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

CAUSE NO. FAM 236 of 2019

IN THE MATTER OF AC (MINOR)

Appearances: Applicant, AC, in person
Respondent, LC, in person
Respondents CF and DW in person via video-link
Ms. Sharrel Jackson (Welfare Officer) supported by Ms. Claire Allen, Crown Counsel

Before: Hon. Justice Richard Williams

Heard: 23 October 2019

Reasons circulated: 24 October 2019



HEADNOTE

*Child - Interim residence order - Ward of Court - Whether Court can make order on own volition
- Effect of child being made a ward of Court*

WRITTEN REASONS

1. This matter comes before me this morning for a mention hearing in my capacity as the Judge responsible for case managing the Family Division of the Grand Court.

Applications

2. The applications before the Court concern a 15 year old female, AC, born on 4 May 2004 (hereafter referred to as "the child"). The applications were commenced by two Form C1's filed by the Applicant ("AM") in the Summary



Court, which were transferred to the Grand Court on 25 September 2019 upon order of Magistrate Foldats. The first application was filed on 1 March 2019 seeking a residence order, a parental responsibility order and unspecified specific issue orders. Leave was granted to AM by the Summary Court on 1 April 2019 to make these applications. The second application was filed on 26 August 2019 seeking a Schedule 1 financial order against LC.

3. At the close of the hearing I informed the parties of my decision to make a further Interim Residence Order in relation to the child in favour of AM and to make the child a Ward of Court. These are the brief Written Reasons for my decision which I indicated would be provided to the parties shortly after the hearing.

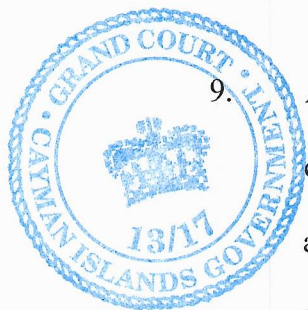
The Background

4. The background of this case is highly unusual and one might say irregular and can be gleaned from the helpful Welfare Reports filed by Mrs. Sharrel Jackson dated 24 September 2019 and 8 August 2019. The child's birth certificate wrongly records KHC (who is AM's sister) and LC as being the child's parents. In fact, neither are her biological parents. This only became known to the Department of Children and Family Services ("DCFS") when LC divulged it to the Welfare Officer during the initial interview with him. LC stated that the arrangement had not been an adoption, but only that arrangements had been made to register the child in their name prior to her birth.

5. KHC had two children, S and DH, prior to marrying LC in 2002. They lived with KHC and LC during their marriage.
6. DW, the biological father of the child, is KHC's cousin. The child's mother, CF, had a number of children and was financially constrained. LC stated to the Welfare Officer that due to those circumstances they decided to take the child from Jamaica and to raise her as their own. The child was brought to the Cayman Islands when she was only three months old by KW, who was KHC's cousin.
7. Sadly, KHC passed away on 5 April 2016 succumbing to long-standing health issues. There appeared to be problems with LC's relationship with S, which caused S to move away from his home and from the child. LC remarried a year after KHC's death, but rather bizarrely chose not to advise the three children about this.
8. In January 2019 AM took the child into her home after she was contacted by the Royal Cayman Islands Police Service following a report of a physical incident between LC and the child on 7 January 2019. A referral had been made to the Multi-Agency Safeguarding Hub (MASH) on 8 January 2019. The MASH Social Worker had recommended counselling for LC and the child to explore the issues between them. It appears that LC at the time indicated that he would not be in a position to engage in counselling, owing to his work hours. At the time, he said



that he was not adverse to the child returning home and insisted that she needed to follow the rules. The child indicated that she did not feel safe living with LC, so AM said that she was willing to provide care for her.



9. AM initially thought that this would be a temporary arrangement, but the child consistently said that she did not want to go back home and she informed AM about the nature of her relationship with LC. It appeared that after her mother's passing, at LC's bidding, the child became responsible for preparing her own meals and for cleaning the house. There has been no direct contact between the child and LC since January 2019, although he did send her a WhatsApp message on 19 March 2019, to which she did not respond positively.

10. The Welfare Officer reports that the child told her that, for some time after KHC's death, she had been struggling in that household. She stated that, since she had been living with AM, she felt comfortable and a part of a family. The child said that, although LC had not been physical with her before, he would regularly quarrel with her and say that he would "*thump her down*" which she said made her fearful. She said that as he would become very aggressive and throw things in the house she would primarily stay in her bedroom. The child told the Welfare Officer that LC was not supportive of her relationship with her sister, S, who he referred to as being a "*whore*" and that he spoke negatively about AM.



11. The child shared with the Welfare Officer that she became aware at the age of 12 that LC and KHC were not her biological parents. She said that she has spoken with her birth mother on the telephone, but this was not ongoing. She said that she was aware that she had siblings in Jamaica and she was curious about them. She made it clear to the Welfare Officer that she did not wish to return to LC's home, as she did not want to be subjected to his attitude and anger. The child said that she did not wish to communicate with LC.

12. The child's brother, DH, who is aged 26, remains living with LC. He told the Welfare Officer that he was very relieved that the child was not living in LC's house, as he knew she was not comfortable there. He said that he was aware that she was sometimes scared because of LC's aggressive behaviour and his tendency to blame her for things. He stated that LC was a very good father figure for him, but had changed a lot. He said that LC's wife was "nice" and was "nice" to the child.

13. The joint investigation involving MASH concluded that it was in the child's best interest to remain with AM. The case was then closed by MASH on the basis that the child was in a stable setting and there were no further child protection concerns. It is not clear upon what legal foundation the placement with AM beyond the initial three days was made, as LC, (who was believed to have parental responsibility at that time) told the Court that he had told the Social

Worker at MASH that he did not agree to it. The Welfare Officer states that the decision had been made on the following grounds:

- (i) there was a physical altercation between the child and LC;
- (ii) LC displayed aggressive attitudes and behaviours; and
- (iii) the child had expressed concerns regarding the safety whilst in his care.

14. In the Welfare Report, when dealing with the likely effect on the child of any change in her circumstances, the Welfare Officer stated that:



“There is nothing to suggest that there will be a positive outcome just by virtue of reverting to the old arrangements. It is perceived that should (the child) have to move back to her father’s¹ home without significant family intervention, this may result some resistance, potentially causing trauma and there is also the risk of acting out behaviours.”

15. When further considering what is termed as the Welfare Checklist found at s.3(3) Children Law (2012 Revision) (“the Law”), the Welfare Officer added:

“This child has been exposed to psychological harm living in an uncooperative family environment, feeling isolated and not have a close bond with the primary caregiver after her mother died.”

The Welfare Officer further stated that:

“(LC) seems to mean well but he may need to make some adjustments in order to meet the needs of his daughter, at this time. This may be primarily

¹ LC’s.

centred on age appropriate parenting, communication, mutual understanding and respect.”

16. LC’s new wife, AC, shows some insight into the difficulties LC had when coping with the care of the child after KHC’s passing. AC told the Welfare Officer that she misses the child as she believed they had a good relationship. AC said that she would also be willing to go to counselling to assist them to better relate to each other.

17. In the concluding part of her first report the Welfare Officer stated:

“There is a major need for intervention in this family. It is important for all parties to recognise how the differences have made it difficult for (the child). There needs to be restoration in the overall family unit, and especially between (the child) and LC. The overall restorative goals may not be met in the near future until issues relating to the estate are settled or the adult(s) decide to take a mature approach towards safeguarding (the child). It is imperative that the adults recognise that the best scenario for (the child) is one in which you can live in whichever household can freely share appropriate relations with all her family members without any pressure or need to choose.”

She concluded that:

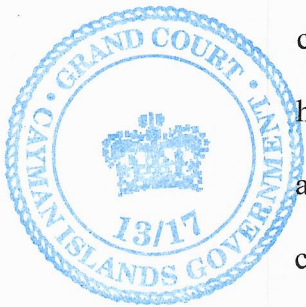
“The immediate focus should be on family interventions with a view of restoring relationships.”



18. In her first report the Welfare Officer recommended that a residence order should be made to AM. That is still her position today. The Welfare Officer recommended family therapy between LC and the child. She stated that the level of contact between LC and the child should be determined by the success of family therapy and LC should engage with the Family Resource Centre regarding support sessions on parenting teenagers.

19. I have explored counselling and/or therapeutic input with the parties today. It is unclear whether LC is actually willing to engage in any form of meaningful counselling. At one stage during the hearing he said that he was. At another stage he said he was not able to attend counselling because he was too busy at work. At another stage of the hearing he said that he wanted to have nothing to do with this child financially or at all, and he would be giving up all responsibility in relation to the child as the child was living with AM. AM stated that she would be willing to be involved in counselling. AM also said that she was willing to promote communication between the child and her biological parents in Jamaica and with her biological aunts who reside in the Cayman Islands.

20. The second Welfare Officer's Report contains details about the biological parents. They said that KHC had reached out to them and offered to assist with the child when the mother was pregnant. They were struggling financially at the time and already had four other children and as a consequence were open to the assistance.





They told the Welfare Officer that KHC advised them how to register the child so that she could live with them in the Cayman Islands. They said that they thought it would not be for the whole of her childhood, but for just about 3 to 4 years and that the child would visit them at least once per year in Jamaica. They told the Welfare Officer that, whenever they tried to communicate with KHC and LC, they were met with hostility. They indicated, and confirmed to the Court today, that they are content for the child to live with AM. However, they said that they would wish to have a relationship with the child, which could commence by regular telephone contact. They said that they would welcome her visiting them in Jamaica during her school breaks. The Welfare Officer concluded that she believed that their interest in the child was genuine, and that they had been reasonable in their assessment of the situation in that they do not want to uproot the child at this point in her life. I have to say, I share the same view about them, having had the opportunity to hear them when they attended this hearing by video link

Court Hearings

21. On 8 May 2019, the Summary Court made an Interim Residence Order to AM and requested a Welfare Officer's Report. The Court also ordered that the child's passport and birth certificate be surrendered by LC to the Court by the 17 May 2019. The matter was then adjourned for a mention hearing on 25 June 2019.



22. The Welfare Officer's Report had not been prepared due to late notification to DCFS of the request for the same. The Learned Magistrate gave a direction that the Registry was to request an investigation by the Customs & Border Control ("CBC") regarding the child's status, as the Social Worker had advised him at the hearing that the birth certificate filed at the Court contained misstatements of the child's mother and father's names. The names appearing on the certificate were not those of the biological parents.
23. On 13 August 2019, the Learned Magistrate continued the Interim Residence Order and directed that the parties should attend counselling. It is evident that the parties have regrettably not attended counselling or shown any genuine interest in the same since that date. The Magistrate again directed the Registry to request an investigation by the CBC. The DCFS were directed to request the Jamaica Children Protection and Family Services Agency to provide a report regarding the child's biological parents. The matter was adjourned to a further mention hearing on 25 September 2019.
24. At the hearing on 25 September 2019, the Interim Residence Order was further continued. The Court ordered that the case be transferred to the Grand Court for a mention hearing on today's date, because it felt that it may be an appropriate case for the child to made a Ward of Court.

25. The Magistrate directed that the purported biological mother (CF) and the purported biological father (DW) be added as parties to the proceedings and that all of the Court documents should be provided to them within seven days. Regrettably, the documents have not been provided to them. I have been told by the Registry Officer who attended this hearing that they will be sent forthwith by the Registry using an email address that is on the Court file. A copy of today's Order as well as a copy of these Written Reasons should also be sent.
26. At the hearing on 25 September 2019 the Registry was again asked to 'chase up' the request for an investigation by the CBC. Regrettably, no update or any information about that investigation has been placed before the Court today. The Registry Officer who attended today's hearing agreed that that this would now be chased up.



Discussion and Conclusions

Interim Residence

27. It is evident that, at this time, no party is seeking to vary the Interim Residence Order made in favour of AM. The Welfare Officer recommends that the Interim Order remains in place. It is unclear whether LC would oppose a final residence order being made in these proceedings. Although they have not reached a final decision, it does not appear that the biological parents would challenge the making of a final residence order. They rightly need time to think about that.



28. It is clear that the Learned Magistrate felt that it was in the best interest of the child for him to make an Interim Residence Order in April 2019, which he has extended. I have considered the Welfare Checklist addressed at pages 15 to 17 in Welfare Officer's Report dated 8 August 2019. I am satisfied that the Welfare Officer has therein correctly addressed the factors the Court must take into account and I am satisfied that there is no change of circumstances.

29. Accordingly I make an Interim Residence Order in relation to the child in favour of AM. However, having regard to the delay principal set out at s 3(2) of the Law, the proceeding should now concentrate on what final s.10 orders should be made, especially before the child's 16th birthday.

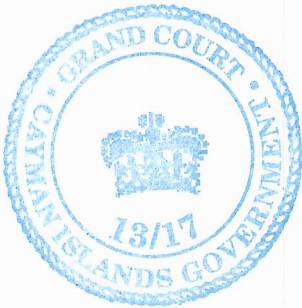
Schedule 1 Children Law Application

30. There is great uncertainty about whether the Court has jurisdiction to make a financial order under Schedule 1 of the Law in the circumstances in this case. Due to the irregular birth certificate, there may be an issue as to whether LC falls under the definition of a parent. I have strongly recommended to AM that, if she wishes to pursue her application for a financial order, she should apply for Legal Aid/seek legal advice due to the unusual background and the jurisdictional issues that have arisen. I do not feel that I am in a position at this mention hearing to make any orders for financial assistance pursuant to Schedule 1 of the Law.

Wardship

31. This 15-year-old child has been settled in the Cayman Islands since the age of three months. This is her home. She has had no meaningful relationship with her biological family in Jamaica. I am conscious that this has been and remains a traumatic and unsettled period for her. She is settled at school and it would not be in her best interest to be uprooted. There is a concern about her immigration status flowing from her irregular birth certificate and the fact that there may be no person in the jurisdiction, save for AM pursuant to the Interim Residence Order, who has parental responsibility for her. On the information before me, it is inarguable that it would be in her best interest for her to remain in the Cayman Islands as this would enable her to attend her school, remain in the company of her friends and be cared for by AM.

32. The Court may decide, of its own volition and without the issue of an Originating Summons, to ward a child. This is clear from the cases of *O'Dare v South Glamorgan Court Council* (1982) FLR 1, *W v Nottinghamshire County Council* (1982) FLR 33 and *R v North Yorkshire County Council ex parte M (no 3)* [1989] 2 FLR 82. I accept that such an approach is not the norm and must be regarded as being an exception. The Court needs to exercise its parental jurisdiction and, at least for the short term, ensure that ultimate responsibility for the child rests with the Court. In all the circumstances of this case, including the uncertainty at this stage as to the child's immigration position, I am of the view



that the Court should exercise its inherent jurisdiction and make the child a Ward of Court. As I make an order on my own volition, I make it clear that the parties to the wardship proceedings are AM, LC, DW and CF. The Welfare Officer is, of course, not a party to the proceedings but is appointed to investigate and report to the Court.



33. I take this approach being conscious that, following the implementation of the Law, there has been a substantial curtailment of the powers of the Grand Court under its inherent jurisdiction in areas previously dealt with in wardship. I have regard to the case of *Re T (A minor) (Wardship: Representation)* [1994] Fam 4 at 59 in which Waite J stated:

“The courts undoubted discretion to allow wardship proceedings to go forward in a suitable case is subject to their clear duty, in loyalty to the scheme and purpose of the Children Act legislation, to permit recourse to wardship only when it becomes apparent to the judge in any particular case that the question which the court is determining in regard to the minor’s upbringing or property cannot be resolved under the statutory procedures in Part II of the Act in a way that secures the best interests of the child; or where the minor’s person is in a state of jeopardy from which he can only be protected by giving him the status of a ward of court; or where the court’s functions need to be secured from the effects, potentially injurious to the child, of external influences (intrusive publicity, for example), and it is decided that conferring on the child the status of ward of court will prove a more effective deterrent in the ordinary sanctions of contempt of court which already protect all family proceedings.”

34. The parties must now be aware that the Court becomes the guardian for the child and is responsible for making all decisions which seriously affect the child's life and welfare. However, this is intended to supplement the Interim Residence Order that I also make today and not substitute it. Therefore, the day to day decisions about the child's care remain with AM who now has parental responsibility pursuant to the Interim Residence Order in her favour. No important step must be taken in the child's life, without seeking leave of the Court. Once a child is made a Ward of Court, the ultimate responsibility for the child rests with the Grand Court. The Court is responsible for making all the decisions which seriously affect the child's life and welfare.² For the avoidance of doubt, the removal of a Ward of Court from the Cayman Islands by anybody, including the Authorities, without the leave of the Court is prohibited and would be seen to be a breach of the custody rights of the Court. Any such removal would be regarded as a breach of the custody rights of the Court.

35. The wardship will be kept under review, especially after confirmation is received from the CBC about the child's status and ability to remain in the Cayman Islands during her minority. The matter will return to Court on 30 January 2020 at 9:30 a.m.



² *Re R (Minors) (Wardship: Jurisdiction)* (1981) FLR 416 at 419E - paragraphs [1057]-[1059] Hershman & McFarlane, Children Law and Practice.

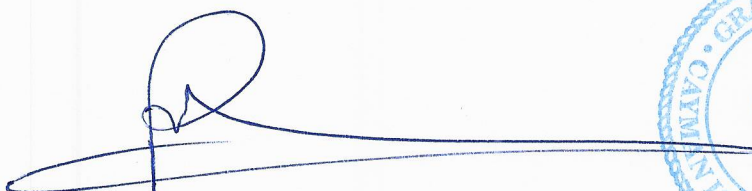
Directions

36. I repeat the directions to the Registry concerning the provision of all the Court documents to the biological parents.
37. I repeat the direction to the Registry concerning the making of a request for an investigation by the CBC regarding the child's status due to the irregular birth certificate. The Registry should actively monitor and chase up the request if no meaningful reply is obtained from the CBC. This information will be required to enable the Court to be put in a position to make final orders.
38. The Welfare Officer should file an update report by or on 13 January 2020. It should include details of any assistance that has been afforded to the child and to the family, including in relation to counselling. The recommendations should include recommendations relating to final orders and as to how the child's relationship with her biological parents can be developed.

Observations

39. It is important that the future of this child, if it cannot be agreed, is approached in an informed manner by the Court and that due process is followed. The wardship will provide, at this time, the structured framework for such careful consideration to take place and enable all interested parties to make representations.

40. In this jurisdiction, we do not have an Official Solicitor. Although these are not specified proceedings, I may well consider at the next hearing whether it is appropriate to appoint a Guardian ad litem to represent the child's interests and see if special dispensation can be made to fund that appointment, along with an attorney. If I am unable to secure such funding, I may have to consider making the child a party to the proceedings and permitting her to then instruct a Guardian ad litem and attorney.
41. I respectfully suggest that the parties reflect on the fact that they may all have an important role to play in stabilising and thereafter developing the child's life. KHC would no doubt have been greatly saddened to see what has emerged after her passing, at a time when the child is at her most vulnerable and in need of consistent familial support. The last thing the child needs is to become embroiled in the uncertainty that emerges from this type of family breakdown, especially so soon after losing KHC.


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

