

1 IN THE GRAND COURT OF THE CAYMAN ISLANDS  
2 FAMILY DIVISION

3  
4 Cause No: FAM 0102 of 2012

5  
6 IN THE MATTER OF THE GUARDIANSHIP AND CUSTODY OF CHILDREN LAW  
7 (1996 REVISION) (REPEALED)

8  
9 AND IN THE MATTER OF THE CHILDREN LAW (2012 REVISION)

10  
11 AND IN THE MATTER OF THE MINOR CHILDREN 'N' (BORN 22<sup>ND</sup> JANUARY  
12 2003) AND 'K' (BORN 3<sup>RD</sup> MARCH 2006)

13  
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15  
16 BETWEEN

17 'R'

18  
19 APPLICANT

20  
21 AND

22 'A'

23 RESPONDENT

24  
25  
26 Appearances:

26 Mr. Graham Hampson of Hampson &  
27 Co. for the Applicant

28  
29 Mr. David McGrath of Samson &  
30 McGrath for the Respondent

31  
32 Before:

Hon. Mr. Justice Malcolm Swift (Actg.)

33 Heard:

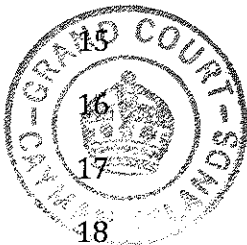
10<sup>th</sup> and 11<sup>th</sup> December 2014

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35 **RULING**  
36  
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- 39 1. The parties were formerly in a relationship from 2001 but were unmarried. They  
40 had two children together who are identified as 'N' and 'K' for the purposes of  
41 this Ruling along with their dates of birth in the title to this action.  
42  
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1           2.     By 2010 or 2011, the relationship was in difficulties and, although the parties  
2                     continued to live under the same roof, they lived separate and apart and  
3                     eventually it became clear that they could not continue to live in the same  
4                     property. The former joint home, "JC", was sold in June 2013 and the parties  
5                     shared the equity equally (approximately US\$128,000 each [CIS\$105,000 as at  
6                     Dec 2014]). The Respondent in November 2012 had purchased a new home at  
7                     "HW". I accept that the Respondent offered to permit the Applicant to live in  
8                     that property, which he would continue to own, to satisfy her housing needs and  
9                     those of the children but that she rejected that arrangement because of the state of  
10                    the property and an unwillingness to remain in any house owned by the  
11                    Respondent, preferring instead, by way of a clean break after the former joint  
12                    home was sold, to rent a condominium in "GR" where she now resides with the  
13                    children. I also accept that the Respondent had hoped to retain "JC" whilst at the  
14                    same time purchasing "HW" as an investment property in which the Applicant  
15                    and the children could live but that turned out not to be an economically viable  
16                    plan and of course the Appellant Applicant was resistant to the idea of continuing  
17                    to live in a home owned by the Respondent. Against the background of the  
18                    separation, her attitude evokes some sympathy.



19  
20           3.     I have seen and heard evidence that condominiums in "GR" can be purchased for  
21                    around US\$300,000 [CIS\$246,000]. The Applicant's share of the proceeds of sale  
22                    would have provided her with adequate capital for a deposit on a property such as  
23                    that in which she now resides. The Applicant did not purchase a property but  
24                    rented instead because she had no Caymanian status<sup>1</sup> and had not been employed  
25                    for long enough to qualify for a mortgage nor were her earnings sufficient to

<sup>1</sup> The Caymanian Status and Permanent Residency Board, upon receipt of an application, may grant the right to be Caymanian to specific categories of persons. A person who has been afforded this grant is, in the vernacular, referred to as having "status".

1 service a loan. As a result, due to the cost of rent and other substantial financial  
2 expenditure principally for the benefit of the children, which I have seen set out  
3 clearly in the Applicant's Statement of Means and her Response to the  
4 Respondent's Request for Discovery, the lump sum received on sale of the  
5 former home has been depleted. The Applicant has been criticized for her failure  
6 to purchase property but, with no status, no employment generating adequate  
7 income or of sufficient duration to support a mortgage and in the wake of an  
8 acrimonious separation, it is difficult to see what realistic alternative course was  
9 open.

10  
11 4. The Applicant was in part-time employment with "PG" from January 2010. She  
12 was able in that employment to leave work in time to collect the children from  
13 school at around 2.30pm and to supervise their extra-curricular activities enjoying  
14 a normal family time together. However the pay for the post was commission-  
15 based and the property market was in the doldrums. She was earning very little.  
16 In November 2012, the Applicant left her post by mutual agreement.

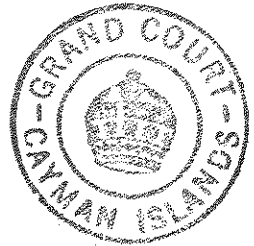
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18 5. It is clear to me that the Applicant was also keen to increase her income by  
19 obtaining full-time employment in order to achieve a degree of independence and  
20 this emerges from the letter from "PG" dated 26<sup>th</sup> November 2012. The  
21 Applicant was however then unemployed until July 2014 when she obtained  
22 employment with "PM". That period of unemployment for 18 months played a  
23 significant role in the depletion of the Applicant's capital although it enabled her  
24 to play a full part in the lives of the children and to deal with family problems  
25 (N's operations, her mother's problems in the UK for example). She also applied  
26 unsuccessfully for two jobs although I am satisfied that the Applicant was during  
27 that period in fact putting the interests of the children first during a deteriorating



1 and unsettling period of re-adjustment following the separation of the parties and  
2 the advent of a new life with which she was struggling to cope.

3  
4 The Applicant has been criticized both in the course of the hearing before me and  
5 in the Respondent's contributions to these proceedings (e.g. his Statement of  
6 Means para 19) on the grounds that she "refuses to support/assist in supporting  
7 the children" and I am satisfied that she felt under pressure eventually to take  
8 some form of full-time employment. Her present job is not well paid. She earns  
9 CI\$2,167.00 per month. She may earn a small commission according to the  
10 Commission Schedule and is entitled to a mileage allowance of CI\$108.33 per  
11 month. She will also earn CI\$2,000.00 in November and in December 2014,  
12 CI\$1,500.00 in January 2015 and CI\$1,000.00 in February 2015 but these sums  
13 are in lieu of commission.

14  
15 6. Ironically, fulltime employment has interfered substantially with the Applicant's  
16 relationship with the children. Instead of being able to look after them as before  
17 and to take a full part in their lives, she now (for the past 3 months) has had to  
18 depend upon the Respondent's helper to collect them from school, take them to  
19 after-school activities, look after them and feed them at the Respondent's home,  
20 and upon the Respondent to return the children to her at around 7.30pm each  
21 weekday. The Respondent believes that this is a satisfactory arrangement  
22 permitting him quality time with the children during the week. The Applicant is  
23 less sure about the benefit to the children of being cared for by a foreign helper  
24 whose command of English is said to be poor and whose punctuality, reliability  
25 and ability to supervise homework and the like is the subject of criticism. The  
26 Applicant says that she feels to have been penalized in terms of her ability to care  
27 for the children as a result of obtaining full-time employment. The Applicant  
28 complains of lack of co-operation and communication on the part of the

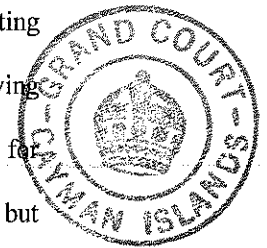


1 Respondent in ensuring that the helper carries out instructions and, in  
2 consequence, seeks funding for a helper answerable to her to ensure that the  
3 children's lives are less disrupted. That would however interfere with the period  
4 between about 5.30pm and 7.30pm on weekdays (in addition to alternate  
5 weekends) during which the Respondent spends time with the children.  
6

7 7. By contrast, the Respondent's income is substantial. Including bonuses, his gross  
8 monthly income exceeds US\$30,000.00 [CIS\$25,000] and is likely to average in  
9 the region of US\$35,000.00 [CIS\$29,000]. He is a litigation attorney. He has  
10 spent in recent times substantial sums (well in excess of CIS\$200,000.00) on house  
11 renovations and on the deposit for "HW".

12  
13 8. I have considered carefully the Respondent's Statement of Means and in  
14 particular his claimed monthly expenditure. The Respondent is well able to  
15 afford to make periodical payments for the children in the sums to be determined  
16 later in this Ruling. It must not be forgotten that the maintenance of the children  
17 is his prime responsibility. I also take into account the substantial sums already  
18 paid by the Respondent for their education, health and incidental support in  
19 accordance with paragraph 5 of the Chief Justice's interim order of November  
20 2012.

21  
22 9. Under an interim order of the Chief Justice made in November 2012 and granting  
23 care and control of the children to the Applicant, the Respondent has been paying  
24 maintenance of **CIS\$600.00** per week for both children (**CIS\$300.00** per week for  
25 each child). This has been paid by cheque in accordance with the order but  
26 instead of being delivered to the Applicant (as required by the order) she has been  
27 obliged to collect it from the Respondent's office. That arrangement is not  
28 satisfactory and the Respondent should forthwith arrange for the maintenance



1 payments to be made by electronic transfer. Whether the transfers are to be made  
2 weekly or monthly is a matter for the Applicant. For the avoidance of doubt, the  
3 payments I order to be made are based on annual figures (although payable at  
4 weekly or monthly rates) and there are no circumstances in which the Respondent  
5 may elect not to make any such weekly or monthly payment even when the  
6 children are with him for any periods such as holiday times.

7  
8 10. I reminded the parties at the commencement of the hearing that the purpose of the  
9 hearing was not to give vent to acrimony but to deal exclusively with facts  
10 relevant to the assessment of maintenance and I am grateful to both parties and to  
11 their attorneys for adhering to that stricture. Some personal disagreements were  
12 inevitable but they have been dealt with in a restrained manner.

13  
14 11. I remind myself that, whether the case is dealt with under the old or the new law,  
15 the principal issue is the welfare of the children and the need for them to be  
16 properly and sensibly supported by such reasonable contributions as the parties  
17 are able to make within their respective means. Ensuring that the children are  
18 properly provided for is the paramount consideration. The overarching principle  
19 is that all orders must be for the benefit of the children. I must make principled  
20 and fair orders dealing with housing and maintenance. I must endeavor to ensure  
21 that the children's standard of living in the future is not entirely out of keeping  
22 with that of the Respondent but I am not required to ensure a comparable life-  
23 style. It is very important that children should not be unduly influenced by a  
24 diminished style of living when they are with one party in contrast to an  
25 enhanced lifestyle comparable to the life they formerly led when at the home of  
26 the other. I must take into account the resources of both parties.

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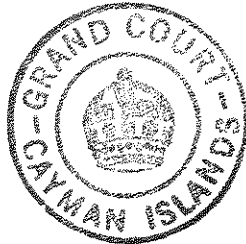


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As far as possible, the court must ensure that the children are not disadvantaged by the personal and financial divisions between the parties and that the financial arrangements cause as little disruption as possible to their normal lives. Changes are inevitable but children are adaptable. For the most part they will cope with change and will not suffer as a result.

12. I also keep in mind the words of Thorpe LJ (summarizing Lady Hale as she now is) when he said that a child was “*entitled to be brought up in circumstances which bore some sort of relationship to the father’s current resources and the father’s present standard of living*” but that “*the court must guard against unreasonable claims made on the child’s behalf but with the disguised element of providing for the mother’s benefit rather than for the child*” – taken from the well-known decision in *Re P (Child: Financial Provision)*<sup>2</sup>.

13. It is argued by the Respondent that his liability for maintenance should be restricted and reduced to CI\$1,000.00 per child per month based on (i) reductions in the claimed expenses, (ii) the fact that the Respondent and his helper look after the children for parts of most weekdays, and (iii) an obligation only to contribute to (rather than pay in their entirety) child-related costs when they are with the Applicant. However, the fact that the children divide their time approximately equally between the parties (an arrangement which must be beneficial) does not in any way diminish the need for them to be supported fully when at home with the Applicant.



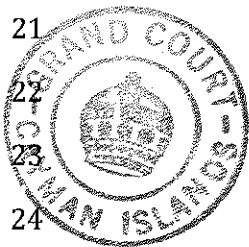
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<sup>2</sup> [2003] 3 WLR 865

1           14.    I accept, for the most part, the Applicant's estimates of child-related costs and  
2                    can see no reason why the Respondent should not pay the vast majority of them.  
3                    I have however made certain reductions where appropriate as will appear later.  
4                    The fact that the Applicant is forced by her working hours (work which the  
5                    Applicant was keen she should obtain) to rely on the Respondent's helper and  
6                    that the Respondent thereby obtains the benefit of having the children during  
7                    early evenings does not reduce her overall child-related overheads save to some  
8                    extent in relation to food (and I have taken this into account in the matters which  
9                    follow). In the findings I make, I also ensure that the Applicant contributes to  
10                  child-related costs to an extent commensurate with her disposable income and  
11                  that the Respondent is not obliged to contribute unnecessarily to costs solely  
12                  attributable to the Applicant.

13  
14           15.    Certain particular issues require explanation:

15  
16           (i)    The Applicant's home is the principal residence of the children. This is  
17                    particularly important in the light of the fact that the Respondent must be  
18                    absent from home on many occasions in connection with his work.  
19                    During those periods the Applicant has responsibility for the children  
20                    regardless of what the normal regime may be. The Respondent seeks to  
21                    reduce the rent and utility costs on account of benefit to the Applicant but  
22                    would have been content to place the Applicant and the children in a  
23                    home owned by him without contribution from her. It is argued that the  
24                    Applicant would have to rent a home for herself if she did not have the  
25                    children to care for but I am not assessing the benefit of this  
26                    accommodation to the Applicant but the benefit to the children of having  
27                    this home and their mother present to care for them.



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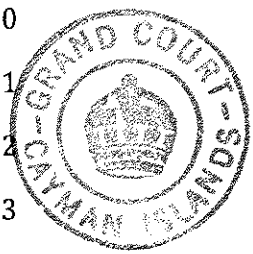
I do not accept that strict mathematical calculations are always appropriate in such circumstances. There will inevitably be a degree of benefit to any principal carer in these circumstances but that is far outweighed by the needs of the children;

(ii) I have adapted the figure for gas to reflect the use of the car made by the Applicant for work purposes and in the light of her mileage allowance which I have taken into account;

(iii) The other car costs are allowable in part because they would be incurred in any event for a car used exclusively for the purposes of the children. It is argued again that such expenses are to be divided according to vehicle usage and that they would have been incurred by the Applicant in any event. I accept that argument to an extent and have made some reductions accordingly but it must be pointed out that a car, unlike a principal residence, is not shared on a permanent continuous basis;

(iv) The cost of groceries has been controversial but I remind myself that we are not here dealing simply with food. The grocery bills include general household purchases for the benefit of the children. Whilst at first glance the sums may appear excessive, on examination and taking into account the range of purchases included in this normal family shopping bill, they are not;

(v) I take the view that expenditure on pets is perfectly permissible and that it is in the best interests of the children to learn to be responsible for the care of animals;

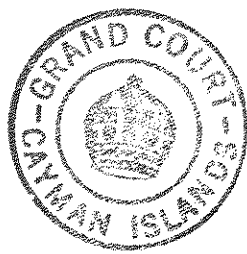


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(vi) In this safety-conscious age, children have cell-phones for obvious reasons. They also need the internet for both educational and recreational reasons;

(vii) I have not taken any account of expenditure personal to the Applicant which is excluded from any order in respect of the children;

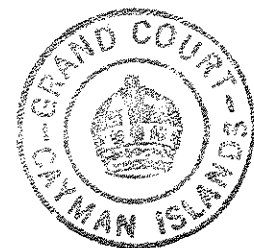
(viii) I have not included any costs for a helper to be employed by the Applicant. The present arrangement is in its infancy and, although at present has unsatisfactory elements, I would encourage the parties to work together to ensure that the arrangement works better (particularly if a new helper is to be employed). In particular the Applicant must be put into a position where she can ensure that the helper is acting in the best interests of the children when the Respondent is not available to supervise their activities. The ability to communicate and to instruct is essential. The Applicant should have the telephone number of the helper, who should be told to cooperate with reasonable requests by the Applicant. The new helper should speak English and have a full driving licence. There needs to be flexibility, for example, at times when the Respondent is working away, in order to allow the children to be returned to the Applicant as soon as she gets home from work. This is surely simple common sense and requires co-operation in the best interests of the children.



1       16.     A Schedule is attached to this Ruling. It is in the nature of a Scott Schedule and  
2             sets out the competing suggestions for the maintenance of the children together  
3             with my conclusions. I emphasise that the figures in the Schedule are merely a  
4             simple means of arriving at a reasonable global figure for maintenance and are  
5             not intended for analysis by slide rule. The claims can be divided between those  
6             expenses exclusively referable to the children and those expenses in which the  
7             Applicant receives some element of benefit herself. However, I should make  
8             clear that I do not accept that an element of benefit to the Applicant necessarily  
9             prohibits the recovery of the whole of such expenses. I have endeavoured to  
10            adjust the figures where appropriate to reflect a contribution by the Applicant  
11            where appropriate and within her means. There are also adjustments made to  
12            expenses exclusively attributable to the children where I have taken the view that  
13            the Applicant should contribute. However the principal responsibility must rest  
14            on the Respondent who must make a sensible and proportionate contribution to  
15            the financial welfare of his children.

16  
17       17.     My conclusion therefore is that, in accordance with the Schedule, the Respondent  
18             should pay for each child the weekly sum of **CIS\$630.00**. This sum is to be paid  
19             in weekly or monthly tranches (as the parties agree) by electronic transfer into the  
20             Applicant's bank account. The increase applies with immediate effect.  
21             Obviously, the payments will only continue whilst the children live with the  
22             Applicant and are subject to change if, for example, they go to boarding school  
23             abroad. Changes will however be either agreed in writing between the parties or  
24             will be the subject of an application to the court.

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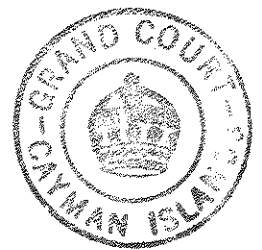


1 18. The Respondent agrees that he remains responsible for healthcare costs and  
2 deductibles, helper costs, and all schooling and educational expenses up to the  
3 conclusion of tertiary education together with all reasonable extra related costs.

4  
5 19. The following matters require immediate resolution and I order that the  
6 Respondent should pay forthwith the following sums:

- 7  
8 i. Maintenance arrears: **CI\$3,000.00<sup>3</sup>**;  
9 ii. CUC invoice paid by the Applicant: **CI\$509.00**;  
10 iii. Costs incurred with reference to N's operations: **CI\$5,500.00<sup>4</sup>**;  
11 iv. Lump sum of **CI\$2,000.00<sup>5</sup>**  
12 v. **Total: CI\$11,009.00.**

13  
14 20. In the course of the hearing, in order to ensure that no properly incurred  
15 recoverable expenses had been omitted from the Applicant's claim on behalf of  
16 the children, I enquired about certain apparently child-related expenses (in  
17 particular, the condominium deposit, naturalization costs and a loan incurred for  
18 the payment of earlier legal costs) but I have been assured that these items do not  
19 form part of the claim.



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<sup>3</sup> This is based on 5 missed payments of CI\$600.00. If there were in fact 4 missed payments the figure should be reduced to \$2,400.00.

<sup>4</sup> This payment takes into account CI\$2,000.00 already paid by the Respondent and will be paid immediately upon production to the Respondent by the Applicant of the supporting vouchers or in the total sum of the vouchers (less CI\$2,000.00) if that is less than CI\$7,500.00. I have deemed the costs themselves to be reasonable as I am certain that the Respondent would have incurred similar costs if he had been the accompanying parent.

<sup>5</sup> This is the maximum which may be ordered and represents a contribution towards the furniture and domestic items purchased for the rented home and kennel care when the family were off island.

1        21.     In November 2012, the Chief Justice made an order for a Child Welfare Report to  
2                    be prepared on both children by The Wellness Centre within 6 weeks of the date  
3                    of the order. I can find no valid reason why this has not been prepared. In the  
4                    light of changed circumstances but concerned by the suggestion that 'N' may  
5                    have psychological issues, I vary the order of the Chief Justice to one of referral  
6                    of both children to the Department of Children and Family Services for an urgent  
7                    report on their welfare. That report is to address any psychological issues and  
8                    whether there is any need for counseling (of 'N' in particular).

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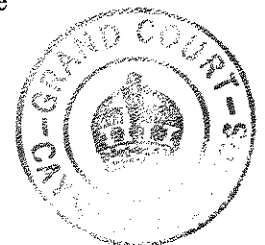
10        22.     I am not persuaded that the outstanding invoices from the Wellness Centre were  
11                    incurred in relation to the preparation of the report ordered by the Chief Justice  
12                    and they therefore form no part of any order I make. However any costs  
13                    reasonably chargeable to the parties in the preparation of the report for the court  
14                    will be paid by the Respondent as part of his responsibility for healthcare  
15                    expenses.

16

17        23.     The periodical payments order for the children will be back-dated. The sum of  
18                    **CIS630.00 per week per child** will be backdated to the 1<sup>st</sup> August 2014 when the  
19                    Applicant commenced employment. This is on the basis that my calculations  
20                    take into account her earning capacity from that date. However, the Applicant  
21                    was not employed between 31<sup>st</sup> July 2013 (she moved to her present address in  
22                    July 2013) and 31<sup>st</sup> July 2014. For that year alone, I assess periodical payments  
23                    at the rate of **CIS700.00 per week per child** to reflect the Applicant's inability to  
24                    contribute financially to the children's maintenance from earned income and  
25                    because of the elimination of the element of business use of the car (see Schedule  
26                    column F).

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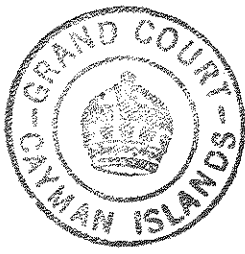


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Therefore the Respondent will pay an additional sum for both children of **CIS\$46,000.00 (CIS\$400 per child per week)** for the period 31<sup>st</sup> July 2013 to 1<sup>st</sup> August 2014 and an additional sum for both children of **CIS\$12,540.00 (CIS\$330 per child per week)** for the period 1<sup>st</sup> August 2014 to 12<sup>th</sup> December 2014.

24. The interim orders made by the Chief Justice in November 2012 will continue in force save as amended by this Ruling as it applies to paragraphs 3 and 4 of that interim order.

25. The Respondent has had many opportunities to increase the amounts payable under the Chief Justice’s interim order particularly after the domestic situation changed and the Applicant and the children were living independently. He not only failed to offer voluntarily any increase in the sums payable but ignored requests from the Applicant’s lawyers for some discussion of what increases might be reasonable. Instead he has sought to reduce the amounts payable under the interim order. I find that attitude to have been unreasonable and obstructive forcing the Applicant to take proceedings in court. The Respondent must therefore pay the costs of the Applicant to be taxed if not agreed.

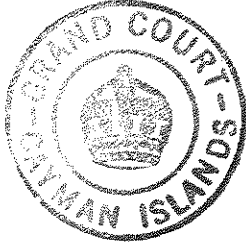


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26. **Summary<sup>6</sup> of Order (as applies to both children):**

a. 31 <sup>st</sup> July 2013 to 1 <sup>st</sup> August 2014	CIS\$46,000.00
b. 1 <sup>st</sup> August 2014 to 12 <sup>th</sup> December 2014	CIS\$12,540.00
c. Sums due under paragraph 13	CIS\$11,009.00
d. <b>Total</b>	<b>CIS\$69,549.00</b>
e. Maintenance per week from 12 <sup>th</sup> December 2014	CIS\$ 1,260.00

Dated this the 12<sup>th</sup> December 2014



**Honourable Mr. Justice Malcolm Swift (Actg.)  
Acting Judge of the Grand Court**

<sup>6</sup> A spreadsheet detailing claims for items of expenditure and sums allowed accompanies this Ruling and has been provided to the parties.