IN THE GRAND COURT OF THE CAYMAN ISLANDS
FAMILY DIVISION

CAUSE NO. FAM 29 OF 2021

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

Appearances: The Petitioner in Person
The Respondent in Person
Ms. Laura Clemens, Guardian Ad Litem

Before: Hon. Justice Richard Williams

Heard: 31 August 2023

Ex Tempore ruling: 31 August 2023

Perfected ruling: 11 September 2023

HEADNOTE

Children Act (2012 Revision) - Role of Guardian Ad Litem in private law children proceedings - recording of interviews by Guardian Ad Litem.

EX TEMPORE JUDGMENT

Introduction

1. The matter comes before me in a long running and highly disputed contact/residence case. The substantive hearing is part heard and is due to conclude after the 8 days which have been listed to commence from 20 November 2023.

2. There are two relevant children. The eldest child, RI, is a 9 year-old female. The youngest child, RA, is an over 4½ year-old male. RA was conceived by the Petitioner using the same male sperm

donor who donated for RI. RA was born during the parties' single sex marriage and both parties' names are on his birth certificate, so both by law 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.

3. For ease of reference, with no discourtesy intended to the parties, I hereafter refer to the Petitioner as "T", to the Respondent as "R", to the eldest child as "RI" and to the youngest child as "RA" in this Judgment.

4. An issue has arisen concerning the role of the Guardian Ad Litem in these proceedings and that is what has been considered at this hearing and is dealt with in this Judgment. I have listed this hearing on my own motion having received an email from the Guardian Ad Litem seeking directions due to problems she is encountering which are preventing her from performing her duties.

Background

5. Due to the limited issue for consideration today I only outline the relevant background. The parties married in early 2016. T filed a Petition for Divorce on 15 February 2021. The Petition was not contested, and it was proved on 9 April 2021. In the Petition, T pleaded that RA was the only child of the marriage. However, that gave an incomplete impression, as the evidence of this hearing establishes that RI was brought up in the matrimonial home of the parties as a member of their family. R stated in her Acknowledgement of Service filed on 23 February 2021 that both children were children of the family and that she sought a shared care arrangement.

6. Between April and June 2021, the parties attended a number of mediation sessions. However, on 3 June 2021, a notice of cancellation of mediation was issued by the Mediation Office indicating that mediation had been halted as one of the parties no longer wished to participate in the process. On 11 June 2021, T filed a Summons seeking orders that contact should be reduced and that any contact visit with R must include both children. When the matter came on before me on 30 June 2021, I made a referral for a Court Welfare Officer's Report. Directions were given to a one-day final children hearing.

7. On 27 August 2021, Mrs. Rennetta Toolsiram filed her Court Welfare Officer's Report. Mrs. Toolsiram made a number of recommendations including that there be a shared residence order.

8. The parties again attended mediation after the Welfare Report had been circulated and a Mediation Report dated 28 January 2022 indicated that the case was fully settled. On 4 February 2022, the parties submitted a Consent Final Children Order and a Consent Ancillary Relief Order. Both orders were approved by me as they were orders which clearly met the needs of the children and which put in place financial and child arrangements which were in the children's best interests. The comprehensive children order ("the Order") was intended to be a final order which confirmed the importance of the involvement of both parties in the children's lives and which made that clear by ensuring that both parties had parental responsibility for both children. The Order, seemingly drafted with the commendable assistance of the Mediator, dealt with the minutiae of the child arrangements and contained the parties' expectations about how the parents should conduct themselves in relation to the children. The Order was clearly more detailed than one might ordinarily expect, likely because each party had concerns about how they could co-parent. The Decree of Dissolution of Marriage was signed on 4 February 2022.

9. Regrettably, the arrangements provided for in the Order soon broke down. On 26 June 2022, T filed a Summons for a variation of the Order. T sought a no contact order for R and both children as well as an order for R:

> *"to immediately have no future decision-making power in matters relating to the children".*

On 18 July 2022, R filed a Cross-Summons seeking an order that T comply with paragraph 4 of the Order and make both children available for contact with R.

10. When the matter came on before me on 22 July 2022, I referred the matter for an updated Court Welfare Officer's Report, which was to be submitted no later than 30 September 2022. At the hearing, I reiterated to the parties that the orders for contact contained in the Order remained in place. However, due to concerns raised by T, I recognised that there may well be issues about ongoing contact during the assessment stage, so the Welfare Officer should be allocated to the assessment promptly. I stated that if the Welfare Officer felt that there was a need to vary contact prior to the final report being submitted and if the parties were not in agreement with any change

in the contact arrangements recommended by the Welfare Officer, that she should inform the Court.

11. On 2 September 2022, T filed a Summons seeking a variation of the Order. T reiterated her earlier request for a no contact order for R and both children to be made as well as for the making of an order for R:

> *"to immediately have no future decision-making power in matters relating to the children".*

T, in the alternative, sought an order that a *"less disruptive"* contact[1] schedule be put in place, namely longer weekend contact on alternate weekends. That Summons is one of the Summonses being considered at the part-heard hearing.

12. The newly allocated Welfare Officer, Ms. Lydia Watling, filed her report on 5 October 2022. Ms. Watling remains as the allocated Welfare Officer. In that report she noted that RI:

> *"clearly expressed wishes for contact with her mothers' to be "equal and fair" and is clear that she wants both of them in her life".*

Her recommendations included one that the contact arrangement should be alternate weeks with each parent.

13. At the case management hearing on 7 October 2022, the Court gave directions to a four-day hearing to be listed on the first available date after 30 January 2023. On 12 December 2022, the matter came on before me for further case management and directions were given to a 9-day hearing to commence on 7 March 2023. A further case management hearing was heard on 2 March 2023 which followed the receipt, on 28 February 2023, of an updated Court Welfare Report drafted by Ms. Watling. Further directions were given to the 7 March 2023 hearing. In her report Ms. Watling recorded that RI:

> *"expressed the desire to continue spending time with each mother in their respective households and believes her brother (RA) wants the same".*

[1] T said to prevent continuous disruption of the children's school schedule.

Ms. Watling noted that she:

"did not observe anything of concern during her home visits with (T), (RI) and (RA)".

Ms. Watling reported:

"Worker assessed that with no child safeguarding issues and with both parents having the ability to care for the children the recommendation was for the parties to adhere to contact orders as the children are entitled to a relationship with both parents regardless of the conflict between the parents."

She stated that:

"Overall worker has observed (RI) and (RA) to be comfortable with both parents. Due to the fact that (RI) is beginning to show signs of confusion and lack of confidence in speaking about (R) and the activities at her home it would, once again, be in her best interest for sessions at the Wellness Center to continue in order to provide her with the best support emotionally and psychologically..."

She added:

"Although worker has seen both children affectionate and at ease in both parents' presence and has no doubt about (R's) and (T's) ability to meet the children's physical needs, it is, however, challenging to ascertain in depth the impact of the parental conflict on (RI) and (RA) without a professional assessment."

She stated that:

"After the submission of worker's welfare report there have been a number of changes in the parties' lives such as (T) having a new partner, (R) experiencing a severe mental health breakdown and (RI) showing signs of confusion. At this time worker is recommending that before a final recommendation for contact arrangements are made that the Applicant and Respondent complete co-parenting classes; Applicant and Respondent complete Parenting Capacity assessments; sessions at the Wellness Center for (RI) and a report be provided as well as parents engage in parent consultations as part of the process; and for DCFS to have continued correspondence with (R's) psychiatric provider to assess for compliance overall."

14. The 11-day hearing was held in my Chambers between 7-24 March 2023 and after the hearing of the evidence it was adjourned for me to prepare a reserved Judgment. T's primary application was and remains that there be a variation of the shared residence into a sole residence order in her favour with a no contact order being made in relation to both children. If contact was to continue, then T sought a variation in the current schedule to alternate weekend contact. R contended that the shared residence order should remain in place and that the contact schedule should be varied

so that the children spend equal time with each parent on a week on/week off basis. In her written notes submitted to the Court for a hearing on 3 April 2023, R requested for the first time that:

> *"the court digs deep into the evidence, events, summonses and evidence given to consider a sole residence order in my favour".*

15. At the time when I was working on the Judgment the parties submitted additional evidence which they felt was relevant to the Court's determination. Accordingly, a two-day hearing was listed to enable the Court to then receive that evidence. At a mention hearing held on 5 May 2023, I directed that a Welfare Officer (preferably Ms. Watling) be allocated to carry out an ongoing assessment on the family in relation to these proceedings.

16. On 16 June 2023, a report prepared by Ms. Felicia McField, Clinical Mental Health Counsellor/Registered Play Therapist at the Wellness Centre ("the Centre"), concerning RI was filed. RI had been referred to the Centre by her paediatrician who reported that she was experiencing chronic abdominal pain with no organic cause identified. The paediatrician also reported that the Screen for Child Anxiety Related Disorders questionnaire was administered and highly suggested the presence of an anxiety-related disorder, particularly separation anxiety. The reporter indicated that:

> *"The primary goal for RI's participation in play therapy was to provide (her) with a safe and unbiased environment where she could safely explore, express, and process emotions."*

The reporter also highlighted a set of circumstances which this Court has also encountered throughout these proceedings. She noted that:

> *"The parents' consultations were challenging, as evidenced by parents sharing information that would incite the other parent and often resulted in each parent interrupting the other and talking over the other. This writer had to intervene and consistently remind parents to stop talking over each other, and to remain focused on the goals of CCPT[2], which was to discuss RI's therapy needs and outcomes. Parent consultations were not efficient in discussing RI's emotional needs, as a primary focus is management on parental accusations against one another and sharing of information for the perceived purpose of diminishing the unbiased stance of the RPT[3]. Outside of schedule parent consultation sessions there was excessive email correspondence from both parents to the RPT, the tone and content of which was often accusatory, aggressive, critical, and not aligned to the initially agreed goals of creating a safe therapeutic space for unbiased CCPT.... Scheduling of appointments for (RI) was exceptionally difficult.*

[2] Child-Centred Play Therapy.
[3] Registered Play Therapist.

> *Parents were not willing to communicate directly with each other to schedule appointments. Given the complete breakdown of communication between the parents, The Wellness Centre administrative team needed to exert an unnecessary effort to schedule appointments at a time suitable for both parents."*

Ms. McField also noted that T's partner:

> *"would attempt to gain information about dates of future appointments or suggested additional support needed to be provided to parents in order to schedule sessions".*

However, the partner was not a designated person to whom information could be released and Ms. McField reported that on two occasions when the partner's request for information were refused:

> *"she spoke rudely to the Wellness Centre administrative team, including raising her voice".*

Regrettably, although RI had benefited from play therapy and would benefit from continued access to a therapeutic space and therapeutic relationship, the Centre was not willing to continue the work due to the difficulties they had encountered with the parents.

17. The matter came before the Court on 21 June 2023 for the continuation of the part-heard hearing with the new evidence to be presented. It was evident that the parties had not been provided with a copy of the Wellness Report and that the Welfare Officer would now be recommending that there be a no contact order. Although the Welfare Officer had not filed a report by this stage, I explored with her why she was now making a no contact recommendation, especially as her position was different to her previous recommendations. I was not satisfied with the generic replies that I received from the Welfare Officer, but I recognised that there would hopefully be more helpful clarification given from her in the soon to be filed Welfare Report. At the hearing, I mentioned to the parties that I was considering whether this was a case that required the children to be separately represented by a Guardian Ad Litem. This suggestion appeared to be well received by both parties. With this in mind, the matter was adjourned to a mention hearing on 27 June 2023.

18. Following the hearing, I explored with the Court Administrator and the Family Proceedings Unit whether a Guardian Ad Litem with legal experience could be appointed in this complex matter, especially due to the conduct of the unrepresented parents. I was concerned about the apparent

lack of clarity about the reasoning for the substantial departure by the Welfare Officer from her previous recommendations and I felt that the best interests of the children would be met by them being represented by someone who had legal experience of the issues that arise in no contact cases. Ms. Clemens, an experienced family lawyer and experienced Guardian, accepted the offer of an appointment and she attended the mention hearing on 27 June 2023. At that hearing, the appointment of Ms. Clemens appeared to be well received by all parties.

19. Ms. Clemens then attended hearings on 11 July 2023, 20 July 2023, and 14 August 2023. I gained the impression from her oral presentations to the Court that she had actively sought to engage in her role with the family and with professionals. At the hearing on 11 July 2023, in light of the content in the Welfare Officer's Report and after hearing from the Guardian I suspended the Contact Order made in relation to RA. It was intended to be suspended until 11 July 2023 with there being such contact as may be recommended by the Guardian and Social Worker who should have by then received a preliminary view from a psychologist. For a variety of reasons that psychologist is still to be appointed and this means that contact is still suspended. At the hearing on 14 August 2023, directions were given, reaffirming the 8 day part-heard hearing due to start on 20 November 2023.

20. However, on 29 August 2023, the Guardian felt compelled to write to the Court due to issues that had arisen and which were preventing her from carrying out her duties and she sought the Court's directions. Her query related to a request made to her by T that the Guardian's meetings with the children should be conditional on all visits and questioning being recorded and/or a third party should be present to witness the conversation/questioning. The Guardian reminded the Court that, at the case management hearing on 14 August 2023, I had indicated that she should meet with the children individually, and in particular RA, in the days following the hearing. She recalled that I placed some emphasis on the meeting with RA because it was important to ascertain whether RA was expressing any reluctance about contact, whether he had positive emotions about it, or perhaps even had neutral emotions about it. This information would then inform the Court as to potential next steps in relation to contact between R and RA, including in relation to R's request that she be permitted to attend the parent morning at RA's first day of school on Wednesday, 30 August 2023.

21. The Guardian informed the Court that on the evening of 14 August 2023, T requested to reschedule a telephone call which had been arranged for that evening. In that email, T asked whether the Welfare Officer could be present at the Guardian's' meetings with the children, indicating that this would make her feel more comfortable. T suggested arranging a time for later that week while she was at work so she would not be in the home. In response to this latter suggestion, the Guardian indicated to T that it was not necessary for both the Welfare Officer and the Guardian to be present at the same meeting with the children.

22. On Wednesday, 16 August 2023, T cancelled the appointment and indicated that she would email the Guardian in order to reschedule the meeting. On Monday, 21 August 2023, T wrote to the Guardian at some length about a variety of issues which she indicated she had been considering since the 14 August hearing. In particular, T indicated that she had concerns about Ms. Clemens' role as the Guardian and her execution of that role to that date. T indicated to the Guardian that prior to the Guardian's next meeting with the children, T would:

> *"need to understand what questioning will take place and what the procedures are to [] ensure an unbiased process,"* and T requested sight of:
>
> *"the framework/policies/procedures for how this happens with young children".*

It was in this email that T made the request that all visits and questioning be recorded, and/or a third party be present as witness to the conversations/questioning. T offered to meet the Guardian to discuss the concerns raised in her email.

23. The Guardian responded on 23 August 2023, informing T that much of what was raised in her email, for example in relation to the nature and scope of the psychologist appointment and questions and concerns in relation to her role as guardian, were matters that would have been more appropriate to have raised at the previous Court hearings and in particular at the case management hearing on 14 August 2023. The Guardian, in consultation with Ms. Watling, went on to address T's questions about the child psychologist's report and the Guardian suggested that she would write to the proposed psychologist (Dr. Basson) for further information. This was agreed and has actually been done. In relation to the other matters raised, the Guardian indicated to T that she was concerned about addressing the assertions by way of email correspondence as she had already provided her oral report for the Court and would need to provide a written report

for the November hearing and told T that she would have the opportunity to question her at the hearing.

24. T replied to the Guardian on Friday, 25 August 2023 indicating that she could speak over the weekend and they agreed to talk at 7:00 p.m. on the following day. The Guardian states that during their lengthy call on Saturday, 26 August 2023 no mention was made by T about any concerns. The Guardian indicated to T that she would like to meet with the children on the Sunday, and this was scheduled for 3:00 p,m, to take place at T's home. The Guardian duly attended T's home on the Sunday afternoon and spent just over 2 hours with the children, however T did not leave the room. The Guardian informed the Court that during previous visits, T would stay for a short time until the children were settled and comfortable, and then she would absent herself. The Guardian felt that due to the open plan nature of the living area, she was not able to have any discussions with the children, and in particular RA, beyond those related to their play. It is clear that T's actions were preventing Ms. Clemens from conducting her duties as the Guardian for the children.

25. Understandably, the Guardian felt it necessary to make different arrangements to enable her to adequately discharge her duties. On the Sunday, she sent an email to T indicating that she would like to meet with each child individually at her office. She asked that T's father (who is currently visiting and providing childcare while T is working), bring them to her office on Monday at 1:00 p.m. She did not receive a response to this email and the children did not attend as requested on the Monday. The Guardian sent a follow-up email to T that evening requesting that the children be brought her office the following day (29 August 2023) at 2:00 p.m. The Guardian indicated to T that if the reason she did not have the children come to her office for the requested meeting was that her position has remained as it was in her email on 21 August 2023 then T needed to let the Guardian know right away so that the Guardian could write to the Court for directions.

26. The Guardian stated that T confirmed by email later that night that this was the position. T asked that the Guardian provide her with a draft of her email prior to sending it to the Court, as she had offered to do in her email on 23 August 2023, so that T could ensure that it properly reflected her concerns and suggested solutions. Given the time constraints, the Guardian provided a draft of the email she sent to the Court to T in advance of sending it to the Court. This is not something

that the Guardian needed to do and neither did she need to wait for a reply before submitting it. However, the fact that Ms. Clemens did this is an indication of her sensitivity and courtesy towards T.

27. On 29 August 2023, following receipt of the Guardian's email to the Court, T sent an email to the Court. In that email she said that she needed to clarify some points for the Court as to why the Guardian and she were now seeking Court directions. She stated that her request that the individual conversations between the Guardian and the children be recorded or be in the presence of a neutral third party is not an unreasonable request due to concerns she has about how (RA's) opinions have been relayed, and:

"how gaining (RI's) perspective' was handled".

I note that T has not made a similar request concerning Ms. Watling's interaction with the children, likely because T agrees with the Welfare Officer's current recommendations.

28. In her email to the Court, T shared some of the content of the email that she had sent to the Guardian. She informed the Guardian that she had:

"concerns about the role of the Guardian as it's being executed...the way it's currently being executed is to abide by the legal system regardless of what they want and what's in their best interests".

She questioned why the Guardian had been appointed only after the Welfare Officer had recommended a no contact order and shared her belief that:

"After 18 months with the family, DCFS has a full understanding of the dynamics, and their findings and recommendations reflect that."

She wrongly imputed that the appointment was because R insisted on a Guardian. That is wrong, although R may have wished there to be an appointment, it was something that the Court was considering and that the Court felt in this case was necessary and in the best interests of the children. I was conscious that this is potentially a child alienation case involving parents whose emotions and thought processes are often consumed by their animosity to the other and their personal emotional needs resulting in them at times conducting themselves in a non-child centric manner.

29. T stated to the Guardian that at all visits with the children to date, she had explicitly asked the Guardian to speak to RA about his wishes. The Guardian said that on each occasion T told her that she did not feel that RA was sufficiently mature enough for the conversation or to understand it. T highlighted that the Guardian stated in Court on 14 August 2023 that RA had expressed no view that he did not wish to see R as a reason for contact resuming. T questioned how the Guardian could express such a view if she did not ask RA and said that:

> *"This causes huge alarm bells for me, as you purposely did not speak to him or ask him his views even though I asked you to."*

30. Due to her views, T told the Guardian that prior to the next Guardian visit, T needed to understand what questioning would take place and what the procedures were to ensure an unbiased process. She added that:

> *"Thus far, the process, from my perspective, has not been to understand their wishes. It has been to re-instate contact. As such, and as per the legal framework regarding guardians, I feel I need to see the framework/policies/procedures for how this happens with young children so I can understand it further."*

31. T told the Guardian in the email that she was happy for her to speak to both children *"once I receive above mentioned policies/procedures"* as she needed *"to ensure that the interaction will be neutral and unbiased to allow the children to have a real opinion"*. T said to the Guardian:

> *"My perspective of your interaction with (RI) was not questioning to establish what she wanted but rather a coercion to attempt to get (RI) to agree to visitation."*

32. It is quite clear from T's remarks, although sprinkled with platitudes, that, on the information currently before me, she wrongly questions the Guardian's competence, impartiality, assessment procedures and professionalism. There is nothing presently before me to justify the holding of such views. It is yet another example of one of these parents questioning the impartiality of a professional who expresses a view that does not concur with their wishes. It is an approach that both parents have adopted during these proceedings. The Court must be careful not to permit a parent to persist with inappropriate complaints about the competency of a professional at the assessment stage to such an extent that it becomes a litigation tactic as it places undue pressure on that person when trying carry out their professional duties.

The role of the Guardian

33. The Guardian has a duty to safeguard the interests of the relevant child, taking account of the child's wishes and feelings, having regard to his age and understanding, and to ensure that his wishes and feelings are communicated to the Court. The Guardian's overriding duty is to advise the Court as to what is in the best interests of the child. The Guardian presents to the Court an independent view of proceedings where critical decisions will be made about a child's future. In carrying out her duty, the Guardian will have regard to the principles set out in what is known as the Welfare Checklist and advise on the options available to the Court in respect of a child, on the suitability of such option including what order should be made in determining the application. If a party wishes they may of course question the Guardian about her oral or written advice at the hearing.

34. Although referring to Guardians appointed in public law proceedings, the following remarks by Sir Stephen Brown, President of the family division in the case of ***R v Cornwall County Council ex parte G*** [1992] 1 FLR is relevant, he stated:

> *"It is vital that the independence of the Guardian in carrying out his or her duties on behalf of the child in any proceedings should be clearly recognised and understood...It is vitally important that the position of the Guardian should not be compromised by any restriction placed directly or indirectly upon him or her in the carrying out of his or her duties."*

35. The objective of the Guardian's involvement is to collect and assimilate as much relevant information as possible in order to advise and prepare a report for the Court in the best interests of the child. The Guardian may carry out such investigations as may be necessary for her to carry out the duties. In particular she may contact or seek to interview such persons as she thinks appropriate or as the Court directs. She should speak to all those whom she believes will be able to contribute to her understanding of the case, including parents and relevant members of the extended family, as well as members of agencies involved with the child and its family. She is entitled to interview individuals or professionals more than once and may ask the parties if they wish a particular individual to be interviewed. The Court can direct the Guardian to attempt to interview a specific person or member of the family or to address specific issues.

36. As part of the assessment Guardian should observe the child, where relevant with its parents, siblings, other family members and perhaps in its school. It is a matter for the Guardian to decide

how detailed the enquiry should be. There is an expectation that the Guardian should see the child on at least one occasion alone. If a Guardian is being obstructed from seeing the child, then the Guardian may seek legal advice to decide what action should be taken to ensure that her investigation is not obstructed. In cases where the Guardian is appointed for more than one child in the same family, it is important that she sees each child separately, so that each child's views and wishes may be separated from those of her siblings. One of the purposes of the interview with the child is to try to establish the child's understanding of the present circumstances and her wishes and feelings. Sometimes the Guardian takes a written note of the child's words in her presence and that may make a child feel that the views are being given serious consideration. The meetings with the child are also important to enable the Guardian to make an assessment of the child's relationship with her parents and other members of her family, to assess the child's emotional and physical development with regard to her age, and to decide whether or not whether other professional input is required.

37. Relevant to the current issues being raised before me, the Guardian should prepare notes of each interview at the time or soon after and bear in mind that these could form part of the evidence at the hearing. However, this does not require the Guardian to record every meeting whether that be with the child or another person. There is no requirement for the Guardian to have a third person in the room when she is meeting with the child.

38. At the end of her investigations the Guardian should be in a position to:

(i) advise the Court about the facts of the case;

(ii) confirm that she has spoken to or otherwise has written information from all of those persons who are relevant to the proceedings;

(iii) present a clear understanding of the wishes and feelings of the child whilst having regard to the child's understanding of the child's present circumstances;

(iv) present an assessment of the child's needs; (v) evaluate the options available to the Court; and

(v) make a recommendation to the Court with regard to disposal.

CAFCASS

39. T has referred to the CAFCASS procedures in England and Wales in support of her demand for the conditions. In England and Wales, the support and assessment network in relation to public

and private law English cases is blessed with greater resources than those available in the Cayman Islands. The more comprehensive legislation in England and Wales in family cases places different obligations on those involved in assessments. Therefore, although the good practice adopted by CAFCASS may be informative, it is in no way binding on this jurisdiction. In any event, the obligations on the assessors in England and Wales differ in public and private law cases, especially where the investigation may result in criminal liability. In public law and in cases with a potential criminal element, especially where the child may become a witness, the need for recording of an interview is more apparent. However, in private law cases, parents may ask to record or request that the family Court Adviser[4] records interviews with the parent. However, as set out in the CAFCASS Operating Framework (August 2017 Update), how an FCA chooses to record an interview is up to them. It is accepted that if the parents insist on recording their own interview, there is no legal reason to prevent them doing so, subject to any directions of the court may give about this if the FCA decides to refer the issue to court for direction. The Operating Framework does not discuss recording and monitoring what CAFCASS say and do with children. It is evident that in private law cases the approach of CAFCASS is that the parents should discuss it with the FCA, but it is only allowable at their discretion and it is usually discouraged.

40. Before I move away from any reference to CAFCASS, I note with interest that Operating Framework states the following[5] in relation to private law cases:

> *"We see the dispute through the eyes of the child, not through the respective narratives of the parents about each other. For us, it is the child's story that needs telling. We promote children being seen and heard by those with parental responsibility, so that the issues and problems leading to a court case can be turned into a new opportunity to co-parent responsibly. We do not judge who is right or wrong after a relationship breaks down. Our role is to establish the impact of what has happened on the child or children concerned and to recommend to courts – and to the child's parents and carers – what should be done to end or lessen any harmful impact."*

At page 17 in the Framework the following is stated:

> *"In private law cases especially, parents are seeking to convey their side of the story to the FCA, including facts about who did what to whom and when. Such 'facts' are often disputed. For the FCA, it is the impact on a child that they have to assess, particularly the emotional and psychological impact, such as the child's static (long-lasting) and*

[4] A CAFCASS professionally qualified social worker practitioner.
[5] At page 48.

> *dynamic (capable of short-term change) emotions. It is for the court to determine the facts, as far as it can – many 'facts' are disputed and the truth of what happened often remains unclear and ambiguous. While the FCA will need to undertake various enquiries to ascertain what has been going on in a family, including social media enquiries where relevant and where the court agrees, it is important to keep the focus on the child's daily lived experience rather than on any dramatic scenarios put forward by either parent."*

These observations are well made, and I respectfully suggest that they should be taken on board by both the assessors and parents in private law cases in the Cayman Islands.

Conclusion

41. I have regard to the abovementioned duties and assessment methods of a Guardian. I have carefully reviewed T's concerns about the Guardian's performance of her duties hitherto. However, I am satisfied that the Guardian has been acting appropriately in what are trying circumstances. The professionals who have been involved in this case have at times had to endure conduct from the parents to a level that is not acceptable. The Guardian must be able to complete her assessment and representation of the children in the manner that she feels is necessary to enable her to discharge the duties in the best interests of the children. For the avoidance of doubt, a parent may request recording of an interview with the child, but there is no requirement for the Guardian to record interviews with the children and there is no requirement for there to be a third person in the room when she is representing the children's interest by interviewing them. It is a matter for the Guardian whether such a recording takes place.

42. In this case I am not satisfied that it is appropriate to attach the conditions sought by T on the Guardian and I direct that T make the children available for interview by the Guardian upon sufficient notice from the Guardian. Although I have indicated that there is no need to attach a condition, there is an expectation that notes shall be taken of the meeting which may become evidence at the hearing.

Psychologist

43. A further issue has been raised before me this morning, and that relates to the long overdue instruction of a child psychologist. Both parties agree that a child psychologist is needed to report on the issues before the Court. It is hoped that they also recognise that a child psychologist is needed to not only address matters in these proceedings but also to address matters in relation to,

especially RI's, long term emotional and mental health. From what I have been told this morning, the parties are in agreement about the nature of the referral and content of a letter of instruction. The issue between them is about payment of the psychologist's fees. R agrees to pay 50% of the fees, whereas T states that she can only afford to contribute $2,500. The psychologist has indicated that she would require $5,000 to commence the work, but clearly the final invoice will exceed $5,000. I note that one of the psychologists had indicated a preference that both parties pay equally for her services and via a third party, to ensure that there is no perception of bias.

44. I am not in a position today to ascertain whether the Court has the jurisdiction to make an order compelling the parties to instruct and finance a psychologist. If I have such a jurisdiction, the parties will need to submit Affidavit evidence, supporting documentation, to verify their current financial position to enable the court to ascertain their ability to pay. The Court would also be interested to know how the parties have been utilizing their funds during these proceedings, especially since that time they knew that the psychologist was required and would need be to be paid.

45. If the parties still fail to reach agreement about the instruction of the psychologist and the payment, I will need to make a decision on my return to the jurisdiction in October as to whether the Court will proceed without a psychologist at the November hearing. Any party may apply for a mention hearing if that is an issue in October. If any party feels that the Court has jurisdiction to consider and it is appropriate to bring an application concerning the payment of the psychologist, then they may of course issue a Summons supported by an Affidavit. As I am away from the jurisdiction from tomorrow for an extended period due to professional and personal commitments, and due to the fact that the issue in such a Summons would be limited to the discrete point of finances and not to the principle of whether there should be psychologist, I am satisfied that any Judge could hear that Summons in my absence.

THE HON. MR. JUSTICE RICHARD WILLIAMS
JUDGE OF THE GRAND COURT

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