

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

3 CAUSE NO: FAM 0115/2012

4
5 BETWEEN:

6 JE

7 PETITIONER/APPLICANT

8 AND:

9 ND

10 RESPONDENT

11
12 Appearances:



13 Mr. David Holland of KSG Attorneys
for the Applicant (*Mother*)

14 Mr. Alex Davies of McGrath Tonner
for the Respondent (*Father*)

15
16 Before:
17 Q.C.

The Hon. Justice Cheryll Richards

18 Heard:

22nd – 25th January 2019

19 Respondent's Written Closing Submissions:

8th February 2019

20 Applicant's Written Closing Submissions:

11th February 2019

21 Draft Judgment Circulated:

4th March 2019

22
23 HEADNOTE

24 *Family Law- Children- Application for leave to permanently remove child from*
25 *the jurisdiction – Mother wishing to relocate to Dubai with child. - Section 3*
26 *Children Law (2012 Revision) - Paramountcy principle and relevant*
27 *considerations to be applied to a permanent removal application.*
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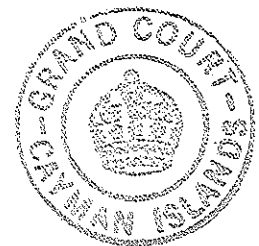
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30 JUDGMENT

1 INTRODUCTION

2 1. By Originating Summons filed 11th April 2018, the Applicant JE seeks the permanent
3 relocation from the Cayman Islands of a female child E, aged 8 years. JE is the mother
4 of E. ND, the father of E opposes the application. By summons filed 7th September 2018,
5 he seeks the variation of the existing final ancillary order in terms that there be a sole
6 residence order in his favour and for the variation of the contact arrangements for mother
7 to have generous contact with E. In the course of this judgment, I shall refer to JE and
8 ND as mother and father respectively.

9
10 2. Following the divorce of mother and father in December 2014, mother has remarried
11 since 2015 and has a child (baby E, aged 16 months) with her new husband, JAE. JAE
12 has obtained employment outside of the Cayman Islands, in the United Arab Emirates
13 (Dubai) since February 2018 and mother is therefore seeking to join him at his new
14 residence and to take her two daughters, E and baby E with her.

15
16 3. Father is employed and resident in the Cayman Islands. He is in an ongoing relationship
17 with his new partner ACP and the couple presently reside together. They plan to get
18 married in the near future. Father and ACP have one child together, a son, baby L aged
19 12 months. Additionally ACP has one child, a daughter, S, aged seven years from a
20 previous marriage. Father seeks to have E reside with him in the Cayman Islands with
21 his new family.

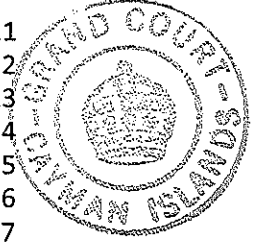


1 **BACKGROUND**

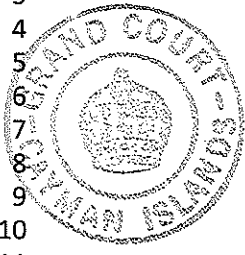
2 4. Mother is from Guatemala. She met the father, who is Caymanian, in 2005 when she
3 was visiting the United States. While the father remained in the States and she returned
4 to Guatemala, they dated long distance for a period of time and were married in 2007 in
5 that country. Shortly after their marriage they moved to the Cayman Islands where their
6 daughter E, the sole child of the marriage was born on the 3rd April 2010.

7
8 5. On the 30th May 2012, mother filed a petition for divorce on the grounds that the
9 marriage had irretrievably broken down. In tandem she sought restraining and
10 occupation orders pursuant to s.5 and s.10 of the Protection from Domestic Violence
11 Law 2010. On the 14th July 2014, she filed an Amended Petition which was ordered
12 proved on the 6th August 2014. The father did not contest the proceedings and a Decree
13 of Dissolution of marriage was made on the 30th December 2014. By consent a final
14 ancillary order was made on the same day. This provided that there shall be shared
15 residence and financial support in respect of E. In addition to an equal share of all school
16 vacation periods, birthdays and public holidays, the order was, *inter alia*, in the
17 following terms:

- 18
19 “2. *The child shall reside with the Petitioner save for the following periods:*
20 *Week 1*
21 i) *The Respondent shall pick up the child directly from school on Wednesday*
22 *afternoons and drop-off the child directly at the school on Thursday*
23 *mornings.*
24 ii) *The Petitioner shall drop-off the child directly to the Respondent on*
25 *Saturday mornings and the Respondent shall drop-off the child directly at*
26 *school on Monday mornings.*
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Week 2

- i) *The Respondent shall pick-up the child directly from school on Wednesday afternoons and drop-off the child directly after school on Friday mornings.*
- ii) *In the event that the Petitioner is working on either Saturday or Sunday, the Petitioner shall drop-off the child directly to the Respondent on Saturday or Sunday mornings and pick-up the child directly from the Respondent on the same afternoon once she has finished work,*
- iii) *In the event that the Petitioner is working [on both days of the weekend], the Petitioner shall drop-off the child directly to the Respondent on Saturday mornings and pick-up the child directly from the Respondent on Sunday afternoon once she has finished work.*

Other

- vi) *The parties agree that any additional contact or variation to the terms can be agreed between themselves in advance.”*

6. These care arrangements were subsequently changed by agreement of the parties and up to the time of the hearing they are as follows:

- a. Weeks 1 and 3- E is with father on Thursdays only;
- b. Weeks 2 and 4 - E is with father on Monday to Tuesday and Friday to Sunday.

7. On the 30th December 2014, the Court also ordered that the Respondent father pay E’s school fees of \$525.00 per month directly to her pre-school until July 2015 and thereafter pay any school fees in respect of her attendance at another educational institution where the parties agree that she should attend. The parties are to share equally all other reasonable educational costs and expenses.

8. On the 25th February 2015, mother issued a summons seeking from father arrears of school fees and an attachment of earnings order. An initial attachment of earnings order of \$700.00 per month – which was made on the 18th January 2016, was varied on the 10th June 2016 to \$450.00, being \$200.00 per month for child maintenance and \$ 250.00 per month towards arrears. As at 26th June 2017, payment of the arrears was completed.

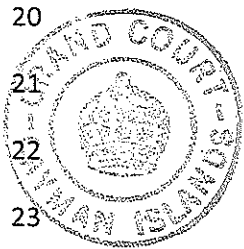
1 The child maintenance order of \$200.00 per month remains in force to date. Unless
2 varied or discharged it will expire on E's 18th birthday or alternatively on her 21st
3 birthday if she is enrolled in tertiary education.

4
5 9. The 30th December 2014 Order also provided that both parties shall be prohibited from
6 removing E permanently from the jurisdiction without the written consent of the other
7 party or further to an order of the Court.

8
9 10. On the 4th May 2018, the Court made an order as to arrangements for the hearing of the
10 Originating Summons filed 11th April 2018 including that the Department of Children
11 and Family Services ("DCFS") prepare a s.9(4) Welfare Report under the Children Law
12 (2012 Revision) on the issue of the possible relocation of E. On 21st August 2018, the
13 Court ordered that an Addendum Welfare Report be prepared.

14
15
16 11. Both summonses came before me for hearing on the 22nd January 2019. The following
17 written material was put before the Court:

- 18 i. First Affidavit of the Applicant/Mother dated 6th September 2018 in support
19 of her application to relocate E;
- 20 ii. First Affidavit of the Respondent /Father dated 5th September 2018;
- 21 iii. Affidavit of ACP, dated 5th September 2018;
- 22 iv. Second Affidavit of Applicant/ Mother dated 25th September 2018;
- 23 v. Affidavit of JAE dated 25th September 2018;
- 24 vi. Second Affidavit of the Respondent /Father dated 31st December 2018;
- 25 vii. Third Affidavit of the Applicant/Mother dated 14th January 2019;
- 26 viii. Report of Ms. Dominique Orakwue, Social Worker with the Department of
27 Children and Family Services (DCFS) dated 19th July 2018;

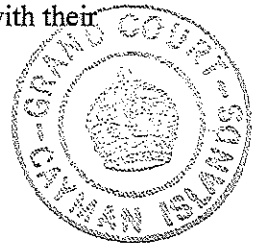


- 1 ix. Addendum Report of Dominique Orakwue, Social Worker with DCFS dated
2 16th November 2018;
3 x. Applicant's opening submissions dated 21st January 2019;
4 xi. Respondents opening submissions dated 21st January 2019.
5

6 12. Over three-and-a-half days, from the 22nd to the 25th January 2019, I heard oral evidence
7 from Ms. Orakwue, JAE, mother, father and ACP. Written submissions were received
8 from both parties on the 8th and 11th February 2019. In addition, I received from Counsel
9 on behalf of the Respondent father, Inspection Reports for E's school in the Cayman
10 Islands. Having taken the time to carefully review all the written material and to listen
11 to the audio recordings of the evidence, this is my reserved decision.
12

13 **THE POSITIONS OF THE PARTIES -- MOTHER'S POSITION**
14

15 13. It is the mother's belief that it would be in the best interests of E. for her to relocate with
16 the family to Dubai to join her husband JAE. Her reasons include that E. would be part
17 of her family unit, would have her as a fulltime mother, would have access to good
18 educational and development opportunities and would also have the benefit of having
19 new experiences and of being exposed to new culture. She states that her husband JAE
20 has generous employment terms in his new job which include allowances for education,
21 housing, transport, health insurance and air travel. JAE's education allowance is for up
22 to three dependent children so that he will be reimbursed the costs associated with their
23 schooling up to High School level.
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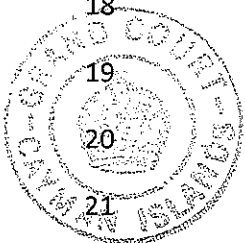


1 14. Given JAE's employment terms, it is not intended that mother will be working in Dubai
2 which will enable her to be at home providing fulltime care for her family. She will be
3 there on a daily basis to assist E after school with her homework in contrast, she says, to
4 father and ACP who both have busy jobs and would not have the same time to commit
5 to spending with E after school.

6
7 15. In Dubai, JAE presently resides in a 4 bedroom, 3.5 bathroom family home in a gated
8 community with direct access to a pool and parklands. E. has a confirmed place to attend
9 a private school for the school year 2018-19. The school has a UK-based school
10 curriculum, with English as the language of instruction, and a teacher-student ratio of
11 1:16.

12
13 16. Mother understands that it will be a big change to relocate E, but she believes that her
14 husband JAE has within the year that he has been away for this new job, created a warm
15 home environment for the entire family. She states:

16
17 *"My husband had made good friendships with other families with children, including*
18 *other families from the Caribbean. He also has friends from the Cayman Islands*
19 *and the Bahamas that he went toschool with. These ongoing friendships provide*
20 *an opportunity for us to continue to keep our culture, traditions, food, religion and*
21 *we will encourage E and baby E to not forget their Caribbean background."*¹



22
23 17. Mother further states that during her five-week visit to Dubai in November to December
24 2018 she had the opportunity to get to know many of JAE's friends who she now

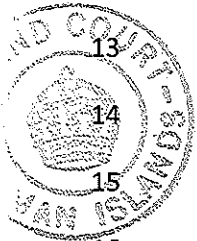
¹ Affidavit of 14th January 2019, paragraph 22

1 considers to be her friends too. They made her feel welcome and were constantly asking
2 about E and expressing how they can't wait to meet her. Mother believes that this circle
3 of friends will be a great source of support during the transition period.
4

5 18. During her visit she went to the schools that E would attend and is happy with them. She
6 would never put E in a position where she felt that she was jeopardizing E's education
7 and learning. Mother and baby E have now had their residence visas approved for Dubai
8 but if it is required, a visa for E cannot be obtained until she is present in Dubai. It is
9 believed that this should be a straightforward process to have E added, should she be
10 permitted to relocate.

11
12 19. Because of the grant of residency in Dubai, mother and baby E. cannot stay out of that
13 country for more than three months and are booked to return on the 15th February 2019.
14 If E is not permitted to relocate or this matter is not completed by that date, mother would
15 like for E to visit with them in Dubai in any event.

16
17 20. Mother would ensure, she says, that E maintains a strong relationship with her father and
18 that a schedule for E to maintain daily communication with him is developed. If
19 permitted to relocate with E, she proposes that father would have contact with E for 2-3
20 weeks at Christmas, alternate birthdays coinciding with the end of term, school holidays
21 in April, every summer break for up to 7 weeks, with at least one week for E to contact
22 her extended family in Guatemala and unlimited indirect contact by phone messaging
23 and video calls. She states that she will continue to encourage and ensure that contact is
24 facilitated. It is her view that if relocation is permitted, father will continue to have a
25 strong relationship with E and will have the benefit of spending block periods of time
26 with her during school holidays which he has not had previously.



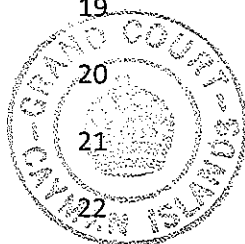
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21. Mother states that E is and always has been a part of her new family and that they desperately wish to stay together. Mother further states that she would be devastated if permission to relocate is not granted and that the idea of not being able to live as a family with her new husband would be emotionally very difficult.

THE POSITIONS OF THE PARTIES – FATHER’S POSITION

22. It is the father’s position that a move to Dubai would not be in E’s best interests and that the status quo should continue. Father states that E is Caymanian and has lived all her life in Cayman. He believes that Cayman is a wonderful place to bring up a child. E is settled and thriving here and has a great support network which includes an extended family of her aunts and uncles and great grandparents and many cousins in the same age group. E loves spending time with her cousins and is especially close to her great aunt - with whom she has developed a bond.

23. In emphasizing the stability of E’s life here in Cayman, he stated that E and ACP have a good relationship and E. confides in her and sees her very much as her stepmother. E has a close relationship with S, and they are very excited to be stepsisters. ACP has a shared care arrangement with the father of S so that S spends half of her time with them (father and ACP). Theirs is a cemented blended family with baby L whom both girls adore. E and S currently share a bedroom which they love. They are the same age and share the same interests. The family currently resides in a two-bedroom rented property and are planning to purchase a three-bedroom property of their own. He explains that the present routine is that E and S would be collected from school either by himself or ACP.



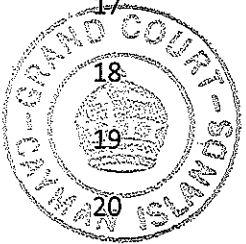
1 They would be taken home where they would have a shower, do their homework and
2 the nanny would provide their dinner. He would get home from work and assist E with
3 her homework if necessary.

4
5 24. He has asked the Court to note that E is a well-adjusted and happy child. She has been
6 an honor-roll student for her first three years. She has many friends and participates in a
7 variety of after-school programmes including dance, reading, arts and craft and Bible
8 study. E loves artwork and cooking and is a keen gymnast. They encourage her to draw
9 and paint and to attend cooking and gymnast classes.

10
11 25. He believes that should E relocate to Dubai, the cultural differences will be too much of
12 an adjustment for her. Dubai is a predominantly Muslim country which he believes
13 offers a very artificial and transient lifestyle for expatriates.

14
15 26. He further believes that a move to Dubai would involve major disruption and significant
16 loss and that going from spending half her time with him to one Skype call per week
17 (given the time differences between the two countries) will have an adverse impact on
18 E emotionally. He has always been a hands-on father and even after the separation from
19 mother in 2012, he continued to play an active role in E's life. Following the change in
20 the residence arrangements his view is that theirs is a shared care arrangement in the
21 truest sense - with E spending 6 of every 14 nights with him.

22
23 27. He fears that the move to Dubai will likely destabilise E, that his relationship with E will
24 be irreparably damaged by the move and that he will be relegated to much less than a
25 part-time father, which is not in her best interests. He says that he is at a loss as to how
26 her stepfather deciding to change jobs on a whim should result in E being uprooted from
27 Cayman and all she knows and in her being deprived of a full relationship with her father



1 and half siblings to live in a country where she has no links or attachments.² He does
2 not believe that the career choice of a stepfather – which he describes as a ‘flight of
3 fancy’ – should be made at the expense of his family life. He states that he cannot see
4 why mother, who has her whole life in Cayman, cannot remain here where she would be
5 supported by her mother in law and visit JAE or vice versa.

6
7 28. He fears that if E is allowed to leave the Island he will not see her again and will be left
8 to fade out of her life. He says that he believes this because mother and JAE have always
9 sought to marginalize his parental involvement with E and JAE has declared the
10 intention in the past to remove him from E’s life.

11
12 29. He does not believe that E will receive a better education in Dubai, given a recent 2017-
13 2018 report on the proposed school which he produces³, or that Dubai offers a better
14 way of life than Cayman and even if it did, he feels that this would be outweighed by his
15 difficulty in maintaining contact with E and the likely detrimental impact on their
16 relationship if she is relocated.

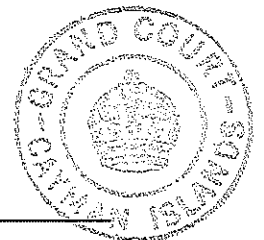
17 30. He would be devastated if E is relocated as would be ACP, S, and baby L. The thought
18 of only seeing E on Skype calls and during holidays is heartbreaking. Since E was born,
19 he has not left her side and he believes that E needs him as a presence in her life. He says
20 communication with mother and JAE is difficult and the only reason the shared care
21 arrangement works is because they all live close to each other. He states:

22 *“Once they are in Dubai I suspect (mother) will do very little to facilitate any*
23 *arrangements and E is too young to be able to facilitate the same herself without*
24 *support.”⁴*

² First Affidavit dated 5th September 2018 – paragraph 29

³ Page 117 et seq. of the Trial bundle

⁴ First Affidavit dated 5th September 2018 – paragraph 30



1 31. He says that he would do his utmost to improve communications with mother if he is
2 granted a sole residence order as he recognizes the vital role mother plays as E's mother
3 and he would never seek to undermine that. He will therefore ensure, he says, that
4 mother has plenty of contact with E.

5
6 32. In his second Affidavit dated 31st December 2018, he proposes that if E remains in
7 Cayman, in addition to unlimited indirect contact with mother, she could spend alternate
8 Christmases for 2-3 weeks on her break from school, alternate birthdays for 2 weeks on
9 her Easter break from school and up to 7 weeks during the summer. He asks that during
10 the summer period E be allowed to travel with his family for at least 10 days.

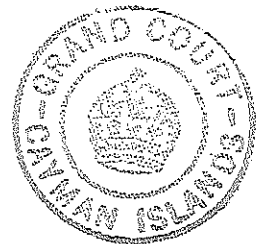
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12 **THE LEGAL PRINCIPLES**

13
14 33. In the leading case of *B. v. B.*⁵ Williams J reviewed a number of local and English cases
15 dealing with the permanent relocation of children on the application of one parent. He
16 concluded that in such cases, the approach of Munby LJ in the case of *Re F.*⁶ shows the
17 right way forward. Williams J stated:

18 *"The clear message being set out by Munby LJ is that the child's welfare is the*
19 *paramount principle to be applied in applications to permanently relocate. To do*
20 *this the Court should consider all the factors, whether they were or were not*
21 *contained in the guidance in Payne v. Payne, in reaching a decision as to what is in*
22 *the child's best interests. The decision appears to be advocating a single approach*
23 *to all relocation cases, in which the Payne factors may apply to all cases, albeit with*
24 *varying weight."*
25

⁵ [2013] 1 CILR 271

⁶ [2012] EWCA 1364



1 34. From the guidance given in the cases of *Payne, K v. K* and *Re F.*, Williams J. derived
2 five principles which are to be applied by a Court in considering whether to make an
3 order granting leave to permanently relocate a child. He listed these as follows:

4 "88. *The first, and overarching principle, must be that the child's welfare is*
5 *paramount. It takes precedent over any other consideration.*

6 89. *The next principle is that the Court should have regard to the guidance*
7 *handed down in case law when considering what factors are to be weighed*
8 *in determining what is in the child's best interests. It is important to note*
9 *that the guidance should no longer be confined by labels given to the*
10 *category of care. This means that a judge must consider the Payne guidance,*
11 *to an extent that he may determine to be relevant to the particular facts of*
12 *the case, even in what might be termed a shared care case. Attorneys and*
13 *judges should avoid detailed classification of relocation cases and hearings*
14 *should not be bogged down in taxonomical arguments or preliminary*
15 *skirmishes as to what characterisation should be applied to the case by*
16 *virtue of the time spent with each parent or other aspects of care*
17 *arrangements.*

18 90. *When the Court considers the guidance the following questions, in a case*
19 *such as this involving an application made by the mother, should ordinarily*
20 *be raised and addressed:*

21 (i) *Is the mother's application genuine in the sense that it is not*
22 *motivated by some selfish desire to exclude the father from the*
23 *child's life?*

24 (ii) *Is the father's opposition motivated by genuine concern for the*
25 *future of the child's welfare or is it driven by some ulterior motive?*

26 (iii) *What would be the extent of the detriment to the father and his future*
27 *relationship with the child were the application granted?*

28 (iv) *To what extent would the detriment to the father if the application*
29 *were granted be offset by extension of the child's relationship with*
30 *the maternal family and, if applicable, homeland?*

31 (v) *Is the mother's application realistic and founded on practical*
32 *proposals both well researched and investigated?*

33 (vi) *What would be the impact on the mother of a refusal of her realistic*
34 *proposal? The weight placed on this will increase if the child*
35 *resides with the mother.*

36
37 91. *Another principle arises from the fact that the circumstances in each case*
38 *vary infinitely and therefore the Court should not be unduly fettered in its*
39 *approach when deciding whatever is in the best interests of the child. The*
40 *Court should regard the guidance, which can promote consistency, as*
41 *helpful in determining the best interests of the child, but not feel that it has*
42 *to be applied rigidly.*



1 92. *Finally, there is no legal principle, or even legal or evidential presumption,*
2 *in favour of an application to relocate by a primary carer.”*
3

4 35. In applying the principle that the child’s welfare is paramount to the case, the Learned
5 Judge had regard to the legislative factors mentioned in the welfare check list under the
6 Children Law (2012 Revision).

7
8 36. In its judgment on appeal⁷, the Court of Appeal approved the summary of governing
9 principles and the approach taken by Williams J. noting that it could be seen that the
10 Learned Judge did have in mind throughout his judgment that the welfare of the children
11 was paramount and that all other considerations, however powerful and reasonable they
12 might be, must yield to that principle. The Appellate Court did not find that the approach
13 of Williams J. was materially different from the approach and observations of Mostyn J.
14 in *Re. TC and JC (Children: Relocation)*⁸

15
16 37. In considering the task of a judge in such cases, the Appellate Court stated:

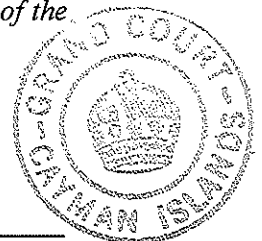
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18 “29. *I should add two further observations. First the judge’s task may involve the*
19 *determination of primary facts (where those are in dispute): that is to say*
20 *he may need to determine what has happened in the past. But it may also*
21 *involve the determination, on the basis of primary facts, as to what is likely*
22 *to happen in the future.”*

23 In its conclusions on the case, the Court stated:

24 “64. *As the Supreme Court of New Zealand observed in **Kacem v. Bashir** (supra)*
25 *the competition in a relocation case is likely to be between declining the*
26 *application for relocation because the children’s interests are best served*
27 *by promoting stability, continuity and the preservation of certain*
28 *relationships, as against allowing it on the ground that the interests of the*
29 *children are thereby better served .”*

7 [2014] (2) CILR 234

8 [2013] EWHC 292 (Fam)



1 38. In the case of *PC v. JC*,⁹ Mangatal, J. adopted the analysis of Williams J. in *B. v. B.*
2 and stated:

3 *“What the best interests principle demonstrates is that the Court must focus on the*
4 *child, and not on the parents and their wishes or positions, save to the extent that*
5 *the latter impact the best interests of the children.”*
6

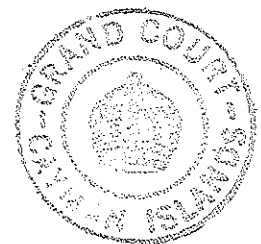
7 39. Mangatal J. cited with approval the judgment of the Court in *Re Y (Leave to Remove*
8 *From Jurisdiction)*.¹⁰

9 *“[14] Now, the court clearly contemplates two different states of affairs. The one,*
10 *the more common and in some ways the more obvious, is where the child is*
11 *clearly living with one parent, and it is that parent that wishes to leave the*
12 *jurisdiction, for whatever reason. The other, and much less common state*
13 *of affairs, is where that does not exist and either there is a real issue about*
14 *where the child should live, or there is in place an arrangement which*
15 *demonstrates that the child's home is equally with both parents. In those*
16 *circumstances, which are the ones that apply in this case, many of the*
17 *factors to which the court drew attention in Payne v Payne [2001] EWCA*
18 *Civ 166, [2001] Fam 473, [2001] 1 FLR 1052 whilst relevant may carry*
19 *less weight than otherwise they commonly do.*

20 *[15] The father does have an application for a residence order in this case, but*
21 *it was raised only in response to the mother's application for permission to*
22 *remove, and the father's actual proposal is for a continuation of the present*
23 *position.*

24 *[16] This case accordingly falls outside the main run of cases that one encounters*
25 *where this problem is raised, and certainly within my own experience is*
26 *unique. What it seems to me I must do is to remind myself of the opening*
27 *provisions of the Children Act 1989. Section 1(1) says that when a court*
28 *determines any question with respect to the upbringing of a child, the child's*
29 *welfare shall be the court's paramount consideration, and in considering*
30 *these issues I have to take a number of matters into account as required by*
31 *s 1(3). It seems to me that of those matters, the ones that are important in*
32 *this case are the educational and emotional needs of Y, the likely effect on*
33 *him of any change in his circumstances, and his age and background so far*
34 *as his life is presently concerned. It seems to me that I need to remind myself*
35 *that the welfare of this child is the lodestar by which the court at the end of*
36 *the day is guided.*

9 FAM 18 of 2014, 15th February 2016
10 [2004] 2 FLR 330



1 [17] *I have stated the case within a very short compass, because there really is*
2 *no significant dispute either as to the essential facts in the case or as to the*
3 *factors which the court ought to take into account. The position of both*
4 *parents is entirely reasonable, entirely understandable and potentially*
5 *congruent with the best interests of Y. The problem is that the respective*
6 *positions are mutually exclusive, and thus one reasonable, honest and*
7 *decent parent is going to have to receive a devastatingly disappointing*
8 *blow.*"

9
10 40. Similarly in *K v. K*¹¹, Thorpe LJ in referring to the case of *Re Y*. stated:-

11 *"I fully concur with the reasoning and conclusion of Hedley J. What is significant is*
12 *not the label "shared residence" because we see cases in which for a particular*
13 *reason the label is attached to what is no more than a conventional contact order.*
14 *What is significant is the practical arrangements for sharing the burden of care*
15 *between two equally committed carers. Where each is providing a more or less equal*
16 *proportion and one seeks to relocate externally then I am clear that the approach*
17 *which I suggested in Payne v Payne [2001] Fam. 473 , para 40 should not be*
18 *utilised. The judge should rather exercise his discretion to grant or refuse by*
19 *applying the statutory checklist in section 1(3) of the Children Act 1989."*

20
21 41. In *Re B. (Removal from jurisdiction); Re S (Removal from Jurisdiction)*¹², the Court
22 stated:

23 *"[11] ..Accordingly I would, in the light of recent experience of applications and*
24 *appeals in relocation cases, offer the following extension to sub-paragraph*
25 *(c) of para (40) where the mother cares for the child or proposes to care for*
26 *the child within a new family, the impact of refusal on the new family and*
27 *the step-father or prospective step-father must also be carefully evaluated.*

28 *[12] That consideration applies with greater force in the case where the child's*
29 *step-father is a foreign national. There as well as work all his history, his*
30 *family ties and his loyalties pull in the same direction. If the court frustrates*
31 *that natural emigration it jeopardises the prospects of the new family's*
32 *survival or blights its potential for fulfilment and happiness. That is a reality*
33 *which the court determining an application for relocation simply has to*
34 *recognise. Often there will be a price to be paid in welfare terms by the*
35 *diminution of the children's contact with their father and his extended*
36 *family. But the court's powers to ensure for children continuing contact with*
37



¹¹ [2011] EWCA Civ. 793

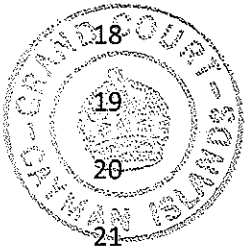
¹² [2003] EWCA Civ. 1149

1 EVIDENCE IN THE CASE

2 EVIDENCE OF JAE

3 43. JAE, in support of mother's application, in his Affidavit evidence confirmed at the
4 hearing, states that E has been living with them from about 2013. He has a very close
5 relationship with her and loves her like his own daughter. He has been fully involved in
6 E's development from she was three years old and has provided substantial emotional
7 and financial support to E from the beginning and will continue to do so. He said in his
8 oral evidence that he first met E when she was a small baby walking around the mother's
9 place of employment. As her mother did not then have a car, he would pick her up from
10 school and do drop offs. As the relationship with mother developed, so did the
11 relationship with E. He would assist her with her social studies homework, take her to
12 the beach, to play at his house, to the movies and for ice cream. He has continued contact
13 with E while he has been away by way of video calling.

14
15 44. JAE explained that it has long been his ambition to work in Dubai from he was in High
16 School. Obtaining this employment has been a main goal in life for him. He accepted
17 the new job because it was a dream job for him and one he could not pass up for himself
18 and his family. He had first applied for a job overseas in 2015 when he was unsuccessful
19 and again in 2016. He accepted Counsel's suggestion that he is driven and ambitious in
20 everything he does. In his new job, he is working towards promotion within the year.
21 This would mean a change in the level of responsibility and another raise in pay. On his
22 salary in Cayman it was becoming increasingly difficult for him to meet all his monthly
23 expenses given the rising cost of living and it would be extremely difficult to send E to
24 private School in Cayman.

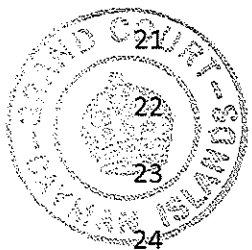


1 With his new job, all extra bills and allowances are paid for by his employer and E would
2 also be covered by his medical insurance. He is entitled to an education allowance from
3 his employer for primary school and for secondary school for E. Her schooling will thus
4 be paid for and he would be able to save for her further education.

5
6 45. The potential job advancement compared to his old job would be two years instead of
7 thirteen years. He now has more days off from work of 13 - 14 days during each month
8 and this will enable him to spend significant time with his family. He would be away
9 from home for work for just about the same amount of time as he would be if he were
10 still in the job in Cayman. In addition to days off during each month, he will have 42
11 days of annual leave per year.

12
13 46. He said that he is not trying to upset anybody by this move. He had planned some ten
14 years for this time. He described the move to Dubai, as not only a personal matter for
15 him but also as a great opportunity for his family, including E. It would broaden her
16 horizons a little bit. There would, he said, be much more to do as a family.

17
18 47. On the support available in Dubai he said that there are numerous expatriate families
19 including two Caymanian families in the complex and surrounding areas of his new
20 home and he has already established friendships with many people. He has twenty-seven
21 Caribbean friends in Dubai and these include families with young children. The mothers
22 in these families do not work. They help out each other. When mother was there in
23 November 2018, if she needed help, help was available. In his new community there is
24 a sports camp with a gymnasium available and there are science camps. He knows that
25 E has a knack for video editing. There are also three water parks within thirty minutes
26 from his home.



1 **EVIDENCE OF ACP**

2 48. ACP gave evidence in support of father's case. She said that she has a special bond with
3 E. E confides in her and sometimes shares things with her that she believes she feels
4 more comfortable sharing with a mother figure. She cares for and loves E as she does
5 her own daughter. ACP participates fully in E's day to day care, attends her school events
6 and has enrolled her in other local child programmes to assist with her overall
7 development. ACP supports E, not only emotionally but also provides full financial
8 support by buying back to school items every school term as well as buying her clothing
9 and other items that she may need when she is in their care. She also assists in paying
10 for any doctor's visits, medicines and any other health related expenses. She describes
11 E as naturally a shy child but states that once E. gets comfortable in her space she can
12 shine.

13

14 49. She arranged to have E on the same days that she has her daughter S so that they could
15 have bonding time together. Both girls have been inseparable since they met and refer
16 to themselves as sisters. They are only a year apart in age and have the same interests.
17 They have bonded to the extent that they do everything together and sometimes wear the
18 same outfits and look to receive matching gifts. They have matching beds. After they
19 have been apart, they have catching up sessions. Although they do not attend the same
20 school, they have mutual friends. E loves baby L and has assumed the role of big sister.
21 E also has a strong relationship with ACP's mother who has assisted in her care and with
22 ACP's niece and nephews and they often frequently have play dates together.

23

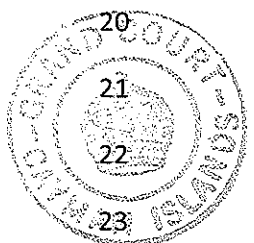


1 50. ACP gives her view that if E were to leave Cayman, she would miss dearly the
2 relationship with S and seeing all her family and friends. She will be leaving behind a
3 support system. In the event that E stays in Cayman, ACP states that she will ensure that
4 she does all she can to facilitate arrangements for contact with her mother.
5

6 **EVIDENCE OF DOMINIQUE ORAKWUE — SOCIAL WORKER WITH THE DEPARTMENT OF**
7 **CHILDREN AND FAMILY SERVICES**

8 51. Dominique Orakwue is a Social Worker with DCFS. She has some ten years' experience.
9 She produced two reports dated 19th July 2018 and 29th October 2018. It is her overall
10 recommendation that E be relocated to Dubai with her mother. Her assessment which
11 lead her to make this recommendation includes reference to: unresolved high levels of
12 tension, hatred and conflict between the parents; the undermining of co-parenting; and
13 the reports of father's violent behavior in the past with mother and in his present
14 relationship with ACP.
15

16 52. It was Ms. Orakwue's evidence that when she spoke with E, she was ambivalent
17 regarding the proposed relocation. At one point E said that she wanted to go and at
18 another point she said that she wanted to stay. Ms. Orakwue said that she sensed E's
19 anxiety and felt that she was being pressured concerning the plans to leave. She
20 described E as loving both her parents and felt that it was evident that she wants to please
21 both. E said that she wanted to go, but "*I mostly want to stay here because it is greener*
22 *and the ocean is blue.*" E also told Ms. Orakwue that her Dad spoke to her and told her
23 that he does not want her to go but to remain in Cayman with her friends and cousin. E
24 said that her stepfather, JAE is in Dubai and her mother thinks that it is a better place to
25 live.

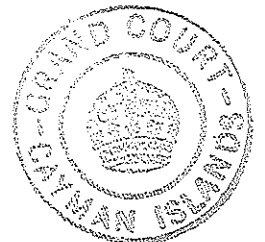


1 Ms. Orakwue said that from E's responses she could sense E's anxiety about going and
2 her anxiety about staying in Cayman. Her anxiety about staying was that her mother will
3 not be around and her wanting to go to Dubai to see what it is like.

4
5
6 53. Ms. Orakwue felt that she was not able to get a sense of any genuine desire on E's part.
7 It is Ms. Orakwue's view that due to her ambivalence, a decision on this application
8 cannot be taken based on E's wishes. She stated that if E is relocated she would need
9 necessary emotional support to deal with transitional challenges. Those challenges are
10 that she would miss her relatives and friends and her accustomed life in Cayman. That
11 support would need to encourage positive parental and sibling relationships through
12 direct and indirect contact.

13
14 54. Ms. Orakwue said that if E stays in Cayman and mother relocates, the likely effect on E
15 would be the same. Her emotional well-being would be affected by her mother not being
16 here. Again there would be separation anxiety and that would need to be resolved in
17 the same way. Ms. Orakwue acknowledged that both parents are the primary caregivers.

18
19 55. In her oral evidence Ms. Orakwue said that weighing the two parental options, she would
20 be more concerned if she stays with her father. She stated that she is very concerned
21 about his present relationship in terms of the stability there, the report of domestic
22 violence and his hostility towards mother. The latter causes her concern that E will be
23 caught in the midst of the conflict between her parents and the effects being trickled
24 down onto her which could have an impact on her overall development.



1 56. Ms. Orakwue said that in the course of her work on the matter, she got a sense for which
2 parent would be better at promoting a relationship with the other parent and that was
3 mother. Based on what was reported to her and her own assessment, it is her view that
4 mother has always been encouraging a positive relationship.

5

6 57. Her recommendations which she maintained at the hearing are summarised as follows:

7

8 i. E should be allowed to reside with her mother and provided liberal contact
9 to father on holidays;

10

11 ii. It is advised that E and her parents obtain counselling intervention before an
12 overseas relocation, if this is confirmed. This forum would facilitate open
13 communication to express all parties' emotional feelings which would
14 lessen likely anxieties and for concerns to be addressed appropriately;

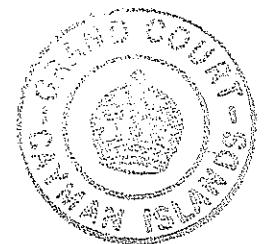
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16 iii. Should E leave the jurisdiction of the Cayman Islands, it is important for her
17 to maintain her family relationships with her father, step-mother and step-
18 sister for emotional and mental wellbeing. This should be supported and
19 encouraged through frequent communication by telephone contacts and
20 visitations;

21

22 iv. Father is encouraged to continue to obtain the relevant psychological
23 intervention to manage his challenges, specifically anger management and
24 violence against women.

25



1 58. In her Addendum Report dated 16th November 2018, her further recommendations were
2 substantially the same as follows:

3 i. E should be allowed to reside with her mother with liberal contact with her
4 father electronically and on holidays;

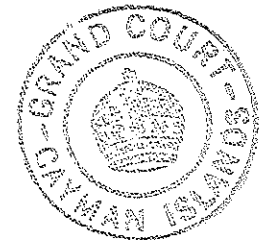
5
6 ii. It is advised that E and her parents obtain counselling intervention prior to
7 the relocation, if this is confirmed. This forum would facilitate open
8 communications to express all parties' emotional feelings which could
9 lessen likely anxieties and the avenue for concerns to be addressed
10 appropriately.

11
12 iii. Should E leave the jurisdiction, it is important for her to maintain her
13 relationship with her father, stepmother and stepsister as this will foster
14 emotional and mental well-being. This should be supported and encouraged
15 through frequent communication by telephone contact and visitations
16

17 59. I am not bound to accept these recommendations if there is good reason not to do so and
18 if in my judgement after considering all the material now before the Court and the totality
19 of the evidence they are not in the best interests of E.
20

21 **MAIN FACTUAL ISSUES**

22
23 60. A number of issues were highlighted in the course of the hearing and require that I make
24 findings of fact and /or alternatively give due focus. These include the following.
25
26
27



1 **ADEQUACY AND RELIABILITY OF REPORT OF MS. ORAKWUE**

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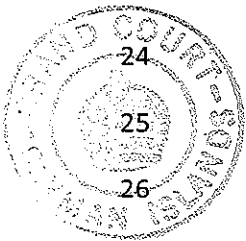
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61. It was urged by Counsel on behalf of father that the reports of Ms. Orakwue are flawed due to her failure to conduct a proper and comprehensive investigation, that they are lacking in detail in several areas and that they show clear bias in favour of the mother. It was also submitted that the reports failed to take into account considerations pertinent to forming a judgment in a case such as this.

62. Ms. Orakwue was cross examined in some detail as to the locations at which she had spoken to E to obtain her views and on the fact that her reports record the views obtained from interviews conducted only at her mother's house rather than at a neutral location such as E's school. Further, and in particular, that there is no record of an interview conducted with E at her father's house.

63. Ms. Orakwue explained in cross examination that at the time the report was being prepared she had no choice but to speak to E at mother's home. This was done in a private setting in the absence of mother who was in another part of the house. It was submitted by Counsel that in light of this fact, the presence of mother in the surroundings of the house may well have had a profound effect on E who may seek to please the parent with whom she is staying or residing.

64. In response to the suggestion in cross examination that she could have spoken to E at her school, Ms. Orakwue explained that she did not do so because of the possible distractions of E's classes and the school day. She agreed that she could have made arrangements to speak with E at the school perhaps at the end of the school day in a suitable area but did not do so.

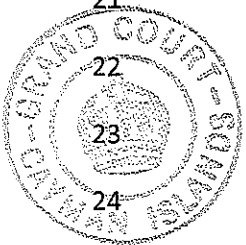


1 She did make visits to the school but these were welfare visits to speak with E's teacher.
2 She said that she did not have the opportunity to assess E at her father's address. As
3 recorded in her Addendum report, she did make an attempt to do so by making an
4 unannounced visit to father's house on the 14th November 2018, but E was not at the
5 home at the time.

6
7 She did speak with E on other occasions than those recorded in the reports, but these
8 were brief conversations in the nature of welfare checks to ask her how she was doing
9 rather than full interviews. Thus these were not recorded in the Reports.

10
11 65. Ms. Orakwue accepted that it is possible for parents to influence a child. In response to
12 the suggestion that it would have been preferable to speak to E somewhere neutral she
13 stated that she did not foresee speaking to E at mother's address as having an impact on
14 what E said to her. She did not feel that E was being pressured to give her a particular
15 response. She did not think that the location of the interview with E influenced what E
16 said to her. Her evidence was that "*there wasn't any importance as to which residence I*
17 *spoke with E*", and that she did not think that E would give different answers while at
18 mother's house than father's house.

19
20 66. I am mindful of the expressed concern on behalf of father that no similar interview to
21 ascertain E's wishes and feelings was conducted at father's address, to compare as his
22 Counsel submits, the responses and demeanor of E, to see whether she was more or less
23 responsive to questioning at her father's address. Counsel also submitted that given the
24 fact that E indicated some preference for remaining in Cayman with father, even while
25 at mother's address, further inquiry would have been important in order to ascertain with

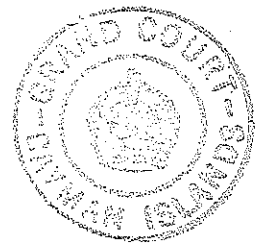


1 greater clarity, E's wishes and feelings about the proposed move, particularly as she
2 became used to the idea.

3
4 67. Ms. Orakwue came across to me as an experienced professional who takes care in her
5 work. I believe from her evidence before me that she would be very much live to the
6 possibility of influence on children in the circumstances of matters such as this and is
7 well capable of assessing whether a response from a child is genuine or not.

8
9 68. I note that her first set of recorded interviews were done for her first report which is
10 dated 19th July 2018. I also note the care with which Ms. Orakwue appeared to take in
11 conducting the interview with E which is set out in that first report. She records that E
12 appeared to be at ease and comfortable while speaking with her. The conversation is
13 recorded as E talking about her school life, her teachers, activities at her school, what
14 she does in her free time, her preparation for school, what she has for breakfast each day,
15 her dinners, homework, what she enjoys eating and a number of casual and comfortable
16 topics as well as the topic of the proposed relocation to Dubai. Thereafter E is recorded
17 as speaking of attending a cooking class with S, a planned vacation trip with her father
18 and of her previous trips to Guatemala, and Disney, Universal Studios in the United
19 States.

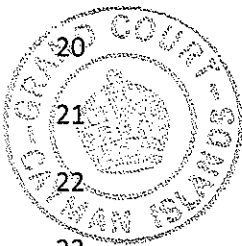
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21 69. E appears to have been fully forthcoming and to have had a lengthy conversation with
22 Ms. Orakwue who would have had time to observe and assess her. I also note the wide
23 ranging topics which were discussed.



1 70. I accept Ms. Orakwue's evidence that at the time she spoke to E, she did not feel that E
2 was being pressured to give her a particular response. I also accept her evidence that
3 there was no reason to believe that the location at which E was interviewed affected her
4 answers. My understanding of her evidence is that E came across to her as being
5 genuinely torn in both directions rather than being pressured to say one thing or another
6 because of mother's presence in the house.

7
8 71. I did also note the possible small inconsistency in the urging of Counsel on behalf of
9 father on the one hand that the failure to interview E in a neutral location may possibly
10 affect the reliability of her responses and be reflective of possible undue influence by
11 mother and on the other hand his submission that her answers indicated more of a
12 preference to remain with father in the Cayman Islands than to relocate with her mother
13 to Dubai, a preference which he says Ms. Orakwue failed to give due weight. It seemed
14 to me that the argument as to the possible impact of the interview location of her
15 mother's house on her responses must be less weighty if the result, despite the location,
16 is said to be more in favor of father.

17
18 72. It was also urged by Counsel on behalf of father that Ms. Orakwue did not use the
19 important opportunity when mother was absent from the Island in November and the
20 first week in December 2018, and E was then in father's care, to conduct a further
21 detailed interview with E. Ms. Orakwue explained that she had spoken with E shortly
22 before her mother left the Island and E, who had then been aware of her mother's
23 forthcoming absence, had not been in the mood to speak. Ms. Orakwue said that she was
24 mindful that E may have been feeling sad because her mother was away and she did not
25 want to add to her distress by pressing her on the matter. She did not think that her failure



1 to speak fully with E during that time, would have affected her ability to provide a full
2 report.

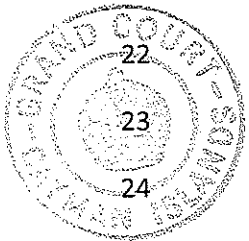
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4 73. As to whether there ought to have been further inquiry, Counsel submits that:

5
6 *“It is of particular significance therefore, that even in her mother's house, E is*
7 *reported to state that her preference was to stay with her father. This preference*
8 *has, it is submitted, been largely played down by Ms. Orakwue, who suggested that*
9 *it was ambivalent and unclear. In these circumstances, one would think that further*
10 *enquiry would have been forthcoming, in order to try to ascertain, with greater*
11 *clarity, what E's wishes and feelings about the proposed move were, particularly as*
12 *she became used to the idea.”*

13
14 74. In considering this I noted that Ms. Orakwue's second report is dated 16th November
15 2018 and her further interview with E appears to have been carried out on the 29th
16 October 2018 so there were at least some two to three months in between the first
17 recorded interview and the second. One would have thought that E would already have
18 had some time to process the issue since the first interview. The short recording of the
19 second interview states:

20 *“E shared that she is happy and sad regarding the possible relocation to Dubai. She*
21 *expressed that she is happy to go to a new country, while she would be sad to leave*
22 *her father behind. E explained that she would not have the patience to wait until*
23 *summer to visit him.*

24 *E is aware of her mother's visit to Dubai on November 5 and shared that she is*
25 *feeling sad.*



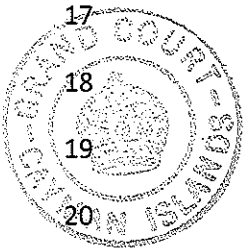
1 *It appeared that E was not in the mood to have conversation as she was not*
2 *forthcoming; hence worker ended the meeting.”*

3
4 75. I thought it of some significance that even some months later, E was still expressing
5 some ambivalence towards the possibility of relocating. She was still torn. How realistic
6 then is it to suggest, as Counsel on behalf of father seems to do, that perhaps two or so
7 weeks later, in November 2018 when mother had actually left the Island, there might
8 now have been a different response from E.

9
10 76. Counsel on behalf of father makes the further submission that while mother was away
11 in November 2018, would have been an optimum time to ascertain how E would have
12 been affected by separation anxiety, in essence that despite E’s sad feelings in the
13 absence of mother, she should have been pressed. He states:

14
15 *“It is submitted that this window of time was arguably the most important period of*
16 *assessment, as it was the opportunity for the court to see, through Ms Orakwue as*
17 *the “eyes and ears” of the court how separation anxiety would affect E. There is no*
18 *doubt that E is a bright and articulate girl, who is perfectly capable of explaining*
19 *her feelings. She could perfectly well articulate her wishes and feelings at this time,*
20 *with appropriate support.”*

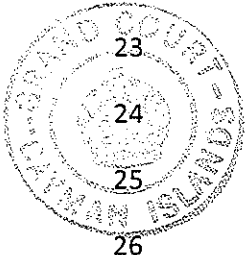
21
22 77. In effect Counsel appears to be submitting that Ms. Orakwue should have persisted –
23 notwithstanding any possible added trauma to E. I find it difficult to agree with this
24 suggested approach as being something which would have been in the best interests of
25 E.



1 78. This also seems to me to be now a moot point. It was not done – the Social Worker
2 having used her best judgment at the time. I cannot speculate as to what E might or might
3 not have said. We are left with the reports as they are, whatever their limitations. I note
4 the fact that it was not done, but this does not cause me to say that the recommendations
5 of the Social Worker must therefore be unreliable.

6
7
8 79. There were other reasons put forward as a basis for the suggestion that reliance cannot
9 be placed on the recommendations of Ms. Orakwue. There were suggestions that Ms.
10 Orakwue, having spoken to mother first and receiving her side as to the conflicts,
11 accepted the mother’s side and had placed too much emphasis on what she had been told
12 by mother and JAE, and that she was predisposed to doing so.

13
14 80. In considering the issue of bias on the part of Ms. Orakwue, firstly I did not find in her
15 evidence, particularly as she faced searching cross examination, any reason to believe
16 that she was in any way biased in her approach to this case. Her answers seemed to
17 suggest no more than she used her best judgement at the material times. Secondly on an
18 objective assessment I noted that she pointed to specific factors which lead her to make
19 the recommendations which she did. There were police reports and acceptance from
20 father as to at least one incident of domestic violence which had occurred. There is also
21 general acceptance of the bitter and acrimonious relationship between the parties which
22 has lead to serious and sustained communication issues. That Ms. Orakwue attributes
23 the cause to be in large measure as a result of father’s responses which flow from his
24 continuing bitterness towards mother and JAE was not an unreasonable conclusion in
25 light of all the material available.
26



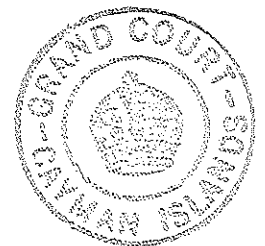
1 These were two specific factors to which reference could be made which underpinned
2 Ms. Orakwue’s findings. I do not find that she was biased in her approach and work on
3 this case.

4
5 81. It was also submitted on behalf of father that Ms. Orakwue tended to side with the reports
6 of mother regarding incidents. Counsel put the submission in the following way:-

7 *‘This may be evident in the similarity of words used. One example raised by the*
8 *parties, and quoted in the report was that of the request for E to be transferred to*
9 *F’s health insurance once M left her employment. M reported the “approach was*
10 *not encouraging, but eventually the policy was put in place”. Ms. Orakwue reported*
11 *the same language verbatim in the report, but did not seek to take F’s account on*
12 *the matter. She did not know, when questioned that the time taken to add E to the*
13 *policy was a matter of 2 days, such delay being due to F’s work dealing with what*
14 *was an immediate enquiry. The end of the Addendum report Ms. Orakwue states*
15 *“the importance of maternal nurturing cannot be overstated”. This statement was*
16 *endorsed by [Ms. Orakwue].”*

17
18 82. I did not find anything of significant weight in these two matters. Ms. Orakwue’s states
19 in her report *“Mother stated that Father did not respond positively at first, but eventually*
20 *the coverage was put into effect.”*¹³ It is a fact that father did not respond in respect of
21 the health insurance for E to advise that he was getting it done. Ms. Orakwue did not
22 follow up to ask him why there had been a delay in doing so.

¹³ Page 3, paragraph 3 of Report dated 16th November 2018

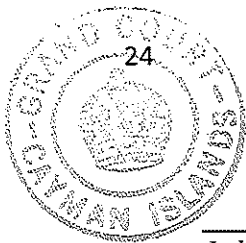


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I would have expected there to have been a more positive requirement on her part to follow up with him, if her information had been that he had not in fact put the coverage into effect.

83. There were also complaints from father and ACP that Ms. Orakwue had not accurately recorded statements that they had made to her or their positions on matters. For example, it was disputed that they had, with respect to the domestic violence incident in 2016, sidestepped the subject with Ms. Orakwue. Ms. Orakwue's evidence was that when she initially inquired of Father and ACP about incidents of domestic violence, both were reluctant to speak about it and side stepped the issue. She records that ACP stated that the incident occurred in the past at their previous residence and that every relationship encounters difficulties, and that they did not provide further information surrounding the event. Both father and ACP denied sidestepping the issue with the Social Worker. In the course of her evidence ACP stated that she was asked by the Social Worker if there is domestic violence in the relationship with father and she said no. She explained that she said this because there is no violence in the relationship.

84. Counsel on behalf of father points to ACP's openness in both the Affidavits filed and in her evidence in Court. The issue seemed to be that ACP was saying to Ms. Orakwue that there is none presently and going forward there is none. Ms. Orakwue was then in possession of a police report referring to the past incident. It is not unreasonable for her to have expected an immediate acknowledgment of the past incident even while circumscribed by statements as to the present position. From ACP's own evidence in Court, I did get the sense that they were not immediately forthcoming to Ms. Orakwue



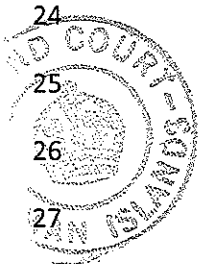
1 with the information that there had been a serious incident of domestic violence between
2 them in the past.

3
4
5 85. Father and ACP denied telling Ms. Orakwue that in September 2018, father had a
6 conflict with ACP stemming from these proceedings which caused him to be stressed;
7 hence he spent a night at his aunt's house with E. They say that there was in fact no
8 conflict between them. Father was simply stressed over the proceedings and needed
9 some time alone. He packed only small bags with their clothing and did not move out.
10 In her evidence ACP said there was no conflict or violence, there was, she says, a
11 disagreement.

12
13 86. These are but two examples. There were others. I have not detailed them all herein. I
14 bore these complaints in mind as I listened to all of the evidence, particularly that of
15 father, ACP and Ms. Orakwue – conscious of the possibility of deliberate
16 misrepresentations, misunderstandings and/or of mistakes.

17
18 87. Counsel on behalf of father also pointed to the lack of detail in some areas of Ms.
19 Orakwue's reports - for example, in her welfare check list in sections such as age, sex,
20 religious persuasion and background. This is a well-founded observation. I accept that
21 the reports are limited in some areas.

22
23 88. However overall, having considered the submissions made by counsel on behalf of
24 father, both in his opening and closing submission, and the points he raised in cross
25 examination, having considered the reports with a critical eye and the evidence of Ms.
26 Orkawue through a lens of skepticism and question, I did not find that the shortcomings
27 in the reports and in her approach to the case as to timings and locations of interviews,



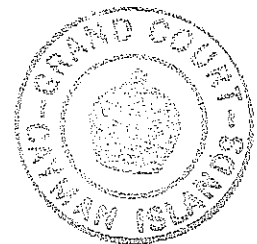
1 the extent and depth of her inquiry, accuracy of recordings and the other issues raised,
2 to be of such a nature as to cause me to feel that reliance could not be placed on her
3 recommendations and on her assessment of E.

4
5 89. Contrary to father's assertion, I did not find that Ms. Orakwue failed to apply the proper
6 considerations and /or to apply the correct test. She took into account the welfare check
7 list as set out in the relevant Law and adverted to the guidance provided in the case of
8 *B.v. B¹⁴*. which she said in her oral evidence had earlier been brought to her attention by
9 the Court on the making of Orders for the Welfare reports.

10
11 **COMMUNICATION**

12 90. Each party raises concerns that the other party would not facilitate contact with E if
13 circumstances change. The evidence, both oral and written, indicates serious and
14 sustained communication difficulties between father on the one hand and mother and
15 stepfather on the other. I concluded from all the evidence that it is not inappropriate to
16 describe the relationship between both sides as toxic. In considering the best interests of
17 E, I considered the issue of communication to be an important issue in this case. In
18 practical terms, E's interest would be best served if she has to be separated from one
19 parent, to be with the parent who would genuinely seek to promote communication with
20 the other.

21
22 91. In her First Affidavit¹⁵, mother stated:



¹⁴ Supra

¹⁵ Affidavit of 6th September 2018, paragraph 39

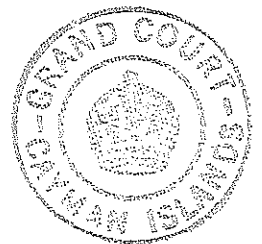
1 “Unfortunately I could not say that the Respondent would properly facilitate contact
2 for me if I were not here. He generally refuses to communicate with me and is quite
3 controlling. I suspect that he would make it very difficult for me to have regular
4 indirect contact.”

5 92. She stated that at the request of father, the residence arrangements of E. were changed.
6 She agreed to the change because the Court-ordered arrangement had not been working
7 for some time as the father refused to let her know where he was living and handovers
8 had to be done in public places. The change was not ideal for her because of her work
9 commitments but she accommodated it so that E could spend time with her father.

10
11 93. In his Affidavit evidence¹⁶, father does not deny that he and mother have had ongoing
12 communication issues but says that despite this there can be no doubt that they both love
13 E. His view is that the present shared care arrangement has allowed them to co-parent
14 effectively even if their communication issues remain.

15
16 94. Ms. Orakwue’s view is that:-

17 *“The importance of co-parenting is undermined as the emphasis is placed on*
18 *parental disagreements, past relationships and each other’s adult affairs. Based on*
19 *parents’ accounts, E is exposed to parental conflicts and is being used as a source*
20 *for communicating information to either parent regarding her general care. Thus*
21 *E’s development is likely to be adversely affected, if parents continue to place this*
22 *responsibility on her.”*¹⁷



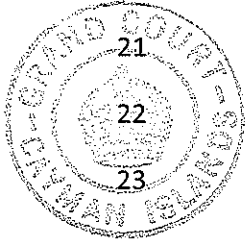
¹⁶ Affidavit of 5th September 2018, paragraph 13

¹⁷ Report of 19th July 2018, paragraph 63

1 95. Mother's evidence was that contact with father has been bad. She has tried many times
2 to come to peace with him. She just wants to have a stable relationship with him for E's
3 sake. She said that father is angry towards her and he uses E because he knows that is
4 how he can get to her. She said that she would like to hear from E every day and that
5 father will take it as if she is trying to investigate if she asks questions. E has been her
6 life, her world since she was born and she cannot imagine a day without her. On many
7 occasions father has told her "why you have to call and find out if she ate." Her calls are
8 ignored. Mother said she does not think a one-minute phone call is interrupting father's
9 time with E. When E is with her, mother says that she gives her the phone and says call
10 your daddy. On the other hand there is always a negative response when it is the other
11 way around, it takes 2-3 hours to get a simple response. She said that even if father is
12 not with E at the time, he could at least acknowledge her call. She says that if her
13 application is not granted and she leaves E in Cayman, her fear is that one day her father
14 does not answer the phone because he gets in those moods. He has always been so
15 negative.

16
17 96. In response to mother's allegation that he frequently ignores her text messages father
18 stated in his First Affidavit¹⁸:

19 *"I accept we have had communication difficulties, but mother must acknowledge her*
20 *share of responsibility for the same. I have not responded on occasion as she would*
21 *often bombard me with messages which were often irrelevant and sought to*
22 *undermine my ability to care for E while she was in my care. For example texting*
23 *me to ask if I had given E. lunch. I am perfectly capable of meeting E's needs and*

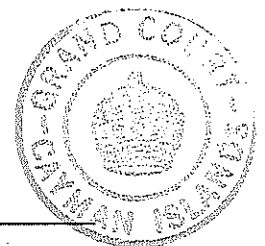


¹⁸ First Affidavit dated 5th September 2018, paragraph 14 (c)

1 do not need constant reminders of the same, I have no issue with E. speaking to
2 mother when she is with me, but it ought not to impinge on our time together when
3 we have a shared care arrangement.”

4 97. In his oral evidence he said that there has been a breakdown in communication between
5 mother and himself but that it is evident that it is always kept between them and has
6 never affected E. He said that they would never expose her to their disagreements.
7 Further that there have been times when he did not respond to messages received
8 because it has to do with parenting skills and he feels that he is being told how to raise
9 E. He knows that it is supposed to be co-parenting and he is capable of caring for E
10 when single and while in a relationship.

11
12 98. He also said that there are times when he does not respond to messages because he feels
13 that if he does so it will come across as hostile so he does not respond. Some messages
14 make him feel upset and as if they are undermining his ability to care for E. He said that
15 there has been no question about his ability to care for E. He said that there have been
16 times when he would send a message, which was possibly “*undermining of parenting*
17 *skills to the other side*” so that he can understand the communication break down
18 between them. He said with some frankness that there have been messages that he has
19 sent that he does regret as they were disrespectful and undermining. He said that he
20 should work and learn to control how he feels but when it comes to E and E’s care and
21 then lines have been overstepped, sometimes by mother but most of the time by JAE.
22 JAE always knows what to do to get him to react. He may not react in the best of ways
23 but it is usually over a message.



1 I) COMMUNICATION RE RELOCATION

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99. Father also gave evidence that he was angry over how the news of the possible relocation to Dubai was broken to him. He was first told of it by E and not by mother or JAE. Mother and JAE were both challenged in cross examination on the fact that they had not sought to raise the issue of relocation with father until after E. had told him of it when they had known about it for some extended period of time.

100. Mother explains that E overheard a conversation between her and JAE and told father about it. She said that she first tried to raise the issue with father in early 2018 but he refused to discuss the matter at the time. She thereafter instructed her Attorneys to write to him about the matter which they did on 19th March 2018. He responded indicating that the relocation would not be happening. Mother said that she had not raised it with him earlier because they wanted to be certain about JAE's job. At the time of their travel for JAE's first interview in June 2017, she did not tell father that she was travelling to Dubai, She said only that she was going off Island. She said that she would have loved to tell him about it but she can't talk to him. He won't listen. She agreed that communication has broken down both ways. She has tried on many occasions to repair them. He has this personality where he jumps at things. He does not sit and research. She said that she personally wanted to go to see Dubai for herself. She said that we already knew how he was going to react before she even said anything. She said:

22 *"I wanted to avoid an argument. Every day something to argue about. It is*
23 *frustrating, draining. My soul is so tired of the arguing."*

24 She states that father has made it very difficult to communicate with him since their
25 separation even in respect of matters regarding E.

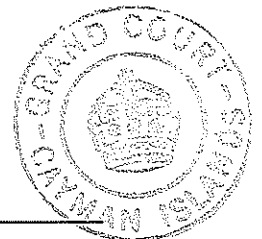


1 101. JAE said in his evidence that he did not tell anyone about his applications as he wanted
2 to be sure before telling everyone. He said explaining anything to father is an issue
3 because of lack of communication. He did not agree that on the whole full contact has
4 been provided. Because of lack of communication with father who is argumentative and,
5 with the history of his temper, they wanted to be sure before approaching him. He
6 described himself as a different person from father. He said that he is a passive person
7 who does not get angry at the slightest things. He would investigate and ask more.

8
9 102. I understand the approach taken by mother and JAE to wait for some certainty, however
10 it is unfortunate that the proposal was not communicated by them directly to father. The
11 manner of communication could only have served to increase rather than reduce the
12 acrimony between the parties.

13
14 **II) PHONE MESSAGES**

15
16 103. Mother produced a number of phone messages which she says highlight how
17 uncooperative father has been in terms of her speaking with E when E is with him. It
18 was the father's evidence that he could have produced messages and that he has some
19 messages but had not brought them to Court because he does not think that messages
20 that show animosity have anything to do with E's relocating to Dubai. He said that there
21 are messages which he has that show frustration in trying to get something back from
22 JAE and mother or where there is a pick up and drop off of E. He also said that he
23 usually deletes negative messages because he does not want to see them and go back and
24 remember all the foolishness which went on.



1 104. Mother said she went some eight days in Dubai in June 2017 without being allowed to
2 speak to E. She was only able to do so on the plane returning home. Part of father's
3 explanation seemed to be that she had kept it a secret from him as to where she was, only
4 telling him that she was going to be off Island.

5
6 105. With respect to her most recent visit to Dubai in November 2018, mother stated that
7 video and voice calls were inconsistent whilst she was away for the month in Dubai.
8 Father showed no initiative to organize a schedule that could work in light of the time
9 difference. She would send text messages to E. on her iPad that were also received by
10 father's phone at the same time but he would not respond until hours later or the next
11 date, if he did eventually respond. She states that his "*ignoring calls and text messages*
12 *does not instill confidence in me that father would properly facilitate contact between*
13 *myself and E, if she was in Dubai and E was staying in his care*"¹⁹.

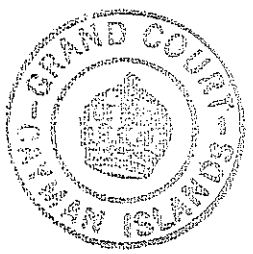
14
15 106. The messages produced included the following. On or about the 8th June 2017²⁰:

16 *Mother:* "It seems like it is not working.
17 Do you have Skype? (05:17)

18 *Wednesday*
19 Do you have Skype (02:12)
20 I really want to talk to E (02:13)
21 Hello?" (15:49)

22 *Yesterday*
23 *Father:*
24 "I don't have skype no she called you a few times with no luck. You
25 haven't called her back. Not sure what it is you want me to do about
26 that.

27 *Mother:*



¹⁹ Third Affidavit dated 14th January 2019, paragraph 9

²⁰ Trial bundle page 165

1 109. He agreed with mother's Counsel in cross examination that mother and JAE have
2 provided a lot more evidence to make it appear that he is the aggressor and initiator and
3 that he has provided nothing to suggest that it is a two way street. He says however that
4 'more times he is a reactor'.

5
6 110. On the 8th October 2017, father sent this message *inter alia*:-

7 "M. I'm not sure why you are telling E. that you will be picking her up
8 tomorrow.....We have plans this weekend as we do every weekend and it's my
9 weekend so I am a bit confused why you are telling E things. Monday is your day and
10 so the day E comes back to you. Stop telling E things that are not discussed between
11 you and me her father."

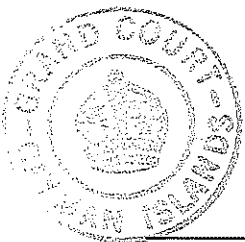
12 Mother's response:

13 "Exactly I will completely agree with it is something you and me need to speak so
14 when you are ready to pick up my calls, I called twice, we can communicate things
15 that refer to E. but I have no choice but to talk to her because you refuse to talk to
16 me."

17 Father:

18 "OK well when E is with us don't even think about calling as we won't answer the
19 phone. I called yesterday and again today. Save the excuse it's falling on deaf ears.
20 Just remember to not bother us when she is here. Thanks

21 And to answer the "it's not my weekend" please remember JAE's words of stupidity.

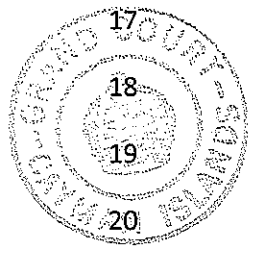


1 *No need to call I will see her tomorrow if she asks to call you will let her and not lie*
2 *to her as you always do. But my point stands don't bother us on my days your number*
3 *will be blocked when she is in my care.”²²*

4 111. Father’s suggestion is that these were messages which were taken out of context and were
5 only a snap shot of what had occurred. The 2017 message re blocking, he says occurred
6 in the course of an exchange of messages initially with JAE with whom he admittedly
7 has an acrimonious relationship. He states that notwithstanding this message, to date
8 mother has in fact never been blocked from his phone.

9
10 112. In November 2018 while mother was in Dubai, after father’s initial difficulties with
11 downloading a communication program that would work, communication was
12 established between mother and E.

13
14 113. Mother questions father’s explanation that he was not readily able to download a cost
15 free communication platform called BOTIM which is used in Dubai when, others on
16 Island such as E’s teacher, other family members and friends were easily able to do so.
17 Father said in cross examination that he saw no need to speak with others who had been
18 able to easily down load the program. He did contact a local phone company. I accept
19 father’s evidence that he in fact made earnest efforts and did not actively seek to delay
20 communication with mother. By this time father would have been well aware of the
21 pending application and of the issues consequent upon same. His First Affidavit in this
22 matter is dated the 5th September 2018 and by then he had already been spoken to by
23 DCFS. I believe he would have been endeavoring to show his willingness to facilitate
24 communication and would have done his best to promptly respond to any such requests.



²² Page 164 of trial bundle

1 114. Unfortunately despite his being in the midst of this, I find that his temperament and
2 continuing unhelpful attitude is revealed in a series of messages produced by mother²³.

3 *Father:*
4 *"Can you add WhatsApp to your Dubai number?"*

5
6 *Mother:*
7 *For the love of God that is the biggest thing that exist. It won't work.. WhatsApp*
8 *won't work, Skype won't work, Face Time won't work.*

9
10 *Father:*
11 *Skype works,*
12 *She spoke to you this morning.*

13
14
15 *Mother:*
16 *Really I am talking to you with my hand on heart.*
17 *She never spoke to me."*
18

19 115. Mother gave evidence that given the time difference between Cayman and Dubai she
20 would stay up into the early hours of the morning in order to speak with E. Mother
21 produces another series of messages exchanged in November 2018 after the program
22 was downloaded by father²⁴:

23 *Father: (yesterday 04:46)*
24
25 *"E is doing her homework and will call you after she's done.*

26
27
28 *Mother: (today 22:40)*
29 *Hi, I would like to Skype E. What time this could be possible?*

30
31 *Father:*
32 *Ammm why are you messaging me to ask? Just call her as you always do I keep*
33 *screen shots of everything so please stop trying to make it sound like I don't facilitate*
34 *your contact with E, you have free access to contact E, So I'm not sure why you*
35 *messaging me stupidity.*

36
37 *Mother:*
38



²³ Pages 238 of trial bundle

²⁴ Page 239 Trial bundle

1 *Are you with her now?, she needs to go on line. Could you please tell her so.*

2
3 *Father:*
4 *Ok”*

5
6
7 116. Father explained in his evidence in cross examination that he responded in the way he
8 did because mother can call E directly. While acknowledging that mother was asking
9 him to get E to go on line, he said that E is a bright and intelligent young girl, who has
10 been using her iPad since 2015. She is capable of opening Skype. He does not need to
11 assist her in doing that. What he had to assist her with is downloading Skype. She does
12 not need his assistance in downloading an application or making a call. She is capable
13 of doing that. He said that he had initially responded to mother without checking. He
14 did go into E’s room thereafter and saw that E was in there, playing and talking. She was
15 on line but was on another social media program. He said that he had not considered a
16 situation where mother had messaged E and E had not responded.

17
18 117. It was put to him that this message really sums up this case and communication
19 difficulties. In the first message he gave mother a time to call E. In the second one,
20 mother asked for a time to call and he responded in the way he did. He accepted that his
21 response was inappropriate but said that with everything, he felt like it was done out of
22 some kind of spite. Mother is well aware that E’s iPad is constantly on line and that she
23 can call E directly. He also said that he is not aware of any time mother may have
24 contacted E and she did not answer.



1 118. There were other messages produced by mother. On the 14th November 2018, there was
2 a message from mother to E, which asked why E. did not message her after school. The
3 response from E. which came on Thursday 15th November 2018 was, "Sorry Mommy I
4 went to my daddy's game."²⁵

5
6 119. On 23rd November 2018, mother sent a message to E at 7:30 pm. There was no response
7 from E until 8:53, when the response was "sorry, my iPad was with my daddy."²⁶

8
9 120. In evidence father said that he would not normally have E's iPad , the only time he would
10 have her iPad is if she asked him to top up games or iTunes, probably a five minute
11 thing. He said that they do monitor her use, only for access to other sites to ensure that
12 she is not looking at inappropriate content.

13
14 121. Mother also gave evidence that while she was away on the said trip, father was in her
15 view inconsiderate in his approach to communication. E was to be dropped off at the
16 home of her mother in law. Some hours passed and father did not communicate to advise
17 of a change of plans so that proper arrangements could be made.

18 *Sat 24th November*

19 *5:40pm*

20 *E: Ya oh and my daddy is taking me out to dinner*

21 *Mother: I need to tell Ms. P. what time you are coming*

22 *She has been waiting, please ask him now and tell me so I can tell*
23 *her please."²⁷*
24

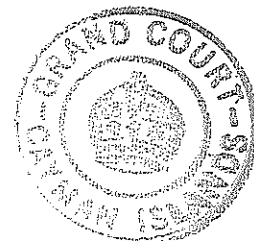
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²⁵ Page 240 of trial bundle

²⁶ Page 243 of trial bundle

²⁷ Page 241 of trial bundle



1 **III) COMMUNICATION- HEALTH INSURANCE FOR E**

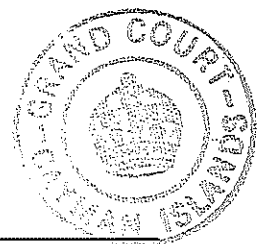
2 122. In November 2018 when mother travelled of Island with baby E. to join JAE for five
3 weeks in Dubai, she resigned from her job in Cayman and therefore E. would no longer
4 be covered by her health insurance. She said that she tried to make contact with father
5 to ask that he add E as one of his dependents so that E. could have health insurance.
6 JAE sent a message to father on mother's behalf²⁸ asking that E be placed on father's
7 health insurance as mother had stopped working. He offered to pay half the cost on a
8 monthly basis. JAE said that he sent the message because mother had been trying get
9 through to father without success.

10
11 123. In his oral evidence father said that he did not respond to JAE's message but worked on
12 it immediately and had it done within a short time. The reason for his not responding
13 was "*because again we have established, I have this thing where you are telling me what*
14 *to do*". In response to questions in cross examination, he acknowledged that there was
15 nothing controversial about JAE's message and he accepted that it would have been
16 sensible to say thanks I will get back to you. He said that he got the insurance sorted. He
17 did what he had to do. It was a \$50.00 difference. He did not see where he had to
18 communicate back with them. He read what they had to say and did what he had to do.

19 **IV) COMMUNICATION - MOTHER'S DAY INCIDENT 2017**

20 124. Much time was spent during the hearing on the Mother's Dincident between the parties
21 in May 2017. Both sides either examined or cross examined at some length on this issue.

²⁸ Page 237 of trial bundle

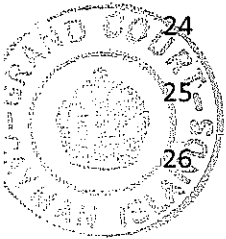


1 In her Second Affidavit mother stated that father refused to let her speak with E. on
2 Mother's day 2017 as it did not fall on her time with E.

3
4 125. Father explained in his evidence that over the weekend leading up to Mother's day 2017,
5 his family participated in the Batabano festival and were out all day the Saturday
6 returning home late that evening. Father said that they were all exhausted and not from
7 alcohol and his phone battery died overnight. On the Sunday morning, once the phone
8 had been plugged in to charge, he heard the notification of a missed call. He was about
9 to return the call when ACP showed him posts on social media in which mother had
10 stated that E was being kept from her on Mother's day. There were also posts from JAE
11 including one which he perceived as a threat. It said "*if I knew where they lived, I would*
12 *let you know.*"

13
14 126. Father said that after looking through the phone on that Sunday he noticed that a What's
15 App message had been sent on the Friday evening from Mother asking to see E on
16 Mother's day. He had not seen that message and suggests that it would have been
17 obvious to mother that he had not opened any message from earlier that Friday afternoon.
18 He says that mother only made two attempts in three days to contact him. He spoke with
19 mother and told her that in future she should simply call where she sees that he has not
20 read a message. Since then they have been in communication through iPhone messenger
21 which notifies him of messages. There have been no issues since 2017 and E spent
22 Mother's day 2018 with mother because proper arrangements were made beforehand.

23
24 127. In response to mother's evidence that she had called him several times on the Saturday.
25 He said that he did not notice any missed calls. He said that perhaps these calls were at
26 a time when he was dancing. They did not receive a call while at Batabano.



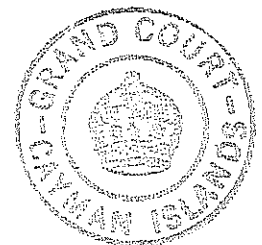
1 E did not have her iPad with her there and it would not have worked where they were.
2 He said that he is not lying and did not refuse mother contact. When asked whether it
3 crossed his mind that mother should spend time with E. for mother's day, he said I am
4 guilty on that part I should have.

5
6 128. JAE accepted that he had put posts on Facebook about the incident. He said he did so
7 because he wanted them to know that what they were doing was not acceptable. Of all
8 days on Mother's Day when mother wanted to speak to E, father would personally ignore
9 mother. He said he wanted father's family to know what was really going on. He said
10 further that mother tried to call father seven times that Sunday morning, his phone was
11 off at that time, mother was pregnant and stressing. This is something that happens all
12 the time.

13
14 129. JAE's Facebook post on Mother's day 2017²⁹ included the following:

15 *"It pains me to wake up to my wife in tears because someone can be so inconsiderate*
16 *and have their phone off when she is trying to call her daughter on mother's day out*
17 *of all days. From Friday requests have been ignored about having her daughter (my*
18 *step daughter) on this special day. A simple response goes a long way. But*
19 *unfortunately I can only count the amount of times on one hand where the phone has*
20 *been answered so she can talk to her daughter every other weekend, simply because*
21 *it is not her day. When it comes to the other way around there is no denial of phone*
22 *talk or requests to see even when it is not "his day ..."*

²⁹ Page 166 of trial bundle



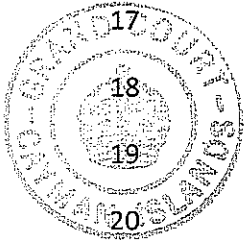
1 130. Following this post, matters took an unfortunate and unpleasant turn. Both father and
2 ACP indicated that there were a numbers of posts on social media which suggested that
3 he was keeping mother away from E. and that he maliciously and deliberately denied
4 contact. They were such as to amount to a public humiliation.

5

6 131. Regrettably it appears from the evidence that JAE took matters even further by handing
7 over private and confidential documents in relation to mother's divorce from father to
8 an activist who is on social media with what is described as significant influence. During
9 the hearing, Counsel on father's behalf, produced messages which were sent with
10 mother's phone stating that this had been done. It is unclear whether mother knew about
11 this hand over of documents at the time it was done or whether she learned about it
12 shortly thereafter.

13

14 132. Father said that what happened on Mother's Day 2017 was a mistake. He said he was
15 angered by what had happened such that he let his emotions get to him because of the
16 postings. He said that Mother and E did speak that day. Mother said that this did not
17 happen. Father agreed to letting his emotions get to him to E's detriment and to failing
18 to prioritise his daughter over his own feelings. He said that it was an unfortunate series
19 of events for which he takes responsibility that E did not get to spend time with her
20 mother but that messages did not have to be posted slandering their names.



21

22 133. Ms. Orakwue's evidence was that Mother's Day 2017 was discussed with her by the
23 Parties. She recalls father discussing it with her. Her impression of his explanation was
24 of him saying that it was mother's responsibility to keep on trying if she did not get
25 through to his cell phone. Ms. Orakwue records in her report that he admitted seeing
26 mother's messages and missed calls but suggested that she should have persisted to reach

1 him by telephone. Ms. Orakwue agreed with Counsel's suggestion that in any child care
2 arrangement it is the norm that contact would be facilitated on special days such as
3 mother's day and father's day.

4
5 134. After mother's day, on the 21st May 2017, mother sent this message to father³⁰:

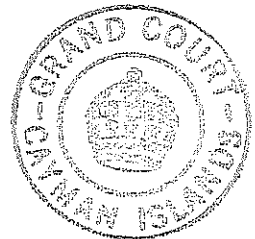
6 *" I hope that for E's sake we can one day you and me get to talk normal without*
7 *attacking each other without blaming me for everything and to understand each*
8 *other because you don't try a little to do so, I hope one day we get to share a joke*
9 *and laugh together with E. It will mean so much to her."*

10 135. The conduct of mother and JAE in handing over private documents to a social activist
11 was plainly wrong and is worthy of condemnation in the strongest terms. I have to
12 consider however what gave rise to the incident. Having listened to both mother and
13 father, on the essential dispute as to whether mother called father several times on the
14 Saturday, I believe mother. Was father ignoring her calls? I think it is very likely that he
15 was. Having not adverted to the fact that it was Mother's Day weekend, I also think it
16 very likely that he saw no urgency in responding. Even if I give him the benefit of the
17 doubt on this I cannot but conclude that his admitted history of ignoring mother's calls
18 whether for good reason or not, could not have helped the situation and indeed was very
19 possibly the genesis of the storm which then erupted on the Sunday morning. Mother
20 and JAE believed from father's history of not wanting to be disturbed during his time
21 with E, that he was in fact ignoring their calls.



³⁰ Page 166 of trial bundle

1 136. While this incident is historical, father points to the fact that there has been no such
2 recurrence to date. At one point he said that proper arrangements had been made before
3 hand for Mother's Day 2018. At another point he said that he could not recall on whose
4 weekend Mother's Day 2018 fell. Counsel on behalf of mother submits in closing that
5 these proceedings were already pending and father with a microscope on him was not
6 going to make the same mistake twice. He submits further that mother is the one that
7 still had to initiate the request for time on Mother's Day.



8
9 **V) COMMUNICATION - FATHER'S RELATIONSHIP WITH JAE**

10
11 137. Father says that at one point he was receiving hundreds of abusive messages from JAE
12 which resulted in his employer sending JAE a stop and cease letter and changing his
13 work phone number. He says that disagreements have arisen with JAE as JAE
14 continually seeks to overstep the boundaries where E is concerned. While he is grateful
15 that E has a stepfather who she gets on with, he suspects that JAE struggles to accept
16 that he will always be a part of E's life.

17
18 138. JAE in his evidence admitted that he has occasionally posted his wife's frustrations on
19 social media but states that this has sometimes been the only way to communicate with
20 the father. He did not intend by the post "*If I knew I would tell ya where he lives.*" to
21 threaten father. JAE admits to stepping in sometimes when there is what he describes
22 as abusive harassment to his wife.

23
24 139. He also stated that they did not know where father lives and they do not know where E
25 is staying when she is with him. He said further that he has always been the one to
26 transport E back and forth for contact visits to father and that picking up E was "the

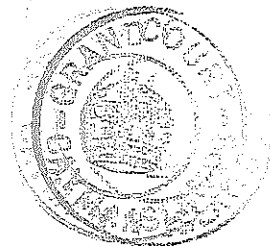
1 hardest thing we could have done". There was always a battle picking up and dropping
2 off E and a breakdown in terms of times agreed for pickups.

3
4 140. JAE says that he fully appreciates the importance of E maintaining a relationship with
5 her father and would do his part to ensure that this is done. He says that it is father who
6 has made it difficult for mother to have contact with E. He said that when E was with
7 her father, father is a little spiteful. Mother is not able to speak with her daughter. It is
8 very stressful for mother and for him to watch her go through that. He said that even to
9 call to say good night is a problem which has continued from 2013 up to recently while
10 they were in Dubai.

11
12 141. He maintained that the only issue which he has with father is the way he has treated
13 mother and how all of this impacts E. He says that father has been immature, abusive
14 and disrespectful to mother on many occasions and that he will sometimes use E as a
15 weapon.

16
17 **VI) COMMUNICATION - RESIDENCE OF FATHER**

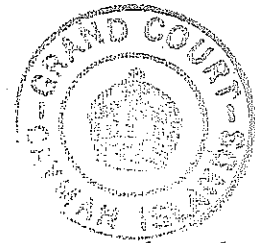
18
19 142. Mother's evidence is that she had not known of father's address since 2016. Father said
20 that he and ACP had good reason for withholding their address. They had moved into a
21 new residence not very long before Mother's Day 2017. ACP confirmed that they had
22 moved in early May 2017. Father said 'that they knew where we lived before, not until
23 we moved that we perceived this to be a real threat. We did not want people coming to
24 our home and disturbing us.' He has recently disclosed his address since October 2018
25 given the situation as it was easier for mother in JAE's absence to do the pick-ups. He
26 agreed that it was not an ideal situation that mother had not known where they lived but



1 said that the Court order required that E be dropped off and picked up at Hurley's
2 Supermarket complex.

3
4 143. I found this aspect of the evidence somewhat lacking in clarity. The real threat identified
5 by father came on Mother's Day 2017. Yet mother's evidence is that she was not aware
6 of his address from 2016. Father seemed to have accepted this at one point. Even on his
7 account, he and ACP had moved before the real threat and without communicating their
8 new location to mother. Additionally despite the lengthy time period thereafter and the
9 opportunity for cooler heads to prevail, he did not communicate his new address to
10 mother until October 2018.

11
12 **VII) COMMUNICATION - CO- PARENTING ISSUES**



13
14 144. Both parties have a difference in approach as to contact. Mother seems to seek regular
15 updates as to what is happening with E when E is with father and states that father either
16 does not advert to circumstances that require updates or information or considers this
17 unnecessary.

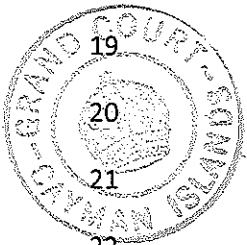
18
19 145. Mother's evidence is that just because E is in father's care, does not stop her being her
20 mother and she believes that she has a right to know what E is doing. She respects that
21 E has time with father but she would like to know what E is doing. She explains that she
22 knows that E misses her when she is not there. She tells her when you feel like that tell
23 daddy to call me. Father tells her later or tomorrow or hold on let me do this first. Mother
24 believes that it reassures E when she calls that she has not forgotten about her when she
25 is gone. Father said that a lot of mother's calls to him about E are unnecessary and that
26 they are sometimes intrusive on his time with E.

1 146. Mother's initial month long stay in Dubai was extended by a week, making it five weeks
2 in total. She states that while she was away, father travelled off Island and left E. in the
3 care of his Aunt L. L then proceeded to allow E. to sleep over at another child's house
4 without mother's knowledge and approval. Mother says that she is concerned that if E
5 were to stay in the Cayman Islands father will simply shift his parental responsibilities
6 to other people when it comes to E's day to day care and she will not know what is going
7 on. Father explains that he and ACP had a pre-planned vacation off Island.

8
9 147. Mother is also concerned that on 7th December 2018 while she was away, E did not go
10 to school and missed a math and spelling test. E was not ill and told her mother that she
11 did not know the reason for not going to school. Mother cannot understand why there
12 was no communication with her about this and notes that on that same evening E, father's
13 family and their nanny spent the night at a hotel where father and ACP attended an office
14 Christmas function.

15
16 148. Father and ACP explained that E was kept from school as she was tired the night before
17 and may have been coming down with something. Father said in his evidence that the
18 night before, E told ACP she was tired. She wasn't feeling well or she was tired. He was
19 not sure as he was just overhearing and not privy to the conversation between E and
20 ACP. He said that he was here with E in his care. He did not communicate to mother
21 that E was not going to school and he did not know that mother had called E's teacher.
22 He did not notice any major illness. He agreed that if E was feeling unwell she would
23 have told her mother. He said that he did not stop to think to let mother know in Dubai.
24 He said further:

25 *"I don't think it would help anybody to let her know on the other side of the world.*



1 *We have the situation under control.*

2 *We did not tie her up and chain her to the bed and say that she could not go to*
3 *school.”*

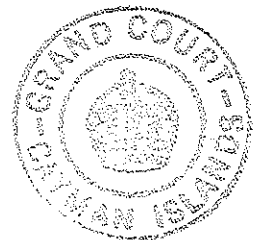
4
5 149. ACP’s evidence was that it may have been better for them to tell mother about it, they
6 did not, but it was not done from a negative standpoint. They just made a decision when
7 E was in their care.

8
9 150. There was also some evidence as to father’s response to E’s sadness at her mother’s
10 absence. Ms. Orakwue reported that father told her that he noticed on one occasion that
11 E was by herself crying because she misses her mother.³¹ In his evidence, father stated
12 that he did not find E alone. She was alone in her room. It was a day when S was with
13 her father. This was at a time when E did not understand the time differences. She was
14 sitting on the bed crying. She said to him that she tried messaging her mother and she is
15 not replying. He explained to her the difference in the time zone. He sat there and
16 comforted her. He did not inform mother that E had been crying. He did not think to
17 inform mother that E was upset.

18
19 151. Ms. Orakwue stated that³²:
20 a. *‘There is no co-parenting between the parents. This is attributable to father’s*
21 *hostility and anger towards mother when efforts are made to communicate with him*
22 *concerning E.’*

31 Addendum report, paragraph 18

32 Report dated 18th November 2018, paragraph 27



1 152. In summary there are stark differences in the approach of the two parents. One seeks
2 regular dialogue, the other regards such dialogue as either unnecessary or an imposition.

3

4 **VIII) COMMUNICATION -GOING FORWARD**

5

6 153. Not surprisingly against the background of all of the above, his own Counsel inquired
7 of Father, moving forward what would you intend to do differently in relation to your
8 relationship with mother and JAE. His response:

9 *“Moving forward with our communication issues, this is something which has to be*
10 *rebuilt and repaired for the benefit of E that if E is in Cayman, she would have that*
11 *comfort of knowing she can pick up the phone and call her mother at any time and*
12 *her mother would be able to do the same and vice versa without any animosity*
13 *between us.”*

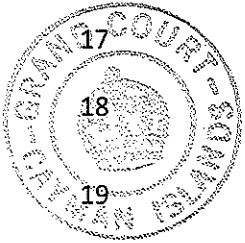
14 154. Again in re-examination by his Counsel he was asked, what will you do differently in
15 the future to prevent mother’s day incident happening again? He said:-

16 *“I will improve work and build communication-bridge between mother and myself.*
17 *2018 went along smoothly we exchanged E for mother’s day I don’t know who had*
18 *her to be honest but there were no issues.*

19 *Going forward quite a bit of work.*

20 *These proceedings are a rude awakening for us to put our differences aside and just*
21 *focus on E.”*

22 155. On the November 2018 response he was asked what would you do differently if faced
23 with it again? He said that moving forward, he would say ok, he would call her. In future
24 he would check if E is on line. His response was not necessary.



1 156. Father sought very much to assure the Court that going forward he will do his utmost to
2 improve communications. He said that he was hoping to have established that this is a
3 two way street and all are at fault.

4
5 157. Counsel on behalf of father made the point that communication difficulties go two ways
6 and rightly points to instances where mother and JAE's responses were unfortunate
7 indeed.

8

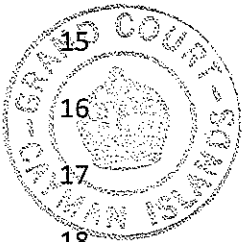
9 **IX) FINDINGS ON COMMUNICATION ISSUES**

10

11 158. Communication between the parties as at the date of this hearing continues to be a
12 serious problem. There is some fault on both sides. JAE though well-meaning in defence
13 of mother has sometimes not assisted to improve or calm matters. While I am cautious
14 in the realisation that the messages produced are but a snap shot in time and I bear in
15 mind father's point that there must be a vast number of messages which have not been
16 produced and that this cannot be the full picture, my view is that what I have seen of
17 father's responses illustrate and give support to the evidence as to the usual negativity
18 and volatility of father's responses. When mother says that he does not usually stop to
19 think, this is plain to see.

20

21 159. Putting aside communications of a historical nature, I was concerned to see how matters
22 transpired in November 2018 when mother was away in Dubai. Father appeared to be
23 in earnest when he said that every morning while mother was away in November 2018,
24 he would ask E if she spoke to her mother and she said yes. He said that he made sure
25 that E spoke to her mother. On the way to school he would say to E that she could call
26 her mother. It was difficult to reconcile his apparent earnestness before me with his
27 responses to mother in the November 2018 messages produced. There was on his part a



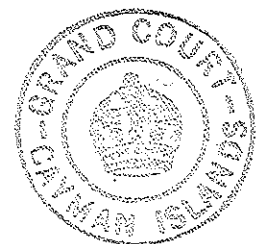
1 clear demonstration of a hands off approach. It was that once he had downloaded the
2 program then it was up to mother and E to call each other. I got the distinct impression
3 that he really did not see an oversight role for himself to play and even if he did, it was
4 to limited extent.

5
6 160. The inconsistency in father's position on communication with E is apparent from his
7 claim that if E is in Dubai, mother will do very little to facilitate any arrangements and
8 E is too young to be able to facilitate them herself without support as against his
9 responses in cross examination to questions about assisting E in November 2018 to make
10 contact with her mother in Dubai. He was adamant that he has raised E as an independent
11 child and she does not need any assistance to make contact with mother once she has the
12 program downloaded on her iPad.

13
14 161. Ms. Orakwue records that father told her that if E permanently leaves Cayman, it would
15 be mother's responsibility to initiate and maintain contacts constantly. Father denied
16 making this statement to Ms. Orakwue.

17
18 162. Mother's view is that E is a child and she wants to play, she will get distracted, she needs
19 a little more direction from an adult, 'not just here is ipad, do what you want to do with
20 it.' She stated that she thinks E needs direction from someone who is in care so that there
21 can be contact and more stable communication.

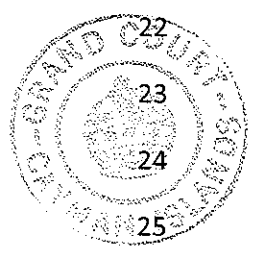
22
23 163. Mother says that she grew up without a father so she knows what this is like. Her
24 evidence was that she would make sure that E stays in contact with her father if she
25 should be relocated.
26



1 164. Father said in cross examination that he and ACP asked mother to change the shared
2 care arrangements so that it could benefit both families and he agreed that mothers'
3 agreeing to do this shows flexibility on her part and willingness to work with them.

4
5 165. On all the historical evidence and having observed mother with some care as she gave
6 her evidence, I believe that she is both honest and earnest in her desire to ensure that E
7 maintains contact with her father. I believe that she has in the past tried to as she said
8 "wave the white flag" and that this has not been received with any degree of welcome.
9 My impression of father following his many assurances in the course of his evidence,
10 that going forward from today, he will ensure that communication is improved is that he
11 was making these statements without any force of conviction but because these are the
12 right things to say in the course of a hearing such as this. I do not believe him. My
13 impression is that he will likely do just enough to skate by to say that he is facilitating
14 contact without any active encouragement of that contact. Unfortunately it appears to
15 me that unless he resolves the bitterness and acrimony against mother with which he still
16 appears to be consumed, it will likely be the case that he will not be unhappy if there is
17 a gradual decrease in contact between E and mother wherever mother is located.

18
19 166. Counsel on behalf of mother submitted with some force that all of the evidence tends to
20 suggest that the poor communication between the parties is driven by father and that in
21 as much as father and his Counsel have tried to suggest that the poor communication
22 between the parties is a two-way street, the documentary evidence before the Court
23 suggests otherwise. He notes also that the only independent evidence before the Court
24 (in the form of Ms. Orakwue's assessment) also supports mother's position. He points
25 to the inconsistency between father saying he has no messages because he deletes them



1 and on the 24th November 2018 saying to mother (in the message referenced above) that
2 he keeps screen shots of all the messages.



3
4 **X) COMMUNICATION WITH ACP**

5
6 167. In seeking to resolve the communication issue, I considered whether ACP was likely to
7 be of assistance in improving matters. The evidence is that ACP has remained outside
8 of the communication between mother and father. Her position which was clear from
9 her oral evidence was that she should take a hands off approach, that it was for mother
10 and father to establish their own level of communication without input from her. Counsel
11 on behalf of father submits that her evidence that she did not wish to “overstep the mark”
12 relating to E, and that she would “never be E's mum” show respect for the relationship
13 between E and mother. Further that her evidence saying she intended to take a more
14 active role in promoting contact may assure the Court that future communication
15 between E and mother will be actively encouraged by father and ACP.

16
17 168. Mother states that E always speaks positively of ACP and that she appreciates the love
18 and affection which ACP shows to E. Mother also states in her Second Affidavit³³ that
19 she has tried to establish some level of communication with ACP but her attempts have
20 been unsuccessful. She thought that it was because ACP has let the issues between
21 mother and father become her issues and that this is what has made any level of
22 communication between them more difficult.

23
24 169. Mother stated in evidence that ACP once sent her a message which she viewed as
25 threatening. This was in relation to something mother said to father in relation to ACP's

³³ Affidavit dated 25th September 2018, paragraph 18

1 daughter S. Mother commented she said on whether S's later bed time should affect E.
2 ACP's message in response requested that mother never say anything about S and
3 included the following:-

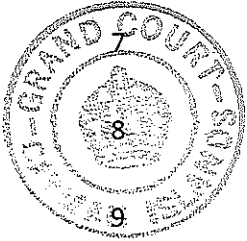
4 *"I am only going to say this once. I have been very civil towards you and JAE*
5 *throughout the years and by that I mean I have not engaged you and him at all and*
6 *in fact I avoid you at all costs. The reason for this is because quite frankly I don't*
7 *have time for the bs and I refuse to direct my attention towards baseless interaction."*

8 It ended with:

9 *"If I do ever have to say anything again it won't be over message it will be to your*
10 *face. "Have a Good day."*

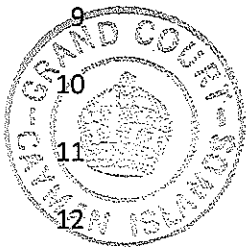
11
12 170. Mother responded saying, *"Hi ACP, maybe it will be nice to finally meet you and share*
13 *a coffee with you..... I will make time in which ever works for you. It will be nice to*
14 *have a conversation with you because at the end of the day you are still part of E's (life)*
15 *and it will be nice that you and I have a sort of communication too. Thank you let me*
16 *know if this is possible."*

17
18 171. ACP's evidence was that she did not see mother's response. She said that mother has
19 never reached out to her to establish any relationship. They had never spoken or engaged
20 with each other, they don't have each other's telephone number. She said that she has
21 taken a supportive role to support father but he is the main point of contact. She thinks
22 that when there are too many people getting involved, it just makes it worse. This is a
23 personal choice she took to remove herself from any negativity and any animosity. She
24 has, she said, been the voice of reason in many situations.



1 172. Mother described in evidence two occasions when she said that ACP did not
2 acknowledge her. One was during a school pick up situation where ACP did not do so
3 and did not encourage E to say goodbye to her. ACP accepted that there was one such
4 occasion but says that she had no need to speak to mother at the time.

5
6 173. As did father, ACP sought to assure the Court that going forward she would do all she
7 can to ensure good communication. She said I do appreciate that there have been
8 difficulties with communication but there has never not been any communication, for
9 the most part it flows well. It is just that some misunderstanding or something is taken
10 out of context which affects it. We don't purposely stop E from speaking with her
11 mother. She said that she is willing to move forward from the past because it is the past
12 and is willing to work so that we get to a place so that everybody is at least amicable and
13 mature. Should E stay with them, she would support the communication and do
14 everything that she can so that E can communicate with her mother. She had not been
15 the point of contact because at the end of the day E is father's daughter. She does not
16 want to come across as if she is trying to interfere with that relationship.



17
18 174. ACP has not to date acted independently of father to remedial effect even when presented
19 with the opportunity to do so. There is nothing in her past conduct which reassures me
20 that she will do so going forward. I found it a struggle to believe that she will act
21 independently of father and will override his natural inclinations. I do not fault her for
22 this, fully understanding that her past approach is based on her principled view that
23 essentially this is a matter for the birth parents. But it does mean that I have less
24 confidence in her recent declarations and that I do not consider that the conclusions I
25 have come to in relation to father as stated above are likely to be much mitigated by her
26 presence and efforts.



1 **STABILITY/STATUS QUO**

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26

175. Father places emphasis on the stable life that would be afforded to E, were she to remain in Cayman and the fact that she is thriving, happy, born here, lived entirety of her life here with friends and extended family. I accept the importance of this factor in balancing what is in the best interests of E.

176. These matters were all put to Ms. Orakwue including that E. would have much greater access to a support network of family and friends if she remained in Cayman. Further that given the very close relationship between E and S, who is of similar age to E that siblings of similar age are of importance in dealing with separation anxiety. It was suggested to her that given all these factors, the better course would be to allow E. to remain in Cayman and that her overall growth will be affected on the move.

177. Ms. Orakwue's response was that whether E goes or remains she will experience a certain level of anxiety. It is the same but her response has to do with how well she is supported to overcome those challenges. She explained that the change in living circumstances, that is moving to a different country, not having her father there or S. there, her brother there all of those factors will have an impact on E.

178. She accepted that for E at her age – 8 years old, it is important for her to maintain her family ties with relatives on both sides. However the extended family will always be present through indirect contact so that through that, E will hopefully get that assistance. She does not foresee this as a loss to E. They are not present but it is presumed that E. will still maintain a relationship with them. She will encounter separation anxiety. It is a normal response for anyone to experience anxiety when moving to another country or

1 if there are any changes. It is how this is dealt with, which will determine the impact on
2 E. The impact could be negative.

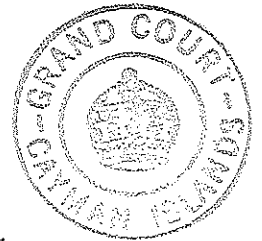
3
4 179. In response to expressed concern about changing schools at this stage, with the term
5 already having started, the change in language and culture, Ms. Orakwue stated that her
6 view is that with the support of her mother and stepfather, E would be able to handle this
7 transition.

8
9 180. As to the difference in culture, Ms. Orakwue's stated that based on general knowledge,
10 Dubai is a multicultural society as is the Cayman Islands. She agreed in cross-
11 examination that it is important for E to maintain her culture but stated that given her
12 personality traits, E will adjust to the new lifestyle.

13
14 **INSTABILITY IN FAMILY UNIT IF RELOCATED TO DUBAI**

15
16 181. There was some suggestion that the relationship between Mother and JAE had become
17 strained because of the long distance relationship of a year while JAE has been in Dubai.
18 The clear implications for the Court's consideration is that if E is to be relocated, she
19 may be exposed to an unstable relationship.

20
21 182. These suggestions of significant strain were not accepted by either mother or JAE.
22 Mother states that "*Myself and JAE are very strong in our relationship during what has*
23 *been a difficult time given that our family is separated.*"³⁴ In her oral evidence she stated
24 that JAE had to go first. It is difficult to be away from her husband. She misses him
25 every day. There was nothing that caused problems between them personally in their



³⁴ Affidavit dated 14th January 2019, paragraph 26

1 relationship. There were no issues that he has been out partying while in Dubai. She said
2 that although his absence has been hard. It has made them grow as a couple.

3
4 183. Mother confirmed that what she had said to the Social Worker about this had been
5 accurately recorded which was that the delays in the Court proceeding have been causing
6 a strain on her personal life as she is yearning for her family to be reunited.

7
8 184. Ms. Orakwue was also asked about this in the course of cross examination and gave her
9 view that the strain in the relationship of mother and JAE was having to be away from
10 the husband. She said that she had no reason to believe that there were any problems.

11
12 185. JAE in his evidence said nothing in his lifestyle in Dubai has caused friction. There was
13 no strain on the relationship with mother. He said that we miss each other but there is
14 no strain. We are being positive and looking forward to this.

15
16 186. On the whole, this appeared to be no more than what may be expected with a long
17 distance relationship. I found no evidence to support the suggestion of a significant
18 strained relationship much less an unstable relationship.

19
20 187. Counsel on behalf of father questioned JAE's motives and essentially his character as a
21 father. It was suggested to JAE that he had left his new baby behind for an interview in
22 September 2017. JAE explained that he had pushed the interview back by a month and
23 that when he left for the interview, he had his stepmother and father to help and had left
24 at a time when mother was recovering well. He was asked whether he had felt conflicted,
25 leaving behind a five month old child, baby E who is now 16 months old. His answer
26 was that he was 21 years old when he first took on E.
27



1 He made a sacrifice to give them something that they could not get in Cayman. He loves
2 both E and baby E. He said “*please don’t make it look like I am abandoning my child.*”

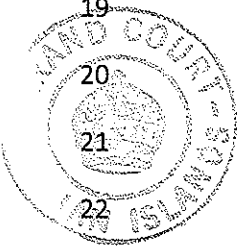
3
4 188. He said that he was not conflicted when he left them in 2018 as he made a sacrifice and
5 knew that it was going to pay off. He had made arrangements before he left, everything
6 was sorted, he hired a helper and mother was working again. He rented out his
7 condominium which he owns and mother moved into his mother’s house with the
8 children.

9 189. Before they were married, they had separated due to some of his personal habits such as
10 putting wet towels on the side of the bed. He had to mature. Although mother moved out
11 they were still together every day until she moved back in after six months, and “ he
12 never got physical with her”.

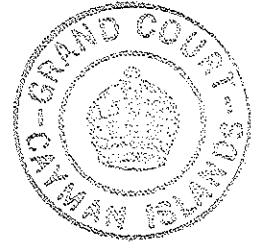
13
14 190. Ms. Orakwue stated that she did not form any conclusions about JAE’s priorities about
15 going to take a job overseas while leaving behind an infant child. He relocated with the
16 view that his family would join him.

17
18 191. Father also questions whether JAE who has a job in which he has to travel, would be at
19 home and have much time for family. JAE explained that his days away from home
20 would be about the same if he was employed in Cayman. He explained to the Court that
21 should he be promoted or secure alternative employment in Dubai as part of upward
22 mobility, that this would not entail a change in residence from his present home in Dubai.

23
24 192. Overall, while noting the various suggestions made and the responses given and bearing
25 in mind the need in E’s best interests to examine each family unit with care, I found
26 nothing to suggest any signs of instability or volatility in mother’s family unit. From the



1 evidence I did not find a basis for a conclusion that this family unit would expose E to
2 insecurity or instability.



3
4 **E'S RELATIONSHIP WITH JAE**

5
6 193. Ms. Orakwue was asked in cross-examination as to her record of the following:

7 *"On that note E shared that she gets along well with JAE. Worker noticed E's silence*
8 *and a fixed smiling facial expression, nonverbal response which she broke by saying*
9 *that she enjoys getting ice cream with him in Caymana Bay and that chocolate and*
10 *raspberry are her favorite flavors."*³⁵

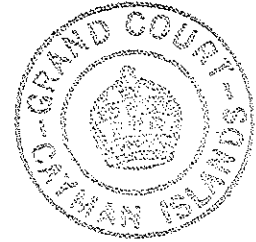
11 194. Ms. Orakwue was asked whether the reaction of E may possibly indicate a poor
12 relationship with JAE. She stated that E was not frozen and that she gathered that she
13 was thinking about the relationship between her stepfather and her. Possibly thinking
14 about the fun times they had when he was in Cayman. She said when children are
15 thinking they have a fixed smiling expression. She did not sense that E was masking a
16 greater turmoil underneath that she was very anxious about the move where she would
17 be with JAE. She said E was thinking about what she was saying to her. She cannot say
18 that E was changing the subject because she was not comfortable about the move. There
19 is no unease on her part about E's relationship with JAE.

20
21 195. I accept the oral evidence which Ms. Orakwue gave on this aspect and rely on her
22 assessment as an experienced professional. Both mother and JAE spoke of the good
23 relationship between JAE and E. There is nothing in this which would cause me to think

³⁵ Report dated 19th July 2018, paragraph 33

1 otherwise much less to conclude as Counsel on father's behalf urges in his submissions
2 that this was an unnatural response to some questioning which demanded further inquiry.

3
4 **INSTABILITY IN FAMILY UNIT IF NOT RELOCATED TO DUBAI**



5
6 **D) DOMESTIC VIOLENCE**

7
8 196. One of Ms. Orakwue's primary concerns is what she describes as the history of father's
9 relationships. She states that the reports of his violent behavior towards both mother and
10 ACP is concerning. She points to research which indicates the difficulties for children
11 who have been exposed to anger and violence. She stated that it is uncertain whether E
12 was exposed to domestic violence at her father's residence.

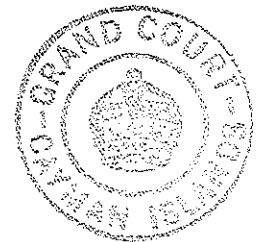
13
14 197. In oral evidence she said that her conclusion as to exposure was based on what she had
15 been told by both parents. There is however no indication that this has adversely affect
16 E or caused her any suffering. It is not to her knowledge that E has suffered harm. She
17 cannot say that the toxic relationship between them has ended. In her view there is
18 ongoing toxicity because although it ended in 2012 father still dwells on the past. There
19 is no indication that E is currently at risk of suffering any harm.

20
21 198. Mother's evidence is that the marriage with father broke down as a result of father's
22 domestic violence towards her and she did not wish for E to grow up in such an
23 environment. Mother in her Second Affidavit provides details of two incidents. The first
24 in which father caused injuries to her. She says that he had a scratch on his wrist that she
25 made with house keys which she had in her hand as he was pulling and pushing her back
26 and forth. She describes the beginning of the second incident in the following way:-
27

1 *“What in fact happened was that he was out the night before and as usual came*
2 *home intoxicated.” It was my day off and I was getting ready in the morning and I*
3 *was also getting E ready for her to go to pre- school. I was sitting on the sofa when*
4 *my mother text me on BBM like she does every morning (still to this day). His*
5 *jealousy was out of control that he couldn’t see me on the phone not even to my*
6 *mother. We started arguing then and it started to escalate to the point where I could*
7 *see that he was going to become physical again.”³⁶*

8
9 199. She stated that he started touching and pulling her back and forth towards the wall when
10 E. walked into the scene and he let her go and picked E. up. Mother then ran from the
11 house to the neighbors for help. She received bruises to her arms and back. She reported
12 the matters to the police but did not pursue criminal charges.

13
14 200. Father agrees that both relationships have involved domestic violence issues. In his First
15 Affidavit he denies these historical allegations of domestic violence raised by mother
16 and states that no findings have been made against him. He states that in any event
17 mother has never alleged that he poses a risk to E. and indeed has supported a shared
18 care arrangement for over three years. He accepts that there were arguments between
19 them and states that both were at fault. He denies that E was ever exposed to violence
20 and states that the only time police attended was in 2012 following a disagreement. He
21 threw mother’s phone out the door and she subsequently physically attacked him. He
22 sustained defensive injuries from trying to protect himself.



³⁶ Affidavit of 25th September 2018, paragraph 11

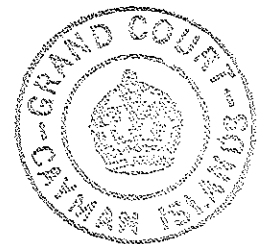
1 201. He describes the second incident as occurring a few months before their separation and
2 states that this was an incident in which mother claimed she wanted to kill herself.
3 Mother denies, this and states that this is a lie on his part. He explains any bruises which
4 mother received as having been caused by him holding her down by both arms just above
5 the elbows as he did not know that she was going to do and they were in an upstairs
6 apartment.

7
8 202. He states that they were both bruised in these incidents but that neither proceeded with
9 charges because they had been told by the Police that a Welfare Officer would come and
10 take E. He also said that mother obtained a restraining order which he agreed to and
11 didn't fight it in Court.

12
13 203. In relation to the 2016 incident with his present partner, ACP, father accepts that he
14 choked ACP and she was left with visible injuries. He said that he was heavily under the
15 influence of alcohol and does not recall what happened. He recalls only taking ACP's
16 car and the police stopping him on the road after he took the car and drove off. E and S
17 were in the room sleeping when it happened. He states³⁷:

18 *"I am deeply ashamed of the incident in 2016. I truly cannot recall the incident*
19 *clearly as I was heavily under the influence of alcohol. I cannot remember why ACP*
20 *and I argued. I find it difficult to talk about as I am regretful and wish clearly that*
21 *it had never happened. The incident was a huge wake up call for me and I realized*
22 *that I needed to limit my alcohol intake and attend counselling. Since then ACP and*
23 *I have attended couples counselling and I rarely drink. I am focused on being the*

³⁷ Affidavit dated 5th September 2018, paragraph 15 on page 6



1 *best partner to ACP and father to my children, we have not had any other incidents*
2 *and I can categorically state that such an incident will never happen again.”*

3 204. ACP in support of father provides some details of the 2016 incident. She says that this
4 was the first time the police attended their property and that there has never been an
5 incident subsequent. She states that at the time of the incident he was clearly under the
6 influence and not acting like himself. She said that this was an extremely serious
7 incident. He choked her, stole her car and drove under the influence. E was asleep at the
8 time and did not witness the incident.

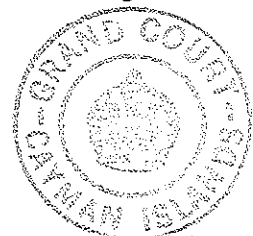
9
10 205. She was asked in cross examination whether once father was arrested why didn't she
11 contact mother to tell her what had happened and for her to contact E. She responded
12 that it was not a thought in her mind at the moment and that she called her own mother.

13
14 206. ACP and father did not speak for a few weeks thereafter but then decided to try again
15 and work through these issues. ACP says that father had been teetotal for one year after
16 the incident and now rarely drinks. They attended counselling sessions and have both
17 worked hard to ensure a healthy and safe relationship. They are stable and she can say
18 “with confidence that such an incident will never happen again.”

19
20 207. Ms. Orakwue also records her concern that father indicated that he was receiving
21 psychological intervention by psychologist Dr. B., however he has discontinued the
22 service and deflected the subject. She felt that he was withholding information on his
23 violent tendencies and psychological services while ACP was normalizing this
24 interaction.³⁸

25

³⁸ Report of 19th July 2018, paragraph 63



1 208. Father explained in his evidence that this was not the case. The psychological
2 intervention with Dr. B was back in 2012 and not in 2016. This was at the time of his
3 separation from mother when he was diagnosed with clinical depression. He did not
4 complete this treatment after what he felt was a breach of patient client confidentiality
5 involving JAE who left him a message saying that he (father) had missed his
6 appointment with Dr. B. He said however following the 2016 incident with ACP, he did
7 complete counselling including counselling for anger management issues.

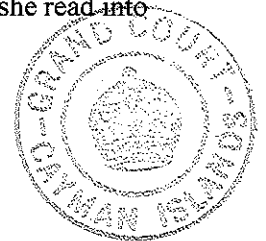
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9 209. Counsel on behalf of father submitted that Ms. Orakwue has mistaken the failure to
10 attend therapy by father as being related to the 2016 incident, and that this may have
11 affected her opinion. I accept that this was possibly a mistake on Ms. Orakwue's part
12 and did consider whether it would have affected her opinion to any significant extent
13 such that I cannot rely on her recommendations. I did not consider that it did.

14
15 **II) INCIDENT 2017**

16 210. I agree with Counsel for father's submission that this incident is not relevant to the issues
17 in this case and make it plain for the avoidance of doubt that it will form no part of any
18 conclusions that I may arrive at.

19 **III) INCIDENT SEPTEMBER 2018**

20
21 211. It is Ms. Orakwue's evidence that father explained to her that in September 2018 there
22 was conflict with ACP stemming from the proceeding which caused him to be stressed
23 hence he spent a night at his aunt's house with E. Ms. Orakwue stated that she read into
24 this as possibly another domestic violence incident may have occurred.

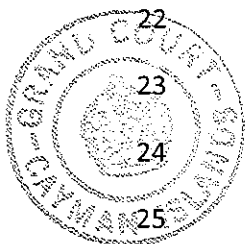


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212. Mrs. Orakwue said that it is incidents like this and confirmation from father of this incident, which lead her to conclude as to potential instability. In light of all of that she has seen, she feels that there are suggestion of altercations and conflicts in the relationship that are not dealt with appropriately. She is not confident that it is in E's best interest to be in the father's care on a full-time basis considering this issue with domestic violence. She is concerned about the impact on E's overall development, emotionally and mentally that may put her at risk.

213. Both Father and ACP explained in evidence that there was no conflict between them. Both say that father had received Ms. Orakwue's report a short time before and father became stressed over it and needed some time alone.

214. ACP's evidence is that it was not a conflict. Father had been an emotional wreck since learning about the relocation proposal. He had received the Social Worker's report a few weeks before and felt that the world was against him. This was causing strain emotionally which then had an effect on their relationship. Prior to this they were fine. When father needs time he goes and sees his friends. She allows him to take as much time as he needs. She wouldn't say he got riled up. He is an emotional father and he loves E very much. He is very passionate about her. He did not put ACP in danger. He simply needed time away. They had agreed that if he needed some time to cool off, he should take it. There is nothing wrong with that. She said that father said he was stressed and that caused a disagreement between them. It was not a serious incident. It was a disagreement. He packed a small bag for himself and for E. Their relationship is stable, sturdy and strong. She said that he is going through a lot. He even called in sick to work because of it. He was emotional but in no way was there any violence or conflict.



1 215. Mother in her evidence was skeptical of this commenting in response to questions from
2 Counsel “but if you need a night to sleep out, if you just need one night for a break, why
3 take E and tell her you are staying there till new house. Why would you pack my
4 daughter’s belongings if you need one night’s break?” Mother explained that she is not
5 going to be here so it is a concern for her. If she is miles away and the situation keeps
6 happening, it won’t take an hour for her to get to E.

7
8 216. Father said in evidence that he and ACP were talking about this situation. They were
9 trying to get things in order. It is a very touchy subject. ACP has been very supportive.
10 It gets him emotionally riled. The report seemed to him to have been ‘poorly misleading’
11 and had misrepresented them as to their statements.

12
13 217. He said that he was about to go through another mental breakdown. He did not want to
14 be seeing doctors. He said to ACP that he needed a break and he needed to go. He went
15 and spoke to his aunt who is a lawyer. He took small bags with his and E’s clothes. They
16 did not take all their clothes. He went there on a Saturday and E joined him on the
17 Sunday. It wasn’t that he and ACP had separated or had an altercation. It was that he
18 was about to break mentally, he just needed a little bit of time. He did not confirm to the
19 Social Worker that there was a conflict. He confirmed that he was on the verge of a
20 breakdown. He felt it was necessary. When they were going through the report because
21 it was so emotional, he needed that break. There was a whole lot hitting him at the same
22 time. The report seemed to suggest that Ms. Orakwue thinks E is from Guatemala. It is
23 not fair for Ms. Orakwue to blame all the poor communication on him. He needed his
24 mental day and cannot see how it raises issue of stability. Sometimes when he is at work
25 he wants to cry. Because he was emotionally upset he needed to be alone.



1 ‘He never stuck around to see himself go down that line. Police may have been called.
2 He does not know. He would have gone crazy.’

3

4 218. Counsel on his behalf submitted in relation to this issue that:

5

6

7

“g. *The incident (in September 2018) coincided with the preparation of the
8 Addendum Report by Ms Orakwue following the order of Hon Gunn J.
9 (Actg) dated 21 August 2018 that an addendum report be prepared. RF was
10 extremely upset by the first Welfare report and the recommendations
11 therein. In formulating his responses, he felt under great stress.*

11

12

h. *RF did not, on the evidence, resort to losing his temper, but withdrew from
13 the house he shared with ACP to his Aunt's address “to be alone”. ACP was
14 clear that he did this with her blessing, that she “sometimes needed time out
15 too” and that the next day E saw RF at the address, before handover
16 followed the day after.*

13

14

15

16

17

i. *The court will note from the live evidence the strain these proceedings have
18 put on the Parties, who, it is clear have had an unhealthy and difficult
19 relationship since 2012.*

18

19

20

j. *It is submitted this confirms that RF has learned coping strategies since the
21 2016 incident, and applied them successfully to avoid any conflict in this
22 instance.”*

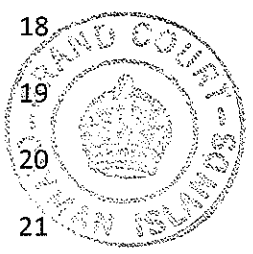
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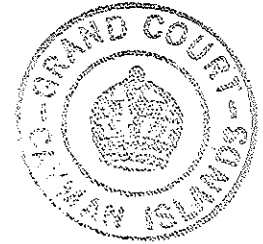
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24 219. Counsel on mother’s behalf submitted that with respect to father moving out of his house
25 with ACP in September 2018 the evidence of father and his partner is again somewhat
26 conflicting. F says there was no conflict, he was stressed and removed himself from the

26



1 house. ACP then indicated there was a 'disagreement'. There was plainly some level of
2 argument or confrontation between the two especially as it led to father packing his and
3 his daughter's bags and leaving the home.



4
5 **IV) FINDINGS ON INSTABILITY**

6
7 220. For my part, I was concerned about the historical incidents in two main respects. Firstly
8 as to the reference to alcohol use in respect of both relationships. I asked father directly
9 at the end of his evidence what strategies he has put in place to ensure that alcohol issues
10 do not arise in respect of his relationship in the future.

11
12 221. With respect to during the time of his relationship with mother, father said that he is sure
13 that he came home intoxicated but those times were not tied to any altercation between
14 mother and himself. He then said I don't want to say I am absolutely certain. He accepted
15 that the 2016 incident was because of alcohol.

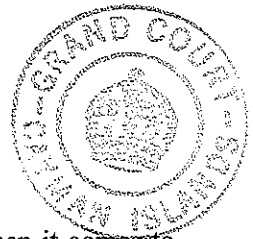
16
17 222. As to the strategies which he has put in place to ensure that it does not happen again. He
18 said that we have done counselling, part of it was anger management. In terms of
19 drinking he has made himself a promise that he will not drink again and since then he
20 has not been in a state where he could not function. He does go out and has a casual
21 drink for dinner or social but he does not like the taste of alcohol much anymore. His
22 ongoing strategy is not to drink or to limit the amount he drinks. If he orders a drink, he
23 leaves it. That was wakeup call where he could have lost everything. He will have only
24 one drink if he goes out and sometimes it remains untouched on the table. He said that
25 he does not know if he is cured. He hopes that it does not happen to him again or between
26 ACP and himself.

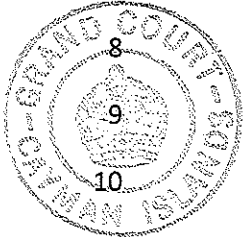
1 223. In summary there is a single admitted incident of domestic violence in 2016 which arose
2 out of alcohol misuse and which required anger management counselling, there is also
3 excessive alcohol use in the course of the past relationship with mother but father is not
4 sure whether or not these are linked to any incidents. I have no reason to disbelieve
5 mother when she says he came home intoxicated “as usual”. There is no admission on
6 his part of any domestic violence incident between himself and mother and the domestic
7 violence aspect of those incidents are unproven allegations which are to be disregarded.
8 I cannot however avoid the conclusion that there is a common thread between the two
9 relationships of alcohol misuse and this latter aspect is in my view a serious concern.

10
11 224. The incident in 2018 which lead him to move away for a very short time from ACP is
12 put forward as understandable and as being as no more than father’s emotional response
13 at the Social Worker’s first report. ACP is adamant that there was no conflict or violence
14 but does describe it as a “disagreement”. I accept the evidence of ACP and father on
15 this that there was no violence involved as Ms. Orakwue may have surmised. Father’s
16 evidence was that when it comes to E he does get very emotional. While it is to father’s
17 credit that he managed to avoid any serious conflict on this occasion, I do feel that it
18 does add to the picture of someone on an emotional edge who is less able to deal with
19 the vicissitudes of life.

20
21 **FINANCIAL IRRESPONSIBILITY/ CONTRIBUTION**

22
23 225. Mother states that father has not always been financially supportive when it comes to
24 meeting E’s expenses and that in reality herself and her husband JAE have always
25 absorbed the bulk of E’s expenses and will continue to do so. Mother notes that father





1 was ordered to pay child maintenance in May 2015 and he made only one payment. She
2 had to reapply to enforce this through the Courts and to have deductions made from his
3 salary. He also failed she says to contribute to E's pre-school expenses even though he
4 agreed to do so. In August 2017, she asked him to contribute to E's school supplies and
5 he did not do so. She states that this is typical of his approach throughout E's life and
6 that he has not met his obligations as he should have done. Father denies not being
7 financially supportive and states that he and ACP have always met E's expenses while
8 she is in their care. He explained in his evidence that he did not make maintenance
9 payments as he had realized that the mortgage payments on the former matrimonial
10 home were not being paid. He provided details as to his income and that he is currently
11 paying \$200.00 per month through the Courts Office for child maintenance. Additional
12 expenses appear to be shared equally between the parties.

13
14 226. On the available evidence I did not find that father was financially irresponsible or
15 incapable or unwilling to provide for E. Each side has put forward the suggestion that
16 they will not seek maintenance from the other if E is to reside on a longer term basis
17 with them. Mother and JAE suggest that father would then be able to save the \$200.00
18 per month from the maintenance payments towards travel to Dubai to visit E.

19
20 **TRAVEL COSTS AND OPPORTUNITIES**

21
22 227. Both in his Affidavits and oral evidence, father raised the issue of travel time and
23 expenses. He said that he had researched the matter and the shortest travel time to Dubai
24 is one day with some flight arrangements including up to two days of stop overs. The
25 cost of tickets range from US \$1821.00 to US \$2,500.00 which he cannot afford.

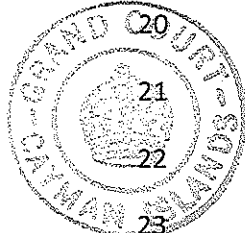
1 228. Both mother and JAE agreed in the course of their evidence that given certain travel
2 allowances to which JAE is entitled it would be more affordable for mother to travel
3 back to the Cayman Islands than for father to travel to Dubai. Further at least in the short
4 term, before baby E starts preschool at age 3, mother would have more time and the
5 flexibility to travel as she would not be employed in contrast to father who would be in
6 full employment.

7
8 229. JAE gave evidence that he is entitled to one flight a year for himself and his dependents
9 with confirmed seats for any airline that has flights to the Cayman Islands. On
10 subsequent flights he would have a 90 % discount if space is available and 50 % discount
11 with confirmed seating. There are a number of options.

12
13 230. He said that if father travelled to Dubai, there is a hotel ten minutes away from his home,
14 which is not very expensive. It is a budget hotel which is just around US \$100.00 per
15 night.

16
17
18 231. To the suggestion that it would be much cheaper for mother to come to Cayman than for
19 father to go to Dubai he said that the plan is for baby E to go to school by age 3 years
old. His employer would pay for this and he would like to give baby E the same
20 opportunity to have early education as was afforded to E. Within another year at age 4,
21 school would be mandatory for baby E.
22

23
24 232. He accepted that if mother's application is not granted, mother would have to travel to
25 Cayman every few months and he would like E to come during the summers. He said
26 this would not be the greatest option but he would not deny mother. She would have



1 total freedom to see E when she wants. He said he would be concerned about the cost as
2 he would like to save some money.

3
4 233. It was put to Ms. Orakwue that mother would have travel benefits, and would be able to
5 make far more trips to Cayman than father would be able to make to Dubai. Further that
6 providing an alternative like that would provide the benefit for E of much more regular
7 contact with the absent parent and would assist with dealing with separation anxiety. Her
8 response to this suggestion was “not with the poor co-parenting”. She stated that she did
9 not think that this would be beneficial to E with the current situation in which there is
10 poor communication and hostility by father towards mother. There is not a surety that
11 father will promote or encourage E to have a positive relationship with her mother. She
12 thought that the hostility is one way. She did not accept that there is hostility on both
13 sides. Her view is that mother has always been putting out the effort.

14
15 **EDUCATION**

16
17 234. Father produces a School Inspection report for 2017- 2018 which he says is the latest
18 assessments report for the school at which E is provisionally registered in Dubai.³⁹ He
19 notes that it is only at an acceptable level and is graded unacceptable in several areas.
20 He therefore does not believe that E. will receive a better education in Dubai than here
21 in Cayman.

22
23 235. The report makes judgments on a six point scale ranging from very weak to outstanding.
24 The teacher student ratio is 1:16. Externals tests are IGCSE and GCSE and it is
25 accredited. The overall quality of education is acceptable - meaning that it meets the



³⁹ Mother produced School Inspection Report for the said School for the period 2016-2017 at page 38 of the Trial bundle.

1 minimum level of quality required in the UAE. The quality of teaching is acceptable
2 overall and good or better in about one third of the lessons but weak in more than a few
3 lessons. On the curriculum the inspection found that it was of an acceptable quality
4 across all three phases of the school. It met the learning needs of most students and
5 includes a range of interesting activities for all students. The highest achieving students
6 were not always sufficiently challenged. The school makes effective provision for the
7 protection, care, guidance and support of the students. Students are said to be safe at
8 school and on the buses.⁴⁰ The engagement of the school with parents and the community
9 is stated to be very effective and the facilities and resources are good.

10
11
12 236. Students' progress in learning of the five key subjects is mostly acceptable with current
13 levels of attainment are primarily weak. At the primary level students attainment is rated
14 as weak in Arabic as a first language, English, science and math.

15 Although English is graded as weak, the report notes that some students are making
16 better progress and that achievements vary across the primary and secondary years partly
17 due to gaps in student's prior learning of English skills including handwriting, spelling,
18 punctuation and grammar. The recommendation for development is to develop students'
19 English skills including handwriting, spelling, punctuation and grammar and continue to
20 develop their oral skills.

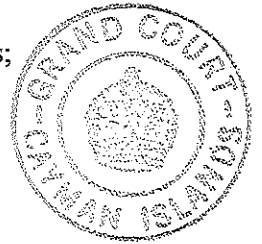
21
22 237. For mathematics the assessment found that the rates of progress for students was
23 acceptable, but that too many children and students across all phases demonstrated below
24 age-related expectations. Recommendations for improvement included ensuring a
25 consistency of approach in meeting the needs of all students. The development work

⁴⁰ Page 54 of Report

1 required for improvement in science is to ensure that work for all students is sufficiently
2 challenging and accurately assessed so that attainment gaps in knowledge, understanding
3 and skills can be identified and quickly closed particularly in the foundation and primary
4 stages.

5
6 238. In the category of what the school does best are the following:

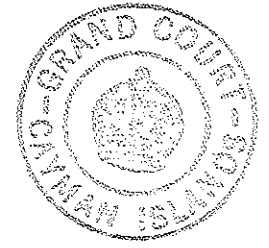
- 7
- 8 • Students' good, personal and social development;
 - 9 • Effective provision for the health, safety, care and support of the students;
 - 10 • Strong partnership with parents;
 - 11 • Mostly high quality of the facilities.



12
13 239. The key recommendations included improving governance by more effectively
14 managing the growth of the school so that best practices can be consolidated in a period
15 of stability, improving the quality of teaching and the subsequent progress and
16 attainment of students by ensuring that teachers make the best use of assessment data an
17 improving the quality of the curriculum so that it meets the needs of all students across
18 all key subjects. Next steps include the schools preparation of an action plan to address
19 the recommendations of the Schools Inspection Bureau.

20
21 240. Father states that the school which E attends in the Cayman Islands has been rated as
22 one of the best public schools on Island. It has a good educational standard and offers
23 the same curriculum that the school in Dubai provides. He produced a Baseline
24 Inspection Report for E's School in the Cayman Islands for the period 24th to 25th
25 November 2014 and a Follow –Through Inspection Report dated January 2018.

26



1 243. In the category of what the school does well were the following:

- 2 • Senior leadership involvement of all staff;
- 3
- 4 • School has high standards of literacy and creates a stimulating
- 5 environment to encourage reading;
- 6
- 7 • Effective use of classroom assistants in supporting pupils;
- 8
- 9 • Good use of Primary Years Programmer to promote inquiry and learning
- 10 engagement.
- 11

12 244. The Follow Through Report of 2018 found that the school had made overall satisfactory
13 progress in addressing its marking and assessments of students work, good progress in
14 increasing the pace of lessons and satisfactory progress with respect to mathematics
15 lessons. The Reports states that the levels of attainment in mathematics had improved
16 since 2016/17 and that such attainment is now broadly in line with international averages
17 and with similar assessments results in other countries. However there was significant
18 scope for improvement particularly in the number of students achieving at the highest
19 level in mathematics.

20 245. The grading systems for the Reports for the two schools appear to be different and I am
21 unsure whether there can be an alignment, comparing like for like given the different
22 frame works and backgrounds. Each school appears to require development work in
23 some areas. Counsel on behalf of father points to English and mathematics as being
24 stronger at E's present school. This may well be the case but I do not see a material
25 difference between the two schools. I note that her present school had past issues with
26 mathematics and is said to be improving. With respect to English at the proposed school,
27 the Assessors noted that achievements in reading and writing vary across the primary
28 and secondary years and that this is partly due to gaps in students prior learning of
29

1 English skills including handwriting, spelling, punctuation and grammar. I think what is
2 important is that each school either meets or exceeds certain minimum standards and has
3 a process by which it will be assessed so that it is able to identify and work towards
4 improvement in areas where this is needed. There is in my view no major concern such
5 as would tip the scales against one or the other school as being inimical to E's best
6 interests.



7
8
9 **APPLICATION OF THE LEGAL PRINCIPLES**

10 246. I now turn to the specific questions which arise in respect of this matter. I remind myself
11 as I do so that the paramount consideration which I must bear in mind is E's welfare.
12 This is a finely balanced case where undoubtedly both parties deeply love and care for
13 E. Both mother and father have been hands on parents from E's birth and despite their
14 separation and resulting bitterness between them, they have each done their best to
15 ensure that E knows that she has their love and support. E is emotionally and physically
16 well cared for and is happy and thriving. Both parents are to be commended on their
17 upbringing of this young child.

18
19 247. The decision which I have to make is a binary one. There is no middle ground. I accept
20 that the parent who receives an adverse decision will be devastated. Mother has already
21 applied for residency in Dubai, where she will reside with her new husband and baby.
22 E. Father will continue to live and work in the Cayman Islands, neither will join the
23 other in the same country whatever the outcome of this application. This means that E.
24 will lose the regular presence of and direct contact with one parent for a number of
25 months of each year. Indirect communication through Skype or other forms of media
26 will assist but will not be the same. Indeed some may say that it is not the best substitute.

1 It does provide however a means of regular contact which will have to be utilised in
2 circumstances such as this. A decision in this case will mean that one of the two parents
3 will have to use this medium at least during the extended periods of the school term in
4 order to maintain contact with E.

5
6 248. I begin by applying the guidance provided by Williams J in the cited case of *B. v. B*⁴³.
7 as approved by the Court of Appeal. I have also considered the decision of Mangatal J
8 in *PC v. JC*⁴⁴ and of the English Courts is the cases of *RE TC and JC*⁴⁵ and *Re F*⁴⁶. In
9 so far as these and a number of other cases may be relevant, each case is fact specific
10 and it is only to the general guidance to which regard may be had. Consistent with the
11 guidance provided in these cases, and having reviewed all the evidence I consider the
12 relevant questions as follows.

13 **QUESTION 1 - IS THE MOTHER'S APPLICATION GENUINE IN THE SENSE THAT IT IS NOT**
14 **MOTIVATED BY SOME SELFISH DESIRE TO EXCLUDE THE FATHER FROM THE CHILD'S LIFE?**

15
16 249. Mother's evidence was that she has a commitment to her husband and cannot abandon
17 him. Understandably, she would like to join him in Dubai and have her family together.
18 I am satisfied that mother has a genuine reason for her application for relocation of E
19 and that it is not to exclude E from father's life.

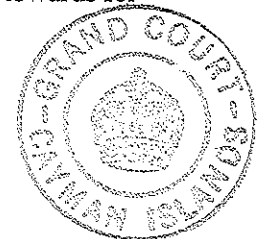
20
21 250. Given the bitterness and animosity between JAE and father, I go further in the context
22 of this case to consider the motives of JAE. He gave evidence of the career
23 considerations which have motivated him and to which he has been working towards for

⁴³ Supra

⁴⁴ Supra

⁴⁵ [2013] EWHC 292 (Fam)

⁴⁶ [2012] EWCA 1364



1 some ten years. He came across as an ambitious young man, who is trying to do his best
2 to embrace opportunities for career growth which he says would benefit his family.

3
4 It does not appear from his evidence that this career move is being made on a whim as
5 father sought to suggest. I do not consider that JAE's motives for this relocation in so
6 far as they may be relevant include any desire to exclude father from E's life.

7 **QUESTION 2 - IS THE FATHER'S OPPOSITION MOTIVATED BY GENUINE CONCERN FOR THE**
8 **FUTURE OF THE CHILD'S WELFARE OR IS IT DRIVEN BY SOME ULTERIOR MOTIVE?**

9
10 251. I accept that father is genuinely concerned for E's future. His view is that E is being
11 uprooted from the only life that she has ever known and from her family and friends at
12 a time when she is doing well. In tandem with this however are feelings of deep
13 resentment towards mother and also JAE:

14
15 Statements such as -

16 *"I am at a loss as to how her stepfather deciding to change his job on a whim should*
17 *result in E being uprooted from Cayman and all that she knows her and deprived of*
18 *a full relationship with her father and half- siblings to live in a country to which she*
19 *has no links or attachments. It makes no sense to me whatsoever.*⁴⁷

20 He continues:

21 *"I am perplexed as to why JAE accepted this new position in the first place. He is*
22 *Caymanian. His mother lives here and he has spent his life in the Caribbean. I*
23 *understand that he was doing well in his previous role and earning a good salary. I*

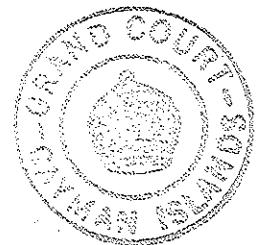
⁴⁷ Paragraph 29 of Affidavit of 5th September 2018

1 *feel that E's life is going to be torn apart if permission is granted to fulfil JAE's*
2 *flight of fancy. I cannot help but wonder how many more career moves JAE intends*
3 *to pursue and whether E must then suffer the consequences of each decision. I*
4 *believe that the career choices of a step-father should not be made at the expense of*
5 *our family life.*"⁴⁸

6 252. These statements make clear that while he expresses the very reasonable and
7 understandable position that E has a stable and thriving life in Cayman with extended
8 family and friends, there was initially intermingled within this, the resentment at JAE,
9 at what he saw as an unnecessary change of jobs by JAE and his view that JAE's
10 movement should not be such as to affect the status quo. Added to this was
11 understandable anger at the way in which the news was first broken to him. This could
12 only have served to increase his resentment. I do not say that this resentment was or
13 continues to be the single driving force behind his opposition but it may have been very
14 much a part of it and it may well have served to increase his initial opposition and his
15 disinclination to engage with mother in discussions about it.

16
17 253. I do note that at the hearing during cross examination, he said that he accepted that the
18 application is genuine and based on JAE pursuing job prospects.

19
20
21 **QUESTION 3- WHAT WOULD BE THE EXTENT OF THE DETRIMENT TO THE FATHER AND HIS**
22 **FUTURE RELATIONSHIP WITH THE CHILD WERE THE APPLICATION GRANTED?**



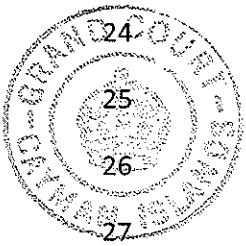
⁴⁸ Paragraph 31 of Affidavit of 5th September 2018

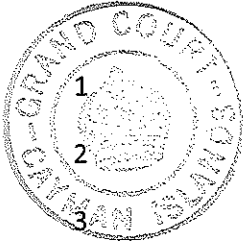
1 254. If mother's application is granted, the existing pattern of direct contact would change to
2 block periods of such contact during school holidays supplemented by regular indirect
3 contact by means of social media. There would be at least two to three periods of direct
4 face to face contact during each year, at Christmas, alternative birthdays over the Easter
5 break and over the long summer break.

6
7 255. Father in cross examination expressed concern that indirect contact might be difficult
8 because of the different time zones between the two countries. He would not be able to
9 speak to E while at work or might have to stay up late into the night. He was asked his
10 view on this if a clear schedule is put in place for calls and the proposed direct contact
11 occurs. He said that if all of that was happening he did feel that he would still maintain
12 a bond with E.

13
14 256. Ms. Orakwue noted that the proposals are that there would be direct and indirect contact
15 so that despite geographical distances, father would still be able to have significant
16 periods with E. She said she could not agree that E will lose everything because it is
17 proposed that she will have these contacts in place. In light of the proposed contact
18 arrangements, she does not view the change as being detrimental to the father's'
19 relationship with E.

20
21
22 257. I agree. From all I have seen of mother I believe that if E is permitted to relocate with
23 her, she will do everything in her power to positively promote this relationship and will
24 ensure that there is regular indirect contact with father. If this occurs as I believe it will,
25 if E is relocated, any detrimental impact on E's relationship with father will be
26 significantly reduced. I add also as a positive note that it very much appears that E's
27 relationship with father is foundationally strong, having been built over time. This is in





no small measure due to father's care and love for her. The proposed contact arrangements of block periods and regular indirect contact would, if required ensure that the relationship continues to be a strong one.

4

5 **QUESTION 4- TO WHAT EXTENT WOULD THE DETRIMENT TO THE FATHER IF THE APPLICATION**
6 **WERE GRANTED BE OFFSET BY EXTENSION OF THE CHILD'S RELATIONSHIP WITH THE**
7 **MATERNAL FAMILY AND, IF APPLICABLE, HOMELAND?**

8

9 258. This is not a case where mother is returning to her homeland. If the relocation application
10 is granted there would be some benefit to E in the further development of her bond with
11 mother's new family. Additionally, her own relationship with her mother will have the
12 opportunity to strengthen and grow.

13 **QUESTION 5- IS THE MOTHER'S APPLICATION REALISTIC AND FOUNDED ON PRACTICAL**
14 **PROPOSALS BOTH WELL RESEARCHED AND INVESTIGATED?**

15

16 259. JAE has been in his new job and living in Dubai since February 2018. He has provided
17 photographs and details of his home, circle of friends, and the available amenities
18 including extracurricular activities which would be available for E.

19

20 260. Mother has visited twice, most recently for five weeks in November to December 2018.
21 She has visited the proposed school and met other Caribbean families with young
22 children. There is evidence of practical arrangements. E's education will be paid for by
23 JAE's employer who also provides health insurance. There are plans arising from the
24 benefits to be afforded to them by JAE's employer to save for E's college education.
25 Mother's evidence was that from her visit she believes that it is a good move.

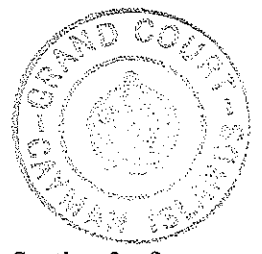
26

1 261. Mother has provided proposed contact arrangements and JAE, the flight benefits which
2 would be available and the travel arrangements which could be made. I conclude that
3 her application is realistic, and has been well researched and investigated.

4 **QUESTION 6- WHAT WOULD BE THE IMPACT ON THE MOTHER OF A REFUSAL OF HER**
5 **REALISTIC PROPOSAL? THE WEIGHT PLACED ON THIS WILL INCREASE IF THE CHILD RESIDES**
6 **WITH THE MOTHER.**

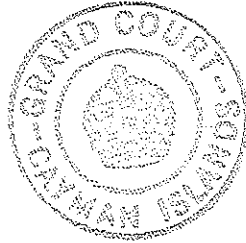
7
8 262. The impact on mother would in my view be significant. Mother's evidence was that she
9 would be devastated by a refusal of her application. It is evident that like father, she
10 cares deeply for E. Her evidence is that she needs to speak with E every day. She
11 described E as her world. A refusal would likely lead to her being torn between E on the
12 one hand and her new husband and baby E on the other. The possible conflict may not
13 only adversely affect her but also her new family unit and may ultimately affect her
14 relationship with E.

15
16 **SECTION 3 OF THE CHILDREN LAW (2012 REVISION)**



17
18 263. I now turn to review the welfare checklist considerations under the Law. Section 3 of
19 the Children Law 2012 Revision provides as follows:

- 20
21 "3. (1) *Where a court determines any question with respect to-*
22 *(a) the upbringing of a child; or*
23 *(b) the administration of a child's property or the*
24 *application of any income from it,*
25 *the child's welfare shall be the court's paramount consideration.*
26 (2) *In any proceedings in which any question with respect to the*
27 *upbringing of a child arises, the court shall have regard to the*
28 *general principle that any delay in determining the question is likely*
29 *to prejudice the welfare of the child.*

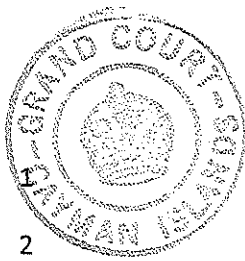


- 1 (3) *In the circumstances mentioned in subsection (4) a court shall have*
2 *regard in particular to-*
- 3 (a) *the ascertainable wishes and feelings of the child*
4 *concerned (considered in the light of his age and*
5 *understanding);*
 - 6 (b) *his physical, educational and emotional needs;*
 - 7 (c) *the likely effect on him of any change in his*
8 *circumstances;*
 - 9 (d) *his age, sex, religious persuasion, background and*
10 *any characteristic of his which the court considers*
11 *relevant;*
 - 12 (e) *any harm which he has suffered or is at risk of*
13 *suffering;*
 - 14 (f) *how capable each of his parents, and any other*
15 *person in relation to whom the court considers the*
16 *question to be relevant, is of meeting his needs; and*
17 *the range of powers available to the court under*
18 *this Law in the proceedings in question.*
- 19 (4) *The circumstances are that-*
- 20 (a) *the court is considering whether to make, vary or*
21 *discharge a section 10 order, and the making,*
22 *variation or discharge of the order is opposed by*
23 *any party to the proceedings; or*
 - 24 (b) *the court is considering whether to make, vary or*
25 *discharge an order under Part IV.*
- 26 (5) *Where a court is considering whether or not to make one or more*
27 *orders under this Law with respect to a child, it shall not make the*
28 *order or any of the orders unless it considers that doing so would*
29 *be better for the child than making no order at all."*
30

31 264. In applying the paramountcy principle to this case, I must and do have regard to the
32 factors listed in section 3.

33
34 **A) THE ASCERTAINABLE WISHES AND FEELINGS OF THE CHILD CONCERNED (CONSIDERED**
35 **IN THE LIGHT OF HER AGE AND UNDERSTANDING)**

36
37 265. Ms. Orakwue who spoke directly to E. noted that she is aware of the relocation plans to
38 Dubai. She records E as stating:
39



1 *"I want to go but I want to stay here. I want to see how Dubai looks, but I mostly*
2 *want to stay here because it is greener and the ocean is blue."*

3

4 266. Ms. Orakwue describes E as ambivalent and anxious about the relocation. She records
5 that both parents have been talking to E about the possible relocation and no doubt she
6 is torn. She said that E was back and forth in her responses saying she wanted to go and
7 at other times that she wants to remain here. Ms. Orakwue gave evidence that E loves
8 both her parents and that it is evident that she wants to please both. She was not able she
9 says to get a sense of any genuine desire on E's part.

10

11 267. She further states that due to E's age and level of understanding her wishes and feelings
12 alone cannot be taken into consideration for a final decision regarding this relocation
13 proposal.

14

15 268. I bear in mind Counsel on behalf of father's overall submission on this aspect that E's
16 wishes and feelings have been minimized in this case without sufficient reported inquiry.
17 I do not accept this.

18

19 269. I accept Ms. Orakwue as an experienced professional who is able to determine whether
20 a child is ambivalent or not and to assess the level of understanding of the child. For the
21 reasons set out above I did not find that Ms. Orakwue was biased in her approach or in
22 her evidence before the court. I also do not find for the reasons set out above that the
23 inquiry she conducted on this aspect was limited in such a way as to make her
24 conclusions on this aspect unreliable. I believe that weight can be placed on her findings
25 in this area.

26

1 270. Thus I accept her evidence that E is ambivalent towards the relocation. Given that
2 ambivalence I do not consider that it is appropriate as Counsel on behalf of father has
3 urged me to do to place any greater weight on E's expression that she would mostly want
4 to stay here because it is greener and the ocean is blue. This is materially different from
5 an expression of desire to stay with a particular person. If she later finds out that Dubai
6 is just as green and there are blue oceans or bodies of water which are just as pretty, what
7 then?

8
9 271. Further and of greater importance E is only eight years old. It would be natural for her
10 at her young age to be unsure rather than to have a decided view. Over all, given her age
11 and level of understanding, I place no great weight on E's expressed wishes in this case.

12

13 **B) HER PHYSICAL, EDUCATIONAL AND EMOTIONAL NEEDS;**

14 **PHYSICAL NEEDS**



15

16 272. On this aspect Ms. Orakwue recorded that E is well cared for and is reportedly in good
17 health and has no medical complaints or concerns.

18

19 273. E's physical needs would be the same whether she is here or in Dubai. Should she
20 remain here, father and stepmother would be able to meet her physical and material
21 needs. Should she be relocated to Dubai mother and stepfather would be able to meet
22 the said needs. Attached to Ms. Orakwue's report are photographs of the home in which
23 E would reside in Dubai, the employment contract for JAE and tenancy agreement have
24 also been provided. Father has provided details of his employment here and of the rented

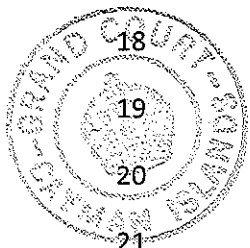
1 home in which he resides with ACP. In my view both sides are evenly balanced in
2 respect of this category.

3 **EDUCATIONAL NEEDS**

4 274. E's educational needs would be the same whether she is here or in Dubai. From the
5 material before the court her present school in Cayman is meeting her educational needs.
6 She is thriving at school and has very positive school reports. Father says that the plan
7 is that in two years she will leave primary school and enter the high school system at
8 which point it is likely that she will attend private school as do her cousins. There was
9 no evidence on the cost of this and how this is likely to be afforded. Father has not yet
10 considered college options for her and the possible cost of this.

11
12 275. Ms. Orakwue attached to her report photographs of the proposed school in Dubai and of
13 its facilities, such as gym, pool, library, and classroom. Stepfather would receive an
14 allowance from his employer which would cover in large measure E's attendance at
15 primary and secondary schools. Mother points out that private high schools in Cayman
16 are expensive and that in Dubai E's education would be covered by JAEs' employer up
17 to high school level. Mother and stepfather say that they are planning ahead to save for
18 E's college education. I look at the combined income of father and ACP and note that
19 they appear to have the capacity to meet E's educational needs on a long term basis. I
20 conclude that while it will be less expensive for mother and JAE to do so, both sides are
21 capable of meeting her educational needs.

22
23 276. As to the schools themselves, Counsel on behalf of father under this heading pointed to
24 the Assessment report for the proposed Dubai school, noting that the scores on the
25 independent assessment document in relation to that school include somewhat

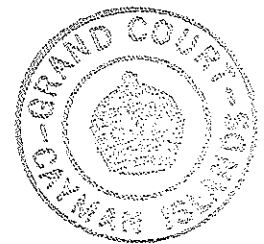


1 unimpressive scores in key subjects, such as English and mathematics. He submitted that
2 the local school provides a better standard in these subjects than the proposed school and
3 has at the very least a matching standard to that school. Further, that E is by all accounts,
4 flourishing in her present school, and the Court ought to be reluctant to interfere with
5 such progress on the basis of a school report indicating poor to acceptable achievements
6 by students. Further that the Court should side with the evidence that E is flourishing,
7 and the balance of E's best interests is weighted firmly in favour of the Cayman Islands,
8 and rejection of the application.

9
10 277. I accept that the local school appears to be stronger in mathematics and English than the
11 other. However for the reasons set out above, where both schools need work in different
12 areas, I did not find that there was such a material difference in terms of the two schools
13 so as to tip the balance much in favour of one or the other particularly when I consider
14 that there will in a few years be changes when E needs to move from primary school to
15 attend a High school.

16
17 **EMOTIONAL NEEDS**

18
19 278. On this aspect Ms. Orakwue concluded that E's emotional needs for love and acceptance
20 are being met by her parents, step-parents and extended relatives. This was also apparent
21 from the oral evidence from both parents and step parents and the many pictures of a
22 visibly happy E which were produced by father. Not surprisingly Ms. Orakwue found
23 that she displayed no signs of emotional or behavioral concerns. E will of course require
24 greater emotional support following a change in her residence arrangements as either
25 way she will be without one parent and there will be resulting separation anxiety.
26



1 279. Ms. Orakwue's evidence was that E's response to the change will depend on the efforts
2 by her primary caregivers to assist her to overcome the likely separation anxiety and
3 transitional changes.

4
5 280. Counsel submitted on father's behalf that there is no evidence before the Court that either
6 parent provides superior emotional assistance to E and that the greater emotional support
7 of an extended family, as well as S, provide good reasons for the Court to consider that
8 her emotional needs are best met in the Cayman Islands.

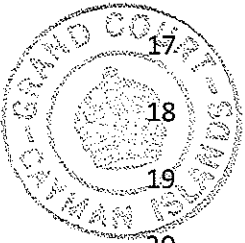
9
10 281. This is an important issue which I consider in further detail below when I come to
11 consider which parent is best placed to support E's changing emotional needs.

12
13 **C) THE LIKELY EFFECT ON HER OF ANY CHANGE IN HIS CIRCUMSTANCES**

14
15 282. This is not a case where a decision on the one hand would mean no change in
16 circumstances. Mother's intention is that she will go to Dubai to join her husband for her
17 new family to be together and father will not relocate from Cayman. E will not have both
18 parents in the same country with the shared care arrangements which are presently in
19 place. Change is the only option.

20
21 283. If E is relocated to Dubai there will be a number of significant changes, a change to a
22 new country, a change of home and school and in the nature of contact with father,
23 friends and extended relatives.

24
25 284. If E remains in Cayman, there will be her father, ACP, S, baby L, the familiarity of
26 school, her father's home, friends and extended family. The number of changes will be
27 fewer in number but there will be the absence of her mother who will not be available to
28 her on the scale to which she has been accustomed.



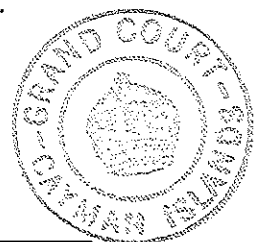
1 285. I must consider the nature of the change which is likely to be in E's best interests. I
2 believe that in so doing, I must consider both the quantity of the relationships, as well as
3 the quality and nature of the various relationships which may be affected, how they may
4 be affected, the impact upon E and the likely best assistance that E would receive in
5 dealing with the inevitable change which would be involved in either decision.

6
7 286. Ms. Orakwue notes that E has been living at the residence of both parents since 2013
8 and has bonded well with her step parents and siblings. She said that it is likely that an
9 overseas relocation will have an impact on E's overall growth and development. Her
10 emotional well-being will be affected as she has a close bond with her father and S. Ms.
11 Orakwue's reports give the common symptoms of separation anxiety as including sleep
12 disruption, changes in eating patterns, increase clinginess and accelerated worries about
13 being alone and isolated.

14
15 287. Father stressed the presence of a family circle in Cayman available to assist E with
16 anxiety caused by separation from her mother. In her evidence Ms. O. accepted that
17 having an extended network of close family and friends will assist in separation anxiety
18 for a child. She also accepted that a relationship with a close step sibling of similar age
19 such as S would also assist.

20
21 288. The Court was urged by Counsel on behalf of father to consider that if relocated E would
22 be without the support of S, her step sister, during the period of profound adjustment,
23 the very start of the separation period and possibly the period of greatest stress, and that
24 indeed the separation from S itself will likely exacerbate E's separation anxiety.

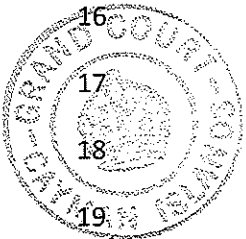
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1 289. It was also submitted by Counsel on behalf of father that Ms. Orakwue failed to consider
2 that the separation from father would unlike the separation from mother result in not
3 only the separation from father, but in addition, separation from friends, family, and S.
4 Thus there would be greater separation from more people and E would have fewer close
5 members of a support network.

6
7 290. Counsel also notes in his submissions that Ms. Orakwue did not accept that these extra
8 factors would potentially have a profoundly greater impact on E and argues that her
9 failure to consider the impact of these additional factors, involving greater separation
10 (from more people) undermines the conclusion that this would be balanced between the
11 two jurisdictions.

12
13 291. Ms. Orakwue did not accept that E would be denied these relationships and assistance
14 by relocating as there would continue to be indirect contact with them and direct contact
15 during holiday periods. Indeed my understanding of her repeated responses in the course
16 of cross –examination was that she was at pains to indicate what I would summarise as
17 her view which is that physical absence does not in this technological age, equate with
18 separation and loss of relationships. She repeatedly mentioned that there would continue
19 to be direct and indirect contact with these persons and that they would not be lost to E.



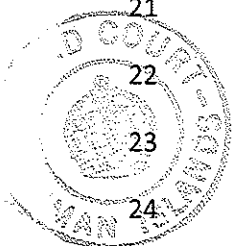
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21
22 292. The fact that Ms. Orakwue did not list each change does not in my view mean that she
23 failed to understand or factor into her analysis the essence of the matter which is that if
24 relocated E will be physically absent from the Cayman Islands and from all her family
25 members here. In each of Ms. Orakwue's reports she stated that should E leave the
26 jurisdiction of the Cayman Islands, it is important for her to maintain her family
27 relationships with her father, stepmother and stepsister for her emotional and mental well

1 -being and that these should be supported and encouraged through frequent
2 communications by telephone contacts and visitations. In her addendum report she
3 stated *“However it is likely that E’s well-being will be adversely affected if she is not*
4 *provided with significant support to adjust to the likely changes. This can be facilitated*
5 *through fostering positive parental relationships, encouraging sibling bond and*
6 *maintaining her family ties.”*

7
8 293. I do not consider that Ms. Orakwue’s findings are rendered unreliable as per the
9 submission made on this point. It very much appears that she has addressed her mind in
10 the course of her recommendations to E’s adjustment needs.

11
12 294. I have applied my own mind to the issues independent of Ms. Orakwue’s report. I accept
13 that the changes which would be involved in the relocation are multiple in number and
14 thus on that basis alone likely to be more disruptive of E’s life. This would ordinarily
15 weigh against granting mother’s relocation application unless when all matters are
16 considered the balanced is tipped by other factors. Put another way, E’s best interests
17 would be served by the least disruption possible, other factors being even.

18
19 295. In addition to his submission that the conclusions of Ms. Orakwue’s report must be
20 viewed as suspect given that she failed to properly assess and come to a conclusion as
21 to how E was coping in the circumstances of her mother’s absence from the Island in
22 November and to find out upon whom she relied for support, Counsel on behalf of father
23 also points out that there are only two reports available of E’s response during this
24 period. One was from father which was that E was feeling upset and crying in the absence
25 of her mother and the second was from E’s teacher to Ms. Orakwue that E was coping
26 well with the separation from her mother. Ms. Orakwue confirmed that she did not



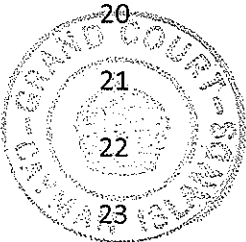
1 attach weight to the report from the teacher. Counsel submits that this factor is
2 potentially highly relevant to the Courts balancing exercise.

3
4 296. Counsel submits also that the effect of the separation could have been properly assessed
5 as this was a period in which the “change of circumstances” was solely the absence of
6 mother and JAE from E’s previous routine and she had the benefit of friends and
7 extended family to cope with this. He says that a golden opportunity was missed to
8 advise the Court in relation to the actual observable effect of a period of separation upon
9 E and that the Court may thus have grave reservations regarding the conclusions in Ms.
10 Orakwue’s report.

11
12 297. While I understand and have considered Counsel’s submission, I find it difficult to agree
13 with it. There is a clear difference between mother making a temporary trip with a
14 specific return date and mother’s permanent relocation. It makes logical sense that
15 mother’s imminent return a short time away would likely produce a different reaction
16 than her going for good for months at a time.

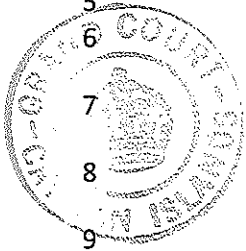
17
18 298. Thus I cannot regard the absence of an in depth analysis during this period as significant
19 to the extent that I have any grave reservations about the conclusions in the report. That
20 despite being emotional at home, she coped well at school in the temporary absence of
21 her mother for five weeks is a factor which I consider but I do not see how it could lead
22 to a conclusion that the *effect* on E of a change where only mother was physically absent
23 on a longer term basis would likely be less than where father and others were physically
24 absent.

25
26 299. I was also concerned as to whether E would be able to adjust to a new environment, if
27 she is relocated. Ms. Orakwue describes E as a shy but confident child. She did not



1 accept Counsel's suggestion that because E is shy that she might struggle if she went to
2 a new school in a foreign country. Ms. Orakwue's view is that E is also sociable and will
3 adjust. While she has not witnessed E outside of familiar surroundings, her assessment
4 is based on her personality traits as relayed to her by E's parents and teacher. She stated:

5
6 *"Based on E's personality traits (such as flexible, happy, calm, resilient) the effects*
7 *of the relocation may not significantly affect her mental, emotional and social well-*
8 *being."*⁴⁹
9



10 300. Father gave evidence that he would love to put confidence in E that she is a strong girl
11 and that she would adjust. He said that E is *'resilient, strong, very strong, very smart*
12 *does not need assistance with anything. Should she be relocated I feel confident that she*
13 *will adjust but it will take time."* He also said that there would have to be proper
14 planning, that he had not heard a plan for her well-being for the changes of the move.
15 He would love to see something in place such as her being evaluated every few months
16 to see how she is doing.

17
18 301. In summary on this aspect the effect on her of the change in circumstances will likely be
19 separation anxiety either way. A process of adjustment is required in both situations. In
20 respect of mother's application, if the change of circumstances is greater than mother's
21 absence from the Islands, what would be the impact on E? Ms. Orakwue is confident
22 that she will adjust to these changes with support. There will be more change if she is
23 relocated but from all that is described of E, I do not consider that the impact of a change

⁴⁹ Report of 16th November 2018, paragraph 29

1 in her circumstances were she to be relocated to Dubai would be such as would place
2 her at increased risk of any harm.

3

4 **(D) HER AGE, SEX, RELIGIOUS PERSUASION, BACKGROUND AND ANY CHARACTERISTIC OF HIS**
5 **WHICH THE COURT CONSIDERS RELEVANT;**

6

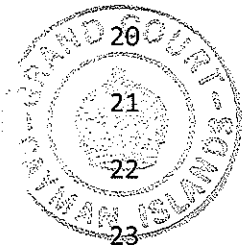
7 302. Father expresses concern that E is of Caymanian heritage, theirs is a Christian family
8 and it is proposed to relocate her to a mostly Muslim country with a different culture and
9 life.

10

11 303. Counsel on father's behalf submitted that more clarification as to the details of the
12 Caribbean families in Dubai is needed. Further that while the presence of these families
13 may mitigate the impact of the change of climate, culture and surroundings, it certainly
14 will not remove it. He urges that these change factors can be entirely avoided if the
15 application is refused.

16

17 304. I note that Mother in the course of her evidence spoke of her belief in God and of her
18 intention to maintain E's culture. I believe that if relocation is permitted mother will do
19 all she can to maintain that culture. The character and culture of the family unit with JAE
20 and baby E will not change simply because it is in a different place. E will continue to
21 be with a Caymanian family. As for the wider community and possible assistance in
22 preserving that culture, I accept the evidence from JAE and mother of the presence of a
23 strong Caribbean community of a welcoming and supportive nature with some twenty
24 seven families, some with young children and that the school to which it is proposed that
25 E attend has a UK based curriculum leading to the GSC examinations. This evidence is



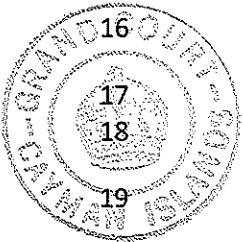
1 sufficient to allow me to say that E would if relocated have the benefit of a wider circle
2 which is not entirely dissimilar to that in the Cayman Islands.

3
4
5 305. Counsel on behalf of father also submitted under this heading that this will be a massive
6 upheaval for E and points to the fact that she is described paradoxically as a shy but
7 confident girl in her school report. He says that the personality trait of shyness could be
8 a significant difficulty for a child moving to a completely different culture, school and
9 life. He suggests that the upheaval for her is being glossed over by the Social Worker
10 and that the personality traits referred to by her as being indicative of her ability to adjust
11 to change, flexible, happy, calm and resilient are indicative of a well-adjusted child
12 thriving in her present conditions.

13
14 306. As stated above, I note that ACP in her oral evidence described E as a shy child who
15 once she is comfortable in her space can shine. Ms. Orakwue described her belief that E
16 will adjust positively to change with the appropriate support.

17
18 There is nothing in E's personality traits as I understand them to be which would suggest
19 that relocation would be particularly difficult for her.

20
21 307. An additional aspect under this heading is that mother is from Guatemala and desires
22 that E maintain her Guatemalan heritage by continuing to visit with her relatives there.
23 Mother expresses her disappointment that father does not see the benefit of E
24 maintaining a relationship with E's extended family in Guatemala. She considers that
25 this is part of E's culture. Mother would like E to continue to maintain a relationship
26 with her maternal grandmother, aunts and uncles and other relatives in Guatemala.
27 Mother says she has always facilitated access to E, for father's family on days that E is



1 with her. Ms. Orakwue had concerns that father appears not to recognise the importance
2 of E visiting Guatemala and maintaining those family ties and stated his concern that his
3 time with E may be reduced for the purpose of her doing so.

4
5 308. Counsel on behalf of mother submitted that it is important that E continues to have
6 knowledge of and exposure to all aspects of her culture. Father explained in his evidence
7 that he does not oppose this but was concerned that his time during the summer vacation
8 would be effectively reduced from seven weeks to six weeks to allow for E to visit
9 Guatemala when his time with E would already be much reduced if she is relocated.

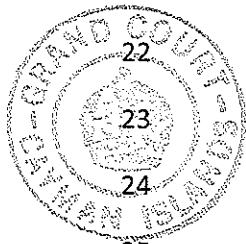
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11

(E) ANY HARM WHICH SHE HAS SUFFERED OR IS AT RISK OF SUFFERING;

12
13 309. Ms. Orakwue records in her reports that E was exposed to domestic violence between
14 her parents during her formative years but that fortunately there is no indication that this
15 has adversely affected her or has caused her any suffering. She is concerned about the
16 possibility of future occurrences exposing E to risk.

17 310. As noted above Father and ACP were adamant that there is no continuing domestic
18 violence following the 2016 incident.

19
20 311. As noted above, I accept Counsel's submission in part on this point, that the allegations
21 in respect of the incidents that occurred between mother and father are historical in
22 nature and are unproven and untested allegations. There has never been a fact finding
23 hearing or any criminal proceedings to ascertain the facts of these allegations. I have
24 highlighted my concern above as to the thread of similarity with the 2016 incident which
25 causes me concern. This is the reference in both to excessive alcohol consumption.



26
27

1 312. Counsel on behalf of mother makes the following submissions on this point, which I
2 regard as having some force:

3
4 73. *F's responses when questioned about his drinking habits are confusing and conflicting.*
5 *In his affidavit evidence there is an apparent acceptance that he had an abusive*
6 *relationship with alcohol which necessitated him seeking counselling for his issues and*
7 *to try and save his relationship with 'ACP'. The need to address such issues in such a*
8 *manner is not usually something that suddenly transpires from one incident.*

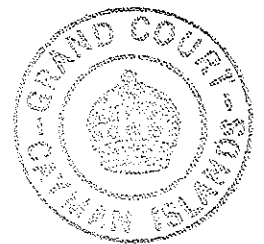
9
10 74. *He stated in his evidence, 'I don't even like the taste of alcohol any longer' but also*
11 *somewhat confusingly stated, 'I would never have more than 3 or 4 drinks'.*

12
13 75. *When asked if he sometimes came home intoxicated during his relationship with M, he*
14 *initially relied 'No'. When challenged on this, 'not that never...a few times'.*

15
16 76. *The Court simply cannot be satisfied that F has addressed his alcohol and anger issues*
17 *based on the evidence F and his partner gave about F's very limited engagement in*
18 *counselling and therapy and his at times evasive and contradictory answers when*
19 *answering these questions."*

20
21 313. Towards the end of his evidence father said this:

22 *"I don't know if I am cured. I hope it does not happen to me again or between 'ACP'*
23 *and myself."*



1 314. To his credit, there have been no reports since 2016 and he can point to two years without
2 a further report but I would be less than cautious if I did not note that the period between
3 the series of incidents is four years. There was also no mention of ongoing counselling
4 and support since the 2016 incident.

5
6 315. As to the 2018 incident, it is said that this was a result of these proceedings and did not
7 amount to conflict or include violence. ACP said that this was no more than a
8 disagreement and father left to have time away.

9
10 316. ACP describes father as an emotional father who loves E very much. She said that he is
11 very passionate about her. I agree, from all that I have seen of father he is a highly
12 emotional person. More importantly I am not sure that he appreciates when he needs
13 help before it is too late. In 2012 he was diagnosed with clinical depression. He did not
14 seek help until his work place sent him to counselling. He stopped going before
15 completion because he says that he felt there was a breach of confidentiality and that
16 JAE had somehow found out about his attendance. For the 2016 incident, he did seek
17 help. As to the 2018 incident, he said he left the home because he was emotionally upset
18 and needed to be alone. He never stuck around to see himself go down that line. Police
19 may have been called. He would have gone crazy. From all that I have seen and heard
20 of him, it is difficult not to be left with a sense of volatility. I believe that he is less stable
21 than mother.

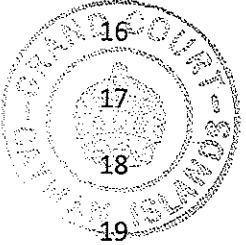
22
23 317. In the course of her evidence mother asked, what would happen to E. if something
24 happens with father and she is so many miles away? This question resonated with me.

1 While no doubt E. would be supported by her extended Cayman family and DCFS, this
2 would surely be less than ideal.

3
4 318. There is no evidence and certainly no assertion that any of this has adversely affected E
5 in the past but I must look as best I can into the future and make a value judgement. The
6 question that I ask myself is on a longer term basis, with which parent is there less risk
7 for E in the sense of possible exposure to unhelpful incidents, disruption and volatility,
8 with which parent is there a greater sense of stability and emotional security for E?
9 Unhesitatingly on my assessment this would be mother.

10
11 319. Even if I could put aside a sense of unease as to father's stability there is a second aspect
12 which causes me even greater concern. This is that separate from the issue of any
13 reoccurrence of alcohol or emotional issues is the issue of the poor communication
14 between the parents. Ms. Orakwue states that E's growth and development will be
15 significantly affected if the high level of tension, hatred and conflicts among the parents
16 and step parents is not resolved. She states that presently there is little to no
17 communication between the parents concerning E's well-being which contributes to the
18 on-going child care conflicts. Mother commented in evidence that E is getting older and
19 noticing more and more.

20
21 320. Counsel on behalf of father submitted that the major issue in this regard is whether there
22 has been an impact on E as a result of these communication issues, either generally, or
23 in relation to her relationship with one, or other Party, or indeed both, and whether there
24 is a risk of this in the future. He pointed to what he described as a fundamental
25 breakdown in trust between the parties which was not assisted by father's perception



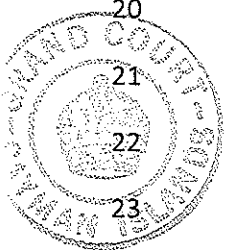
1 that mother was intruding during his activities undertaken with E and or criticizing his
2 parenting. He references mother's frequency of contact during E's visits with father and
3 what he describes as her failure to understand the impact of multiple contacts with E
4 during such periods. He points to father's care of E during the November 2018 period
5 when mother was away including the encouragement and support which he provided
6 while E was upset and crying because she was missing her mother and the assurances
7 provided by both father and ACP as to their intention to work on these communication
8 issues.

9
10 321. Counsel on behalf of mother submitted on this aspect that there is a potential risk of
11 emotional harm to E if she were to stay in Cayman with father. He submits that based
12 on the evidence, father exhibits a great deal of hostility towards mother and his
13 communications with mother are poor at best, and wholly disrespectful at worst. He
14 urges that as a result, the Court simply cannot be satisfied that father will properly
15 promote E's relationship with her mother if she is located thousands of miles away.

16
17 322. He also submits that when it was put to Ms. Orakwue by father's counsel that it would
18 be a much easier adjustment for E to stay in Cayman with extended family and friends
19 around her, she disagreed stating:

20 *'Not with the poor co-parenting. I don't think it would be beneficial to E due to the*
21 *poor communication and hostility by father towards mother. There would be no*
22 *surety that he will encourage E to have a positive/healthy relationship with her*
23 *mother.'*

24 323. In my view the singular factor which is plain from all of the evidence is the deep
25 resentment and bitterness of father which appears to have continued from the break up



1 with mother in 2012 to date. It appears that his simmering anger is just beneath the
2 surface and erupts at even the mildest of communication. By no means do I acquit mother
3 and JAE of communication faults sometimes unwittingly, sometimes deliberately on
4 JAEs' part, they have provoked the situation. However in large measure from what I
5 have seen and heard, the poor communication and co- parenting appears to be driven by
6 father's conduct and responses. I believe mother on this point and the messages which I
7 have outlined above appear to lend some support to her evidence.
8

9 324. In the six years since 2012 where this has continued unabated on father's part, it is
10 difficult to accept father's assurance that from the date of this hearing going forward that
11 not only is he going to but that he will be able to make a significant change on the
12 communication and co-parenting front. Counsel on behalf of mother's submission does
13 have some force that worryingly even at a time in November 2018, when father knew
14 that the proceedings were at an advanced stage and he should have been on his best
15 behavior, even then, he could not control his resentment towards mother.

16
17 325. ACP has done nothing in the past to assist the situation, taking a hands off approach and
18 indeed appears in some respect to take the same views as father when E is in their care,
19 by not adverting to the need for communication with mother on parenting issues. There
20 is nothing which she has done in the past which reassures me that she will have the
21 earnest desire and fortitude to assist in making the situation between father and mother
22 and JAE significantly better than it is, for E's sake.
23
24
25



1 326. The evidence which I have seen and heard leads me to conclude on a balance of
2 probabilities that the risk of possible emotional harm to E from the poor communicating
3 and co-parenting issues would be greater if she is resident on a longer term basis with
4 father than if she is resident with mother.

5
6 327. Counsel on behalf of mother put the balancing considerations in a different way which
7 is equally to the point when he submits that any risk of emotional harm posed to E as a
8 result of her separation from father is much less than the risk posed to E by separating
9 her from mother. Given all that I have seen and heard, I entirely agree.

10

11 **(F) HOW CAPABLE EACH OF HER PARENTS, AND ANY OTHER PERSON IN RELATION TO WHOM**
12 **THE COURT CONSIDERS THE QUESTION TO BE RELEVANT, IS OF MEETING HER NEEDS.**

13

14 **EMOTIONAL NEEDS**

15

16 328. Ms. Orakwue's view recorded in her first report is that both parents are capable of
17 meeting E's needs and that their parental capacities are significantly supported by the
18 involvement of their respective partners who have also played an integral role in E's
19 general upbringing and development.

20

21 329. In her addendum report she stated that the importance of maternal nurturing cannot be
22 overemphasized and that this is crucial to E's psychosocial development, will boost her
23 learning and academic performance, mental health, well-being and emotional security.
24 It is her view that should the relocation application be granted, E would continue to
25 receive the necessary nurturing from mother who will be a full time mother in Dubai.

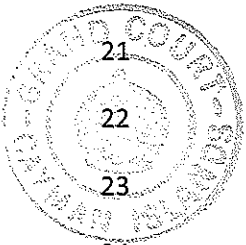


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1 330. Ms. Orakwue was asked whether if E remained in Cayman, what role would father's
2 new partner ACP play in terms of maternal nurturing. Her answer was that she believes
3 that ACP would be playing a maternal role in E's life but that she could not confidently
4 say that it would be the same role as her biological mother. She also said that she is
5 aware that ACP is a busy professional and is concerned about the quality time that she
6 would be able to provide child care assistance to E and also give her that adequate
7 nurturing in the absence of her biological mother.

8
9 331. Ms. Orakwue accepted Counsel's suggestion that paternal nurturing is equally important
10 but she did not agree that she had placed too much emphasis on maternal nurturing. She
11 said that the emphasis was placed on this in the event that E is not relocated with her
12 mother. ACP's evidence was that she may sometimes have to work long hours because
13 of the nature of her job, but that this is rarely until 10pm at night. Additionally, her
14 employer allows her to work from home so that she is able to take work home in the
15 evenings if necessary.

16
17 332. Counsel on behalf of father submits that JAE will be absent from home for work for
18 regular periods and that during this time he will be unable to assist mother which will
19 impact her ability to care for E. Further, mother will not have the assistance of any
20 extended family in Dubai to help her with child care. I bear in mind the supportive nature
21 of the friends in Dubai as described by both mother and JAE in the course of their
22 evidence. Counsel also submits that the presence of mother at home for 24 hours is really
23 only just the after school hours and that father and ACP have both reported a consistent
24 routine upon E's return from school, to the house, supervised by the helper, bathing,
25 changing, eating and doing homework. He submits that it is difficult to see what material
26 benefit there is for these activities to be conducted by mother rather than the helper at

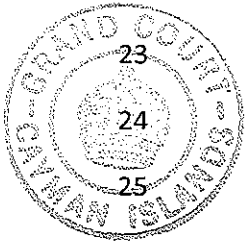


1 home. The present system, he submitted, appears to be working insofar as the provision
2 of E's basic needs.

3
4 333. I disagree with this attempt to minimize the importance of parental presence be it mother
5 or father. Ms. Orakwue speaks of the importance of maternal nurturing and the benefits
6 to a child of having her mother around. The after school time is an important time. My
7 view is that if there is to be change, there is benefit to E in having a parent present for
8 this after school period whether it be mother or father. In this case where father would
9 not be available, E's own mother would clearly be better placed than a third party to
10 assist E. I consider that it is of some significance that if relocated, E would have her
11 mother on a full time basis. This is a positive which would inure to the benefit of E.

12
13 334. Ms. Orakwue's view is that in terms of managing the emotional issues, mother would
14 be best placed to assist E in doing so. Additionally in terms of the time available, mother
15 in providing full time care, would be better placed to provide the necessary emotional
16 support to E during her transition and adjustment to assist to minimize any possible
17 effects of the changes.

18
19
20 335. Ms. Orakwue agreed that more regular contact with the parent from whom the child is
21 separated would assist in reducing separation anxiety. Her view is that such contact could
22 be both direct and indirect contact. Counsel suggested on behalf of father that the
23 separation anxiety caused to E by mother moving to Dubai could be mitigated even
24 further by more regular contact with mother. He asked the Court to note that for a number
25 of reasons it would be far easier for mother to travel to Cayman than for father to travel
26 to Dubai. These include the travel benefits available to mother and that mother would
27 until baby E starts school in just under two years have greater flexibility to travel because

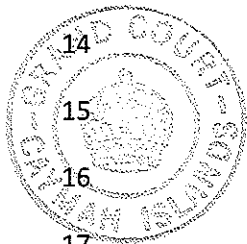


1 she would not be employed. Unlike father who would face both air fare at standard rather
2 than discounted prices as well as accommodation costs in Dubai, mother would have
3 family members in Cayman with whom she could stay. Given the costs and the level of
4 affordability to mother, mother would be able to visit more frequently than father. It is
5 said that realistically father would be only able to visit Dubai once a year. I accept that
6 in the short term, it would be far more convenient and affordable for mother to travel
7 than for father. When the frequency of travel by mother was put to Ms. Orakwue as a
8 better arrangement, she responded expressing concern as to the poor co-parenting.

9
10 336. Ms. Orakwue's evidence was that mother would be better at promoting the relationship
11 with the other parent. In light of my conclusions above on the communication issues, I
12 agree. I am not satisfied that father will actively encourage contact with mother, rather
13 than passively not interfere with or stop it. I do not believe his eleventh hour declarations.
14 I do not believe that he is earnest in seeking amicable relations with mother. Mother in
15 contrast appears to me to be truthful and earnest in seeking amicable relations with father
16 and appears to have time and again made efforts to reach out and have peaceful relations
17 for E's sake. I believe mother when she said that if E is relocated she will ensure that E
18 makes contact every day and that E's relatives and friends in Cayman are not left behind.

19
20 337. Given these matters which I have taken into account as set out above, my view is that
21 the parent who is more capable of meeting E's emotions needs in the adjustment period
22 and beyond is mother.

23
24 338. There is no medical evidence on the effect upon mother of a refusal of her application
25 but I do also consider that mother's capacity to meet E's needs will likely be diminished



1 if in effect she were to be forced to choose between her daughter, E and her new husband.
2 I believe that E would be adversely affected if mother were to be forced to leave her
3 behind and to be separated from her for extended periods because of trying to keep her
4 new marriage and family together.

5
6 339. Both parties are capable of meeting her educational needs.

7

8 **(G) THE RANGE OF POWERS AVAILABLE TO THE COURT UNDER THIS LAW IN THE PROCEEDINGS**
9 **IN QUESTION.**

10

11 340. Under this heading I have weighed the options in considering what is in E best interests
12 and considered the orders which could be made if the application is refused and she
13 remains in the Cayman Islands with father to ensure that contact orders are complied
14 with and that mother remains in a close relationship with E. This includes arrangements
15 for school holidays and leave for E's temporary removal from the Island. I have also
16 considered the orders which could be made if E is relocated from the Island to reside
17 with mother to ensure that she is returned periodically to the Island to be with father.

18

19 **HAGUE CONVENTION ON THE CIVIL ASPECTS OF INTERNATIONAL CHILD**
20 **ABDUCTION/ENFORCEMENT OF ORDERS**

21

22 341. In his Affidavit dated 5th September 2018⁵⁰ father raises the concern that a potential issue
23 is that an order of the Cayman Court is not automatically recognized in Dubai and that
24 he is concerned that if mother unilaterally stops contact with E, he would not have
25 recourse to that legal system. Further he says that if the relationship broke down between

⁵⁰ Paragraphs 43 and 44

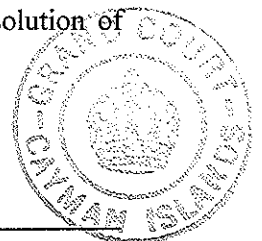
1 mother and JAE while in Dubai. JAE could as a father potentially block the removal of
2 E. from that jurisdiction. He said that he also understands that another potential issue is
3 that an order of Cayman court is not automatically recognized in Dubai and if mother
4 stops contact he will have no recourse to the Court in Dubai He is also concerned that if
5 the relationship between the mother and JAE breaks down, JAE could block mother's
6 departure with E.

7
8 342. On this issue JAE stated in evidence that his parents live in Cayman and that there would
9 be no reason for him not to return periodically to Cayman with E and baby E in order to
10 visit them. He says that father has no reason for concern about not getting to see E.

11
12 343. No expert evidence was provided on this point and indeed neither Counsel raised the
13 issue in the course of the hearing. Given that father had adverted to it in his Affidavit, I
14 invited Counsel to consider this point at the end of the hearing. From the submissions
15 provided, both Counsel accept that the United Arab Emirates (Dubai) is not a signatory
16 to the Hague Convention on the Civil Aspects of International Child Abduction. Counsel
17 on behalf of Father has referred me to cases in the United Kingdom which are similar in
18 circumstances in that they have dealt with the travel of children to Dubai and the
19 differing legal systems. In particular he has drawn my attention to the cases of *In re J (a*
20 *Child) (Custody Rights: Jurisdiction)*⁵¹ and *S v. S*⁵². He has also provided a helpful
21 legal overview entitled "Family Law in the United Arab Emirates: Overview" by Diana
22 Hamade Alghurair, International Advocate Legal Services (IALS) which discusses the
23 Sharia based legal system, its applicability to non-Emiratis persons unless they choose
24 their own home country's law, the guardianship rights of a father on dissolution of

⁵¹ [2006] 1 AC 80

⁵² [2014] WL 4636870



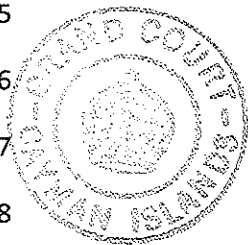
1 marriage, the focus by a judge on the welfare of a child in exercising a discretion in
2 respect of a matter involving the custody of a child and the circumstances under which
3 leave to remove a child out of the jurisdiction may be granted.
4

5 344. In submissions Counsel on father's behalf submitted that:

6 "41. *It is submitted that should the application be refused, and E remain in the*
7 *Cayman Islands habitually, there are a number of safeguards to ensure that*
8 *an order for contact is complied with. The Cayman Islands is a signatory of*
9 *the Convention, and further has implemented a comprehensive Practice*
10 *Direction to ensure that applications for wrongfully removed children can*
11 *be dealt with swiftly and efficiently;*

12 42. *In the event that father did wrongfully remove E, while she was ordinarily*
13 *resident by order of the Grand Court in Dubai, swift and effective recourse*
14 *could be had through the Grand Court, ensuring that she was returned to*
15 *her habitual residence. The Applicants would have immediate recourse*
16 *through the courts of the Cayman Islands, with an order made in the same*
17 *jurisdiction. This clearly protects their position in relation to enforcement*
18 *of any such order,*

19
20 43. *By contrast, the United Arab Emirates, including Dubai, have a Sharia Law*
21 *system governing family matters. The court has not been furnished with any*
22 *expert opinion on the enforceability of an order of this honourable Court in*
23 *relation to ensuring that, should there be a breach of the court order made*



1 *in this jurisdiction, that the Respondent Father would have similar swift*
2 *recourse to enforcement or indeed any recourse to enforcement.*

3
4 44. *The case of Re. JS does provide a useful summary of a detailed expert report*
5 *in the UK case with similar issues, highlighting the particular difficulties in*
6 *enforcement. This can take months, it would seem with no result a foregone*
7 *conclusion. It is submitted that, in the case of some problem with*
8 *enforcement, or a refusal by the Applicant to abide by the order of this*
9 *honourable court, for whatever reason, E would potentially suffer far more*
10 *delay, and potentially harm to her familial relationships than in the case of*
11 *enforcement of an order in this jurisdiction.*

12
13 45. *The court should tread very carefully, it is respectfully submitted, when*
14 *considering the issue of potential breach. Both parties assure the court*
15 *solemnly that they will abide by any order the court grants, and to date there*
16 *have been few serious issues with this. However, should there be any change*
17 *in the position in the future, an order to return E to this jurisdiction due to*
18 *breach would, it would seem, clearly be more efficient and cause far less*
19 *disruption to her development and relationships than seeking to enforce in*
20 *the UAE.”*



21
22 345. Counsel on mother’s behalf did not take issue with the overview of the UAE legal system
23 referenced above. He submitted that:-
24

1 “77. In short, the United Arab Emirates is not a signatory to the Hague
2 Convention on the Civil Aspects of International Child Abduction 1980.
3 However, the UAE does have numerous bilateral treaties with other
4 countries, relating to extradition and in many instances judicial co-
5 operation in both criminal and civil matters. In some cases there is provision
6 for mutual recognition and enforcement of their respective judicial
7 instruments which can extend to family judgments.

8
9 78. It should be noted that this issue was not raised by F or his counsel in the
10 skeleton argument filed prior to the Trial nor was it put to M or father
11 during cross-examination. It is respectfully submitted that this is not in fact
12 a source of great concern for F. Nor should it be. It is equally not a factor
13 which should greatly trouble the Court in this matter.

14
15 79. As has been stated in oral and written evidence, Mr. JAE is Caymanian and
16 his family continue to reside in Cayman. Plainly, he will want to be able to
17 return to Cayman in the future for visits and possibly to live here again one
18 day. He would clearly not wish to do anything that would jeopardise his
19 ability to return to the jurisdiction.

20
21 80. The Court can add penal notices to any contact orders if necessary so that
22 if M were to fail to comply with the existing court orders, it would present
23 a substantial impediment upon their ability to return to this jurisdiction
24 unless they are prepared to face proceedings for contempt of Court. It is



1 86. *H acknowledged in his own affidavit evidence, 'I appreciate that Dubai has*
2 *many ex-pats' and the Court heard oral evidence from M and Mr. JAE*
3 *about the many ex pat families that they have met in Dubai already. In*
4 *reality, there are many ex pat children who have been relocated to Dubai*
5 *in similar situations to this. Indeed there are many cases which have come*
6 *before the English courts dealing with relocation to UAE. Being a non-*
7 *signatory country to the Hague Convention should not greatly influence the*
8 *Court's final decision on relocation in this case.'*
9

10 346. While some expert evidence may have been helpful, in the absence of such evidence on
11 this point, the significant feature for consideration is the agreed fact that UAE is a non-
12 convention country. Father's concerns are as to difficulties with enforcement of any
13 order made by this Court should the Applicant refuse to abide by the orders made and
14 the potential for E to suffer far more delay and harm to family relationships than in the
15 case of an enforcement of an order in this jurisdiction.
16

17 347. In the case of *IB v. JE*⁵³, Williams J in the context of a temporary removal application
18 cited with approval the guidance provided in the English case of *Re R (A Child)*.⁵⁴ In
19 that case Patten LJ stated that as per the judgement of the Court in *Re K*, applications for
20 temporary removal to a non-Convention country will inevitably involve consideration
21 of three related elements:

- 22 "a) *the magnitude of the risk of breach of the order if permission is*
23 *given;*
24 b) *the magnitude of the consequence of breach if it occurs; and*



⁵³ Cause no Fam 237 of 2013 and 247 of 2014 , Judgment dated 11th September 2017

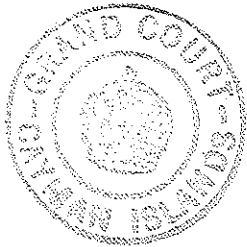
⁵⁴ [2013] EWCA Civ. 1115

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c) the level of security that may be achieved by building in to the arrangements all of the available safeguards.”⁵⁵

4 348. The Court also stated:

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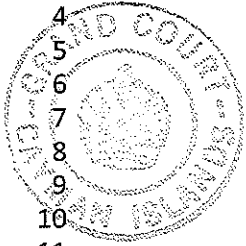
“23. The overriding consideration for the Court in deciding whether to allow a parent to take a child to a non-Hague Convention country is whether the making of that order would be in the best interests of the child. Where (as in most cases) there is some risk of abduction and an obvious detriment to the child if that risk were to materialise, the Court has to be positively satisfied that the advantages to the child of her visiting that country outweigh the risks to her welfare which the visit will entail. This will therefore routinely involve the Court in investigating what safeguards can be put in place to minimise the risk of retention and to secure the child’s return if that transpires. Those safeguards should be capable of having a real and tangible effect in the jurisdiction in which they are to operate and be capable of being easily accessed by the UK-based parent. Although, in common with Black LJ in *Re M*, we do not say that no application of this category can proceed in the absence of expert evidence, we consider that there is a need in most cases for the effectiveness of any suggested safeguard to be established by competent and complete expert evidence which deals specifically and in detail with that issue. If in doubt the Court should err on the side of caution and refuse to make the order. If the judge decides to proceed in the absence of expert evidence, then very clear reasons are required to justify such a course.”

26 349. In the case of *S v. S*⁵⁶, Wood J. said this:

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“I have been referred to a number of cases. They are *Re A* (Security for return to jurisdiction — Note) [1999] 2 FLR 1 ; *Re K* (Removal from jurisdiction — Practice) [1999] 2 FLR 1084 ; *Re L* (Removal from jurisdiction — Holiday) [2001] 1 FLR 241 ; *Re S and O* (Temporary removal from jurisdiction) [2009] Family Law 114 ; *DS v. RS* [2009] EWHC 1594 Fam; [2010] 1 FLR 576 and finally *Re R* (a child) [2013] EWCA Civ 1115 . In the majority, if not all, of those cases the court clearly considered there to be no risk of non-return, yet nevertheless sought protective measures, for example the obtaining of a bond, the proffering of undertakings to the court by a parent wishing to go on such a holiday, supported in appropriate cases by the taking of solemn oaths on the holy book binding on the conscience of the parent – sometimes in the presence of, for example in the case of a Muslim, an Imam or a priest for a Hindu. Not unnaturally, the authorities also require the provision of extensive information to the left behind parent concerning plans for the holiday, the duration of it, what accommodation there is, telephone numbers, etc.

⁵⁵ Paragraph 25
⁵⁶ supra



1 *The last of the above-named cases sets out in clear terms the Court of Appeal's*
2 *recently expressed summary of the proper approach to these cases. I incorporate by*
3 *reference only paragraphs 23 to 26 of the judgment of the Court of Appeal given by*
4 *Patten LJ. It is clear that the judge at first instance in that case had determined that*
5 *there was some risk of non-return, though not a great risk, yet the risk nevertheless*
6 *required the imposition of terms. The approach which this court should adopt seems*
7 *to me to be spelled out in paragraphs 25 and 26. I further remind myself that these*
8 *applications should be approached applying also Section 1(1) the welfare principle,*
9 *and Section 1(3) the Welfare Check List of the Act, and should bear in mind also the*
10 *considerations of Article 8 European Convention for the Protection of Human*
11 *Rights and Fundamental Freedoms 1950, substantially incorporated into domestic*
12 *law. I remind myself, when considering the conflict of those interests (for there will*
13 *be many in play), it is JS' interests under Article 8, consistent with European and*
14 *domestic law, which have primacy."*
15

16 350. On this aspect of the matter as in all aspects of this case I bear in mind that E's welfare
17 is my paramount consideration. I have regard to the respective welfare considerations as
18 outlined above and the general principles set out in the Law as well as the guidance in
19 the cases cited on this aspect.

20
21 351. As to the first question, should E. be permitted to relocate with mother with orders for E
22 to be returned at intervals in order to have direct contact with father is there a risk that
23 mother and JAE will not comply? If there is such a risk, what is the magnitude of that
24 risk? I considered this carefully. I note firstly that there is no history of non-compliance
25 by mother with any of the orders of the Court. E is said to have travelled to Guatemala
26 to visit her maternal relatives and returned without difficulty. Secondly father himself
27 gave evidence that he does not believe that mother will intentionally stop him from
28 contacting E. Thirdly from all I have seen and the extensive evidence which I have heard
29 from mother and JAE, I do not for one moment believe that there is a risk of non-
30 compliance by mother and JAE much less a risk of any recognisable magnitude. As best
31 I can looking at the past, the present and the likelihood of a future occurrence I think that
32 any such risk is non-existent.

1 352. On the second question, if E is not returned periodically to Cayman in compliance with
2 any order made, such a breach would undoubtedly be of significant magnitude. E would
3 be deprived of regular direct contact with her father. Similarly if she is not able to make
4 indirect contact with father. At the very least on the limited material available from
5 father, enforcement would be delayed.

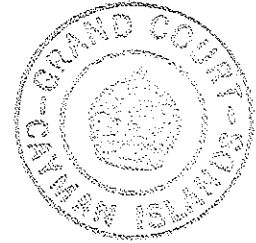
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7 353. On the third question, as to the level of security that may be achieved by building into
8 the arrangements all of the available safeguards, the guidance considered appears to
9 suggest that even where there is believed to be no risk, as in this case, the Court should
10 still in light of the magnitude of the harm which may be caused put in place protective
11 measures or safeguards.

12
13 354. I have approached the matter in the following way. I have not sought more extensive
14 expert material on UAE Law as in my view given the ties to this jurisdiction of mother
15 and JAE in particular, I believe that if relocation is permitted, effective protective
16 measures such as the attachment of penal notices to any order and the provision of
17 appropriate security can be put in place in this jurisdiction which would sufficiently
18 serve to enforce compliance and protect E's interests should relocation be permitted.

19
20 355. I am not here dealing with a Dubai national wishing to return with E to their country of
21 origin. Step-father JAE is a Caymanian national, with strong ties to the Cayman Islands.
22 His family remains here and he has property here, a home which is now rented. He will
23 need to return periodically to visit his mother and other family and friends. Mother has
24 strong ties to these Islands which has been her permanent home since 2007. Importantly
25 also JAE has a job which requires him to cross international borders with some
26 frequency. He will be conscious I am sure of the possibilities for impact on his treasured



1 career should he seek to thwart or aid and abet, procure or cause noncompliance with an
2 Order of this Court.



3
4 **CONCLUSIONS**

5
6 356. I have considered all the factors and looked at Ms. Orakwue's reports with a critical eye
7 conscious of the numerous complaints which have been made against her findings. I
8 found that her findings are in large measure supported by other evidence in the case.
9 There are some inadequacies but none that I consider so serious as would cause me to
10 say that reliance cannot be placed on her professionalism and on her recommendations.
11 I have also stepped back to form my own conclusions on the available evidence.

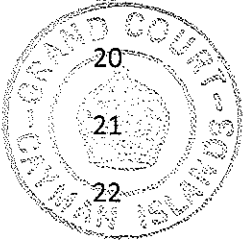
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13 357. I found both father and mother deeply sincere and genuine in their love for E. These
14 proceedings have been difficult for both of them and this was evident throughout their
15 lengthy tearful testimony at the hearing. There are strong arguments advanced by able
16 and experienced counsel on both sides. I have given their arguments and the evidence
17 careful and anxious consideration as I am very much aware of the importance of the
18 outcome of this case to E. Either way, the outcome will mean some significant change
19 for her. I must consider what is in her best interests. Some factors such as meeting her
20 physical needs, finance and housing and education are in my view relatively neutral or
21 even. Factors such as the stability of her life here in Cayman and her extended family
22 and friends would as stated above point towards refusing the application.

23
24 358. Counsel on behalf of father urges that if E remains in Cayman, in the absence of her
25 mother her needs will continue to be met, and she will continue to flourish. I cannot say
26 that this will be the case. E needs both her parents and to maintain meaningful contact

1 with both of them. When I consider which parent will do the utmost to facilitate that
2 meaningful contact, my unhesitating view from all I have seen and heard is mother.

3
4 When I consider which parent will best meet E's emotional needs, will prioritize E's
5 interests above their own anger and feelings, and work at a co-parenting relationship
6 long distance, my unhesitating view from all I have seen and heard is mother. When I
7 consider with which parent there is a stronger sense of absence of volatility, my
8 unhesitating view is mother.

9
10 359. Father should in no way consider that my view is based on any feelings as to the
11 unproven allegations against him or even as to the details of the allegation which he has
12 admitted. He should not think that I am seeking to punish or blame him for anything.
13 My primary concern is E and her best interests. I hope that I have made it plain that my
14 concern is as to his apparent volatility and the risk that this may expose E to some harm.
15 On the other issues, I am doing no more than taking from the evidence which I have
16 accepted (some of which he himself has accepted to be accurate), what I regard as a
17 pragmatic view as to the communication and co-parenting issues which have been drawn
18 to my attention in this case. I had the opportunity to observe father carefully as he gave
19 his evidence. I did not believe him as to his intention to work at communication in the
20 future and think it would be fool hardy of me in considering what is in E's best interests
21 to accept without question that what he has not done in six years since the divorce in
22 2012, he will do now simply because he says, that this hearing is a wakeup call for him.
23 This is not based on a single message or call but on mother's descriptive evidence which
24 I accept as to how difficult he has been and the real evidence of all the messages
25 produced. All the evidence paints a picture of a continuing course of conduct on his part
26 spanning the period from the divorce in 2012 through to December 2018. From father's

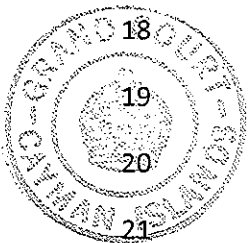


1 past history in the area of communication, I am not confident that he will do all he can
2 to facilitate contact with mother. He will mean well but will likely become frustrated
3 with constant communication. If history assists in showing what the future might be like,
4 his history does show that it would be unsafe to place reliance on his statements of intent.
5 I do not think that it would be in the best interests of E to take such a risk.
6

7 360. The second factor which tips the balance for me is the fact that mother will be available
8 on a full time basis for E during the school time. This should not be taken as not
9 recognizing the commendable approach of ACP and father in balancing their
10 professional and home life. Counsel submitted that the presence of a full time mother
11 is really only for the short after school period before E goes to bed as during most of the
12 day she will be at school. In my view the period after school is an important time and
13 where E will need additional emotional support, her mother rather than a nanny will be
14 available to provide this.

15 361. In considering where the balance lies in this matter, I considered with due caution
16 whether the fact that the UAE is a non-convention country and the possible delays in
17 enforcement referenced by father's Counsel is a matter which moves the balance in
18 favour of refusal of mother's application for relocation. Given my assessment as to the
19 absence of the risk of breaches of orders if permission is given, coupled with my view
20 that an appropriate level of security may be achieved by building safeguards into the
21 arrangements, I did not consider that this factor tilted the balance.
22

23 362. Overall, looking at all the evidence and applying the paramountcy principle, I conclude
24 that in E's best interests, the balance is in favour of granting mother's application for
25 relocation of E to Dubai. E will be part of mother's new family unit, will have her
26



1 mother' s full time support and I would anticipate from her age and from what has been
2 described of her, shy but once comfortable will shine, that that she will soon make new
3 friends at school and in her new community. In another year or so, she would have been
4 starting a new school if she remained in Cayman. According to father, this may be to
5 high school where some of her cousins attend. Then there would be college to consider.
6 Change is inevitable. Her life and circle of friends will not stay the same.

7
8 363. When should this begin? The school year is already advanced. I am concerned about a
9 move by E in the middle of the school year. Mother indicated that a place would be open
10 for E at the beginning of the Easter term in April. I did note some hesitancy on her part
11 about this when she gave her evidence. I think that she quite rightly recognizes that it
12 would be in E's best interest for her to complete the school year and not be disrupted.

13
14 366. Counsel on behalf of father submitted that:

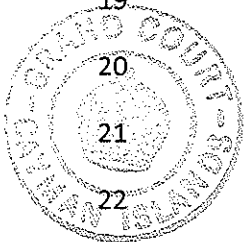
15 e. *AM accepted in cross examination that removal of E immediately*
16 *would be very likely to significantly negatively affect her progress*
17 *this academic year. Father further expressed concern that any move*
18 *to Dubai could severely derail her progress, particularly if the move*
19 *was to take place close to the commencement of the academic year,*
20 *when jetlag as well as culture shock and separation anxiety may*
21 *affect her education. These extra elements appear not to have been*
22 *considered in the Welfare Report.*



1 364. In part, this submission accords with my own view. There would be two benefits to a
2 delay until the start of the August /September 2019 term. The more significant is that
3 this would allow time for E to be prepared for the changes so that any adverse impact or
4 anxiety on her part can be minimized. Further if E travels to Dubai during the latter half
5 of the summer in advance of the school term, she would have the opportunity to
6 gradually adjust to her new home and community and make friends with her neighbors
7 before having to adjust to her new school. I believe that in E's best interest this would
8 be the better course.

9
10 365. The second benefit is that during the period through to August, there would be the
11 opportunity for both sides to avail themselves of the counselling recommended by Ms.
12 Orakwue in her reports if they choose to do so.

13
14 366. I would therefore grant mother's application and order that E be permitted to reside with
15 mother in Dubai during each school year commencing with the school term beginning
16 in August 2019. She should return to father for each Christmas, alternative birthdays to
17 coincide with the Easter breaks and summer breaks for a minimum of six weeks. The
18 seventh week should be alternated on an annual basis between travel with Father's
19 family and travel to be with mother's family in Guatemala. The parties may agree any
20 additional contact or variation to these terms by agreement between themselves. Mother
21 is to prepare and agree a schedule with father for unlimited indirect contact with E. Penal
22 notices are to attach to this Order and security is to be provided. I have in mind security
23 on property which mother and JAE have in this jurisdiction or similar but will invite
24 further submissions on this aspect.
25



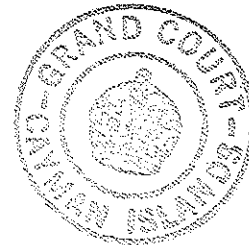
1 367. I am confident from what I have seen and heard of both mother and father and their love
2 for E that they will each in their own way do their best to assist her in this interim
3 transition period. Additionally, while this can only be a suggestion, I would very much
4 hope that father considers travelling either with E in the summer as she makes this
5 transition so that he assists in settling her in or if that is not possible because of his work
6 commitments that he would travel to see her during the mid-term break in October before
7 the Christmas holidays. Mother and JAE indicated in their evidence that he would be
8 welcome to visit at any time and he may wish to take advantage of the invitation
9 whenever he is able to do so. He would be able to visit the school and other relevant
10 areas and see for himself the accommodations and circumstances.

11
12 368. I will ask Counsel to prepare the order arising from this decision.

13

14 **Dated this the 22nd day of March 2019**

15

15

16 **Honourable Justice Cheryll Richards Q.C.**
17 **Judge of the Grand Court**