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

The Ruling 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 ruling itself) may be identified by name or location and in particular the anonymity of the child and the adult members of their family must be strictly preserved.

IN THE GRAND COURT OF THE CAYMAN ISLANDS
FAMILY DIVISION

CAUSE NO. FAM 29 OF 2021

BETWEEN:	**T**	**APPLICANT**
AND:	**R**	**RESPONDENT**

Appearances: The Applicant in Person
The Respondent in Person
Ms. Laura Clemens (the Guardian Ad Litem) instructed by Ms. Lynne McDonagh of KSG to represent the children

Before: Hon. Justice Richard Williams

Heard: 12 April 2024

Ruling circulated: 15 April 2024

HEADNOTE

Children Act (2012 Revision) - Specific Issue application for leave to temporarily remove children from jurisdiction for a family wedding and holiday in Mexico with four school term days being missed - Section 15 Children Act (2012 Revision) - A parent with a shared residence order requiring the permission of another person who has parental responsibility to temporarily remove children from the jurisdiction for a period of time under a month - Sections 12 and 14 Education Act (2024 Revision) and absences of children from school – Comment upon (i) the *timing of communicating to the other parent a request to temporarily remove a child; and (ii) the expectations placed upon an applicant when making such an application.*

RULING

The application, the proceedings, the hearing and the positions of the parties

1. The primary application that is before the Court is the Applicant's Form C3 application filed on 27 March 2024 for a specific issue order granting her leave to remove the children to attend her brother-in-law's wedding in the Yucatan, Mexico (a Hague Convention country) for the period from Saturday, 4 May 2024 up to and including Sunday, 12 May 2024. The Court has been told that it is intended that the children will play an enhanced role at the wedding. If the children were to travel on those dates, they would miss four school term days[1].

2. The application had to be made because a Prohibited Steps Order remains in place which prohibits the removal of the children from the jurisdiction without the consent of both parents or an order of the Court. The Applicant had sought the consent of the Respondent to remove the children, stating that she first did that with an email sent by her on 14 March 2024. Prior to the hearing the Respondent did not consent, as she was concerned about the children missing four days of school and because she felt that it may impinge, upon her return to the Cayman Islands, on any Court ordered contact that may be granted to her. This is not an application that was ever opposed due to any fear that the children will not be returned to the jurisdiction or because it was an application concerning removal to a non-Hague Convention country.

3. I have had the opportunity to read the Applicant's Affidavit sworn on 8 April 2024. I have heard briefly from the parties and, at their request, both the Applicant and Respondent have attended this hearing by Zoom. I have heard in some greater detail from the Guardian Ad Litem, who attended the hearing in my Chambers.

4. The Court is endeavouring to complete a comprehensive reserved judgment covering issues of residence, contact, prohibited steps and discharge of parental responsibility after a twenty plus day hearing which was spread over eleven months, and which only concluded on 21 February 2024. During the latter stages of that substantive hearing, the Applicant issued an application to permanently relocate with the children to New York, USA. As a part of the orders sought in the present C3 Form application, the Applicant has also applied for leave to temporary remove the children to the UK for an extended period during the children's school summer holidays. I will

[1] Monday, 6 May 2024 is a public holiday.

not be progressing or giving consideration to either of these two applications until after that above-mentioned Judgment has been delivered.

5. At the hearing of the present Summons, I felt that it was appropriate to indicate to the parties the primary decision that I had reached in relation to the above-mentioned substantive contact application. My decision, which will be elaborated in the reserved judgment, is that a no contact order will not be made. The Court will, in that judgment and post that judgment, be endeavouring to make arrangements to repair the fractured relationship between the Respondent and the children. Having given that indication to the parties, the Court highlighted that it has little doubt that the children were very much aware of and were looking forward to attending the wedding in Mexico. Looking at the longer term best interests of the children, The Court was concerned that, if it ruled that the Applicant could not take them on the trip to the wedding, the children would, no matter how they reached that view, wrongly believe that the reason that they were not going was because of the Respondent. If they were to hold such a view, it would likely make the task of their re-bonding with the Respondent more problematic. In addition, it would widen the already deep divide between the Respondent and the Applicant, resulting in them being less insightful about how they must cooperate in relation to the child arrangements in the future. Of course, the children may not have the maturity to understand the detrimental effect of them missing school, so their wishes would not be the determinative factor when considering whether to grant leave to remove at a contested hearing. Upon hearing the Court's indication about the substantive proceedings, the Respondent indicated that she no longer wished to oppose the Applicant's application to remove the children from the jurisdiction to Mexico for the proposed dates. It is clear that she was still uncomfortable with them missing days from school but felt that, because of the present circumstances where they were looking forward to the imminent trip, it would be upsetting and therefore may not be in their interests for them to be prevented from travelling.

6. With that indication having been given by the Respondent, the Prohibited Steps Order no longer applies in relation to the proposed Mexico trip as both parties now consent to the temporary removal of the children. Therefore, the Court does not have to give its leave to the Applicant to remove the children from the jurisdiction for the proposed dates. That said, because of the educational matters arising in the application, I felt it appropriate to make some comments in a

brief written ruling. The parties, including the Guardian, agree with the Court's suggestion that a copy of this Ruling should be provided to the children's school by the Guardian.

The parties and the children

7. The parties were married in 2016 and were divorced in February 2022. In February 2024, the Applicant married her new partner in New York.

8. The parties are both female and are aged in their early forties. They are United Kingdom ("UK") nationals. The Applicant has immigration status in the Cayman Islands pursuant to her work permit. The Respondent's previous employment in the Cayman Islands came to an end in or around December 2023, after which she had to return to the UK. The Respondent informs the Court that she will soon be returning to live and work under a new work permit in the Cayman Islands, but no date has been given for that due to a delay in her employer completing the work on their business facilities. The Applicant states that she has retained her rented accommodation in Grand Cayman.

9. There are two relevant children. The eldest child, RI, is a 10-year-old female. She was conceived by the Applicant using a sperm donor. The youngest child, RA, is a 5-year-old male. RA was also conceived by the Applicant using the same male sperm donor who donated for RI. RA was born during the marriage and both parties' names appear on his birth certificate, so both have parental responsibility in relation to him. They both now also have parental responsibility for RI as a Shared Residence Order was made in relation to her in a Consent Order approved in February 2022. Much to the Respondent's understandable chagrin, and despite her and the Guardian's efforts, she has only been able to have contact with the children on two occasions since July 2023.

10. For ease of reference, with no discourtesy intended to the parties, I hereafter refer to the Applicant as "T", to the Respondent as "R", to the eldest child as "RI" and to the youngest child as "RA" in this Ruling. T's new wife will be referred to as D.

The circumstances of the present application and the children's school's position in relation to the children missing school

11. The Court has throughout these proceedings accommodated many applications, primarily made by T, for temporary removal, brought in a manner that has compelled the Court to reorganise its hearing lists to provide very prompt hearings. This has again had to be done with the present application.

12. Attached to T's supporting Affidavit is documentary evidence which satisfies me that T's brother-in-law is marrying in Mexico and that those attending may be in Mexico between 2 May and 12 May 2024. Despite that, T does not propose that she and the children leave to Mexico to join others from the wedding party who will be arriving on 2 May 2024, as she feels that the children should attend school on Thursday, 2 May and Friday, 3 May 2024. They will then be able to make use of the public holiday on 6 May 2024. The children are named on the official wedding invitation which is exhibited to T's Affidavit. It appears, from some photographs exhibited to T's affidavit, that the children's wedding outfits have been purchased and I am informed that they will match the other attending children's outfits. I accept T's evidence that the children will be participating in the wedding and that their outfits were purchased by T's mother-in-law in November 2023. With that in mind, it is a pity that this application was not made sooner, or a request made to R sooner than March 2024.

13. If this proposed trip was not taking place during the school term time, I would have expected consent to have been given by R. This would not have been one of those more complex matters where the Court is considering the removal to a non-Hague Convention country or where there is a genuine concern that a child will not be returned to the jurisdiction. I should add, that in the one case that I have dealt with in which a child was wrongly retained by a Mexican mother in Mexico City, once the Hague Convention mechanisms commenced between the two Central Authorities, the Mexican Authorities (including police, social workers and the courts) acted in an exemplary fashion resulting in the prompt return of the child to the Cayman Islands. If R's consent had been withheld, it would not have required the more in-depth consideration that I would have needed to give if R had not removed her opposition at the hearing.

14. As this proposed trip would result in the children missing four days at school, other considerations would have come into play and I would have had to give more thought to an opposed application being made. A primary consideration for me prior to the hearing was whether any absence caused by the trip would be viewed by the children's school as having a detrimental effect on their educational welfare, or even a possible benefit to it. I felt it would be helpful to know whether the school would formally approve of such an absence and, if they did not, what was their wider informal view about whether the provided purpose for the absenteeism would be beneficial or not for the children. Therefore, after reviewing the application in preparation for the hearing, I directed my Personal Assistant to write to the parties in the following terms:

> *"In relation to removing the children out of the jurisdiction during the school term time, the Court will need to know what the Schools'*[2] *positions are in relation to that. The Schools should be invited to consider paragraph 12 (especially paragraph 12(3)) the Education Act (2024 Revision) and then state whether they approve the children's absence from school on the proposed school days. It would be helpful for the Court to be provided with a written notification from the Schools indicating that they have considered the relevant provisions in the Education Act and stating whether they then approve or do not approve the proposed absences from school on the specific dates."*

15. In her supporting Affidavit, T states that she then wrote to the headteacher of the children's school requesting permission for the children to be absent from the school for the requested period. T stated that the school had to obtain legal advice concerning the application of the Education Act (2024 Revision) ("the Act"), but their stance was the same as it had been in December 2022, namely that the absence would be treated as an *"unauthorised absence"*. I have seen an email sent on 10 April 2024 by the Director at the school to T in which she states:

> *"Based on the Education Act and the School's attendance policy, regretfully if the children were to be away from school for the family event overseas it would be considered as an unauthorized absence. As such, if you were to take the children overseas for the wedding, as a school we would note it is notified but unauthorized."*

[2] The email wrongly referred to there being more than one school rather than the one school which both children are attending.

16. In her Affidavit, T said that the headteacher at the school:

> *"has offered to speak to a representative for the Judge to clarify their position, and holds the belief that family events of these kind when the children are doing well in school and attendance is good are beneficial."*

I was conscious that it might be helpful for the Court to know what the school's less formal/non-statute restricted view was about the benefits or otherwise of the children missing school, in other words, does the school think it was in their best interests to travel to Mexico or to remain at school. Therefore, I instructed my Personal Assistant to write to the parties in the following terms:

> *"Having regard to paragraphs 15 and 17 in (T's) latest affidavit:*
>
> > *"16. .... Arrangements for any necessary coursework will be made to ensure no adverse impact on their studies when they travel."*
> >
> > *"17.* ***The Headteacher, …, has offered to speak to a representative for the Judge to clarify their position,*** *and* ***holds the belief that family events of these kind when the children are doing well in school and attendance is good are beneficial."***
>
> *I am able on the information before me to understand the ss~~S~~chool's formal position concerning how any absent days would have to be recorded pursuant to the Education Act. However, I invite the Guardian Ad Litem, on behalf of the children, to urgently reach out to (the headteacher) to confirm whether the above apparently supportive comments for the proposed trip attributed to her are accurate and to clarify the ss~~S~~chool's 'non-Education Act position' about the children attending the wedding."*

17. Ms. Clemens, the Guardian Ad Litem, kindly took up the invitation to speak to the school and had a fifty minute conversation with the headteacher. I am grateful to both the Guardian and to the headteacher for doing that. As the application is no longer opposed, I need not rehearse the helpful details provided by Ms. Clemens. However, it is clear that, although the school recognises that the children may want to go to the wedding and that there may be benefits for them from travelling to Mexico and thereby seeing the wider world, such a trip would not fall within the justified circumstances set out in the Act or in the school's written policies for not classifying any absenteeism as being *"unauthorized"*.

The Law - Temporary Removal from the Jurisdiction and the provision of the Act

18. As this application was not one which involved any risk concerns relating to potential abduction, the Court would not have needed to concern itself with much of the guidance given in ***R (A Child)*** [2013] EWCA Civ 1115 and in ***AB v TB (Temporary Removal to Jordan)*** [2014] EWHC 4663 (Fam). The application for a s.10 Specific Issue Order means that, pursuant to s.3(1) of the Children Act, the child's welfare would be the Court's paramount consideration.

19. As R has now given her consent and as I am not required to consider whether the Court's leave should be given, I do not need to consider what is now commonly referred to as being the 'welfare checklist'. However, I felt that I should still comment on the education needs factor set out therein.

20. I can see the educational benefits that may arise for young children travelling to fascinating places when they live on a rather small island community like Grand Cayman. The trip to the Yucatán could broaden their horizons and may have an educational element, but one must then balance that with the potential detrimental effect arising from the days they will miss from school.

21. Section 12 of the Act, under the heading: *"Duty to secure attendance at school"* provides:

> *"(1) Subject to subsection (3), a parent or legal guardian of any child of compulsory school age shall ensure that the child receives full-time education suitable to the child's requirements either by attendance at school, from the first day of the school calendar*[3]*, or otherwise as provided in section 16.*
>
> *(2) A person who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine of two thousand dollars.*
>
> *(3) It is a defence to any charge under this section of the failure of a student to attend school on any day on which the school is open if —*
>
> *(a) the absence is caused by illness or other unavoidable cause making the student's attendance at school not reasonably practicable;*
> *(b) the day is recognised as a religious holiday by the religious denomination to which the student belongs;*
> *(c) the student is excluded from school and the exclusion is still in effect; or*

[3] My emphasis by underlining.

(d) the student has been expelled and has not been given permission to enrol in another school."

None of the above defences cover a situation where a parent decides to keep a child out of school to attend a wedding.

22. Section 14 of the Act, under the heading: *"Excuses for failure to attend school"* provides:

"A student of compulsory school age shall be excused from school attendance if -

(a) the student is suffering from a disability that, in the opinion of a medical practitioner, makes the student incapable of physically attending school;
(b) the student is engaged in work experience or other educational programmes authorised or approved by the school leader; or
(c) the student is representing the Islands in an educational, cultural or sporting event or in any other official capacity."

None of the above *"excuses"* cover a situation where a parent decides to keep a child out of school to attend a wedding.

23. The children's school, quite rightly when having regard to provisions in the Act and in the school's written attendance policy, state that their formal position is that they would have to record the proposed days away as being *"an unauthorised absence"*. Even if this Court had granted leave to T by means of a Specific Issue Order, that decision should not have in any way been regarded as being an indication that the school's official registration of the leave as being *"unauthorised"* is unreasonable or wrong. In fact it would have been correct. The school is in an almost impossible position if it were to formally authorise the absences for this trip so publicly and it is almost bound to say that the trip would be *"unauthorised"*.

24. The Court accepts that education and school are very important and so too is attendance. I have no evidence to suggest that for the current academic year the children do anything other than attend school properly and, save for acceptable sickness days taken, fully. I do not in any way suggest that leave during school term time should be easily permitted. However, in the circumstances, I would hope that, if the children's attendance for the rest of the academic year is high (save for any later authorised absences), there will be no formal repercussions under the Act if T decides to take the children to Mexico on what will be unauthorised leave from school.

Conclusion

25. As mentioned, due to the consent being given by R, I do not now need to rule on the issue as to whether leave should be given. In such circumstances, the Prohibited Steps Order does not restrict T taking the children on the trip on the proposed dates. Therefore, it is now left up to T to decide whether it is appropriate for the children to be removed from their school on the proposed dates to enable them to attend the wedding trip even though the school has indicated that the absent days will be registered as being *"unauthorized"*.

Footnote

26. The timing of communicating to the other parent a request to temporarily remove a child and for the making of applications of the related Specific Issue Order requires comment in this footnote. A request should be made to the other parent well in advance of the requested departure date. I note, in this case, that T was aware of the wedding at some stage prior to November 2023 because that is when she says she received the children's wedding outfits and that she then did not make a request of R to consent to the removal until March 2024. Any such request should ordinarily be coupled with as much information as possible including: (i) the travel arrangements; (ii) where the children will be staying whilst away; (iii) how to contact the parent and children when they are away; (iv) proposed arrangements for indirect contact for the other with the children whilst they are away; and (v) general details about what the children may be doing whilst away. A timely provision of the request/details would provide the other parent with sufficient time to consider the request and to reply. It may then, in turn, leave sufficient time for the applying parent to finalise the travel arrangements without leaving that to the last minute. If agreement is not reached, the above would enable the applicant parent to then seek a listing of an application for a specific issue order in the normal way, rather than over-pressurising the Court to find a space in its full lists on too short notice. Parents should be aware that if they do not apply for a specific issue order permitting them to temporarily remove the child well before the proposed departure date, then the Courts may well not be able to accommodate the hearing of a contested application in the period prior to the proposed departure.

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