that the Respondent was using the Court process to exploit his dominant

1 economic position and to retaliate against the Petitioner for raising reasonable concerns about
2 certain events on the 1st June 2025 when the Respondent failed to collect J from school.

3
4 56. The position of the Respondent is that there had been no concluded agreement that he should
5 collect J from school on that day and that the Petitioner persists in unreasonable conduct which
6 includes limiting his contact with J without there being a proper basis to do so.

7
8 **THE EVIDENCE AND CHRONOLOGY**

9
10 57. Each side places reliance on the chronology of events leading up to the filing of the June
11 Summons. Thus, I have reviewed the Affidavits filed and the correspondence which is referred
12 to therein. The Summons is supported by the Affidavit of the Respondent sworn on the 16th
13 June 2025. The Petitioner filed two Affidavits in response⁹ and there are also Affidavits from
14 J's shadow Teacher HP¹⁰ and an Affidavit of Jennifer Rudd¹¹ which exhibits correspondence
15 between the parties.

16
17 58. In his Affidavit the Respondent highlights that there were three letters to the Petitioners'
18 Attorneys seeking to agree June contact dates and summer vacation arrangements before a
19 response was received. There were letters of the 7th April 2025, 26th May 2025 and 4th June
20 2025.

21
22 59. The letter of 7th April 2025 proposed that J would spend the month of July with the Respondent
23 and the month of August with the Petitioner.

24
25 60. The letter of 26th May 2025 proposed an adjustment to the June dates to 1st to 10th June rather
26 than 6th to 15th June 2025. It repeated the proposed vacation arrangements.

27
28 61. The letter of 4th June stated in part: -

29
30 "In her message of 1 June 2025, your client also seeks to restrict our client's time with J
31 during his summer vacation to just nine days in each of July and August. There is no

⁹ Dated 1st July and 11th July 2025

¹⁰ Dated 1st July 2025

¹¹ Dated 8th July 2025

1 reasonable or substantiated basis for such a limitation, particularly in light of the fact that
2 J has already spent considerably more time in our client's care during April and May of this
3 year than your client now proposes for the entirety of the summer period."

4
5 ...

6 Accordingly, our client reiterates the position previously set out in our letters dated 7th April
7 2025 and 26 May 2025 in respect of the proposed summer arrangements. Please confirm
8 that the same are agreed as a matter of urgency."

9
10 62. The letter closed with a request for an urgent response failing which a Summons would be
11 issued.

12
13 63. The first response which was received was on the 9th June 2025. That letter referred to the
14 schedule being revised in June due to the Respondents' travel off Island and concern that he
15 had thereafter failed to collect J on the 1st June 2025 as per the revised schedule.

16
17 64. With respect to the summer vacation the letter stated: -

18
19 "Further, it is our client's position that BJ's contact with J during July and August 2025
20 should remain as ordered by the Court and as previously agreed between the parties, i.e
21 from the first Friday of the month for a period of 9 days."

22
23 65. The Respondent states in the Affidavit that prior to sending the letter of 7th April 2025, there
24 had been agreement with the Petitioner that they would split the summer vacation, such that J
25 would be in his care for the whole of July and in the care of the Petitioner for the month of
26 August.

27
28 66. He states that the Petitioner was now refusing to agree to such an arrangement without
29 advancing any welfare reasons for doing so. He says that he believed that the Petitioner was
30 once again behaving unreasonably in this litigation while he has attempted to take a pragmatic
31 approach to resolving these issues. He refers to the Petitioners' failure to respond to the letters
32 of his Attorney as being clearly unreasonable such that the costs should be borne by her.

33

1 **THE AFFIDAVITS OF THE PETITIONER**

2

3 67. In summary by Affidavit dated 1st July 2025, the Petitioner states that she is unwilling for J to
4 be in the Respondent’s care in excess of the regular 9 day period. The Petitioner details a
5 number of incidents in relation to the health and care of J while at the home of the Respondent
6 about which there are concerns on her part.

7

8 68. In a Second Affidavit dated 11th July 2025, the Petitioner states that sometime prior to April
9 2025 her initial suggestion was that they would each have one month with J during the summer
10 holidays. She states that there were medical issues raised in relation to J in April 2025. He
11 developed a significant fever and despite the fact that she was traveling it was only at her
12 insistence that he was taken to the doctor.

13

14 69. The Petitioner states that on the 14th May 2025 there was a video call with J, at the end of which
15 she suggested to the Respondent alternate two-week periods in July and August rather than a
16 month at a time. She states that the Respondent agreed to this. She states that the letter of the
17 26th May 2025 was the first time that she was aware that the agreement of 14th May 2025 was
18 not being honoured.

19

20 70. Her evidence is that following the Respondent’s failure to pick up J on 1st June 2025 as had
21 been agreed, she became incredibly frustrated with the Respondent and that she: -

22

23 “...felt as though we had agreed the revised June dates for the Respondent’s care of J as
24 well as the July and August vacation dates and the Respondent was purposefully ignoring
25 or disregarding these agreements.”

26

27 71. The Petitioner also states: -

28

29 “I felt bullied, taken advantage of and I was angry with the Respondent and given that both
30 previous efforts to make changes to what had been ordered by the Court had resulted in J
31 not being collected as agreed and a complete denial of our agreement, I simply suggested
32 that we just stick to that which was ordered by the Court, I considered that this was not
33 only best for certainty between myself and the Respondent, but it was also best for J. I have

1 always tried my best to safeguard, particularly because sudden changes can result in him
2 having increased anxiety and emotional discomfort.”

3

4 72. She states that the letter of 9th June 2025 from her attorney outlined a number of concerns
5 including J’s health, hygiene and oversight while in the care of the Respondent.

6

7 73. The Respondent did not respond to any of these issues. A further letter was sent on her behalf
8 on the 20th June 2025. The letter stated in part:

9

10 “At this same time, my client asked and your client agreed, that J’s July and August time
11 with BJ be amended to 2 weeks in July and 2 weeks in August commencing as normal.”

12

13 74. The response of the 24th June 2025 from the Respondents attorney was that: -

14

15 “For the avoidance of doubt, and as had been clearly and consistently communicated, my
16 client has not agreed to any amendment reducing the time he spends with J in July and
17 August 2025 to two weeks in each month. My clients’ position remains that the agreement
18 between our respective clients, was that J would spend the entirety of July 2025 in his care
19 and the entirety of August 2025 in your client’s care ...”

20

21 THE SUBMISSIONS OF THE PETITIONER

22

23 75. The Petitioner applies for her costs of this Summons on the basis that the Respondent acted
24 unreasonably and in an unnecessarily contentious manner in issuing the June Summons when
25 an agreement was already in place. This forced her (the financially weaker party) to incur costs
26 in defending it. The Respondent should therefore be held accountable for the costs incurred by
27 her. It is argued that there is a pattern whereby the Respondent as the economically dominant
28 party is the primary driver of litigation and has demonstrated overzealous and litigious conduct.

29

30 76. Counsel invited the Court to consider the sequence of events. By letter dated 7th April 2025,
31 father sought an agreement to increase contact and for contact during the summer holidays.
32 There was a discussion between the two on 14th May 2025 and agreement that the Respondent’s
33 time with J would be moved from 6th to 15th June 2025 to 1st to 10th June 2025. The Petitioner

1 suggested the two week per month division in July/August which was agreed by the
2 Respondent. This agreement was not put into writing. Then came the 26th May 2025 letter from
3 the Respondent's attorneys which said that the agreement remained unchanged from that of
4 April 2025. On the 1st June the Respondent did not collect J from School as had been agreed.
5 There was an exchange of correspondence about this on 4th and 9th June. It was suggested on
6 behalf of the Petitioner that the arrangements for July and August remain limited to the same
7 arrangements as during the school term. The Summons was issued on the 16th June. The
8 Petitioners' Attorneys wrote on 3rd July proposing terms for a resolution.
9

10 77. Counsel submits that against this background the Summons was issued unnecessarily in
11 circumstances where the Parties had reached an agreement on or about the 14th May 2025 that
12 care of J was to be shared equally between them for the months of July and August. The
13 agreement was that each would have care for two weeks of each month. Despite this agreement
14 the Respondent sought to change the arrangements so that he would have J for all of July and
15 the Petitioner for all of August. In addition to the fact that an agreement had been reached, the
16 Petitioner continues to have concerns about J being in the longer term care of his father. It is
17 also said that the Respondent had not taken steps to obtain the welfare report and was seeking
18 further time when he had already failed to keep scheduled contact dates which had to be
19 rearranged because of his schedule.
20

21 78. Counsel relies on the case of *R v A*¹² in which Swift J. (Acting) awarded costs against a father
22 who had failed to make voluntary increases of maintenance and ignored requests for discussion
23 as to what increases might be reasonable. His attitude was said to have been unreasonable and
24 obstructive and to have forced the Applicant to have taken out proceedings in court.
25

26 79. Counsel also submits that in the case of *Barrett v Barrett*¹³, costs were granted to the husband
27 because the award made by the Court closely resembled his suggestions.
28

29 80. Counsel explains that a response to the 7th April 2025 letter was initially delayed as a result of
30 the Petitioner being off Island traveling for work for almost three weeks. It was further delayed
31 because the parties attempted to reach agreement themselves. Counsel references the
32 discussion between the parties on the 14th May 2025, and the dual agreements reached as to a

¹² Grand Court Unreported Judgment Cause 102 of 2012 dated 12th December 2014

¹³ [2001] CILR 56

1 change of contact time in June to accommodate the Respondent and the agreement as to the
2 summer vacation on the terms newly proposed by the Petitioner.

3

4 81. Counsel said that in light of the agreement of 14th May, the subsequent letter of 26th May which
5 reverted to the earlier agreement prior to April 2025 was confusing to the Petitioner. Thereafter
6 there was the issue on 1st June 2025 where there was a failure to collect J as had been agreed
7 in May.

8

9 82. I note that the Respondent maintains in his Affidavit that there had been and could have been
10 no such agreement for J to be collected on the 1st June as the Petitioner had failed to confirm
11 the arrangements for June in response to the letter of 26th May 2025.

12

13 83. The submission of the Petitioner is that the Petitioner having refused to allow for a change to
14 be effected during the school week, which is viewed as disruptive of J's routine meant that the
15 Respondent's time with J was shortened. It is said that the Respondent retaliated by seeking to
16 rescind the agreement made in May about the summer vacation period in July and August.

17

18 84. Counsel submits that the Petitioner simply sought to break up the length of time in light of the
19 concerns raised about J's health and hygiene while in his father's care.

20

21 85. Counsel uses very strong language in submitting that the Respondent has deliberately caused
22 the Petitioner to incur financial costs as a retaliatory measure for his own failings: -

23

24 “ 47. The Father has wielded his financial dominance as a tactical sword, not merely to
25 assert his position but to punish the Mother for her refusal to acquiesce to his unilateral
26 demands. By issuing the Summons in the face of an already agreed arrangement, and in
27 full knowledge of the Mother's lesser financial means, the Father has deliberately caused
28 her to incur legal costs as a retaliatory measure for his own failings- most notably, his
29 failure to adhere to the agreed care arrangements (and his indifference for J's health and
30 hygiene). This conduct is not only unreasonable but emblematic of a broader pattern of
31 litigation strategy designed to exhaust and intimidate, rather than resolve disputes in good
32 faith.”

1 86. As to the question of who is the successful party, Counsel submits that the terms of the
2 settlement which was reached are substantially the same as those which were offered by the
3 Petitioner in May, that is a portion of each month. The result is said to be that each parent had
4 close to half of July but the Respondent had less time in August. It is submitted that the
5 Respondent issued the Summons without seeking to agree revised dates. The argument is that
6 the Summons was unnecessary and was issued in retaliation against the Petitioner. It is said
7 that the Respondent sought to manipulate the Court into repudiating the agreement made by
8 the parties without notice to her or attempting to address agreement with her.
9

10 **THE SUBMISSIONS OF THE RESPONDENT**
11

12 87. The Respondent seeks his costs arising out of the Summons and resists any order of costs in
13 the Petitioner's favour. Alternatively, if there is to be no order as to costs, the Respondent seeks
14 his costs for the preparation of the costs submissions.
15

16 88. Counsel submits that there was no concluded agreement on the 4th July because the parties had
17 been unable to agree on costs.
18

19 89. It is the Respondent's position that he was the ultimate successor in bringing the Summons
20 because he secured more contact than had been offered by the Petitioner in her open letter of
21 9th June or as contained in the Affidavit of 1st July. The Petitioner offered only 9 consecutive
22 days. He secured 17 days in July and 8 days in August a total of 25 days which was more than
23 the 18 days being offered by the Petitioner.
24

25 90. It is submitted that the Petitioner maintained an unreasonable position in her letter of 9th June
26 and in her Affidavit of 1st July. This position did not take account of the fact that J spent 17
27 continuous days in the Respondent's care in April and more than 9 consecutive days in May.
28 The further submission is that the Petitioner sought to raise welfare concerns, some of which
29 date back to 2016 and in circumstances where the Court made findings that there were no
30 physical welfare concerns when J is in the care of the Respondent.
31

1 91. Counsel submits that where the Petitioner then abandoned her objections and on 3rd July 2025
2 offered the Respondent significantly more time with J, the Respondents' application for costs
3 should succeed.

4
5 92. It is also submitted that the conduct of the Petitioner in failing to respond over a two month
6 period is significant. Counsel says that had there been an early response, an earlier hearing date
7 could have been obtained, or negotiations could have ensued without the need for incurring
8 further substantial costs.

9
10 **DISCUSSION**

11
12 93. This is a case which is directly concerned with the day to day care of J with each side clearly
13 having his welfare uppermost in mind. The usual position is that there be no order as to costs.

14
15 94. Each side urges upon the Court that there is something out of the ordinary which should move
16 the Court to order costs in their favour, but it seems to me that there are clearly failings on both
17 sides.

18
19 95. On the Petitioner's side, it is urged that an oral agreement had been reached in May. It is not
20 clear why there was no response to the letters of the Respondent of 7th April, 26th May and 4th
21 June even if the Petitioner had been travelling for a period of time as is asserted. Even if the
22 Petitioner was travelling during a part of this time it is not clear why the fact of the agreement
23 could not have been communicated or referenced.

24
25 96. The letter of 26th May post dated what was said to be the oral agreement of 14th May 2025. Of
26 significance is the fact that the response which was finally sent on the 9th June made no
27 reference to the agreement said to have been reached in May and inexplicably in light of what
28 was said to have been the agreement proposed insisted that vacation contact be limited to 9
29 days.

30
31 97. The Respondent is accused of taking retaliatory action in very strong language. For my part I
32 do not see his response as being unreasonable or retaliatory. Whatever had been the issues in
33 June, his contact with J had been limited to only 4 continuous days and he was now being told

1 that the summer vacation would be limited to 9 days per month rather than what had been agreed
2 before April or the equal number of alternate weeks which the Petitioner maintains was the
3 alternative agreed position in May.

4
5 98. I cannot see how it can be classified as retaliatory to try to achieve additional contact time with
6 a beloved child or to clarify arrangements such that summer holidays with the child could be
7 planned.

8
9 99. If there is a failing on the part of the Respondent, it is perhaps in failing to further respond or
10 negotiate in light of mother's identified concerns which had been set out in some detail in the
11 letter of 9th June 2025.

12
13 100. On the Petitioner's side, the fact is that her position changed over time heavily influenced by
14 what is said to have been the Respondent's failure to collect J from school on the 1st June 2025
15 and J's health issues in April/May. It is her action and response which at first glance may seem
16 retaliatory but in reality, I accept that it is very much a response to her concern for J and her
17 endeavour to protect his health and hygiene.

18
19 101. Nothing in these circumstances stands out to me such that the ordinary rule should be displaced
20 or put another way such as to merit the exercise of discretion outside of the ordinary course in
21 cases involving children. There are issues on both sides. In this case I do not think that I reach
22 the stage of considering who is the successful party. Even if I did, I would likely say that the
23 distinction between what was offered and what was achieved on both sides is an extremely
24 narrow one. But I do not reach that stage, I am satisfied that in this case, which is so inextricably
25 bound with the welfare of J and on both sides, their deep love and care for him, that the
26 appropriate order is the usual one that there should be no order as to costs.

27

28 **Dated this the 3rd day of February 2026**

29 

30 **The Hon. Justice Cheryll Richards KC**
31 **Judge of the Grand Court**

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