

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

3 CAUSE NO. FAM 88 OF 2013  
4  
5

6 BETWEEN:  
7

8 DEPARTMENT OF CHILDREN AND FAMILY SERVICES

9 APPLICANT

10 AND

11 SH

12  
13 1<sup>st</sup> RESPONDENT  
14

15 AND

16 WH

17 (by Dr. Linda D. McField, his Guardian ad Litem)

18 2<sup>nd</sup> RESPONDENT  
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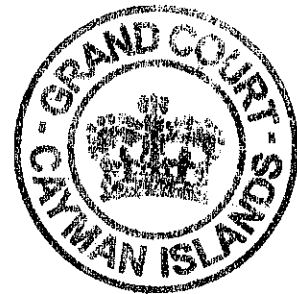
21 **Appearances:** Ms. Joan Mattis of the Attorney General's Chambers for the Applicant  
22 Mr. Michael Snape of Priestleys for the 1<sup>st</sup> Respondent  
23 Mr. David Holland of Samson & McGrath for the 2<sup>nd</sup> Respondent  
24

25 **Before:** Hon. Justice Richard Williams  
26

27 **Heard:** 6<sup>th</sup> & 7<sup>th</sup> May 2014  
28

29 **Judgment delivered:** 7<sup>th</sup> May 2014  
30

31 **Transcript provided:** 12<sup>th</sup> May 2014  
32  
33



34 **HEADNOTE**  
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36 *Children Law (2012 Revision) ("the Law") - Duration of interim care orders -*  
37 *Unopposed care order - Good practice for parties when preparing for a care/supervision*  
38 *order hearing - Duty of Court to investigate the facts prior to making an unopposed care*  
39 *order - Requirement of Summary Court to give reasons for orders made in child public*

1 *law proceedings - Application under section 35(6)(b) for leave to remove a child in care*  
2 *from the Cayman Islands to attend a therapeutic school in Florida, the United States of*  
3 *America - Duty of Department of Children and Family Services to promote contact*  
4 *between a child in their care and the child's parents pursuant to section 36 of the Law .*  
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6 **TRANSCRIPT OF EX TEMPORE JUDGMENT**

7 **Introduction**

8 1. I am grateful to the parties for this afternoon submitting the written “Agreed  
Statement of Facts.” I am now in a position to make my decision. Although the  
order is not opposed, it is necessary for the Court to give the reasons for its  
decision. I therefore feel it appropriate to now deliver an Ex Tempore Ruling, the  
parties will thereby leave today’s hearing with an understanding as to why the  
orders have been made by me. Having regard to the nature of this case, a  
transcript of the Ex Tempore Ruling will be provided to the parties. I trust that the  
parties will appreciate that this may not read as neatly as a formal reserved written  
ruling.



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18 **The Parties and the Applications**

19 2. The matter I have before me is an application made by the Department of  
20 Children and Family Services (“the Department”) for a care order under section  
21 33 of the Law relating to a male child who was born on 8<sup>th</sup> April 2003, and so is  
22 now 11 years old. I shall refer to him as WH in this judgment.

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3. The Court has not been asked to make findings on any disputed issues of fact. No party wishes to give oral evidence, submitting that the documentary evidence is sufficient. Accordingly, I am giving this judgment without the case having been fully opened to me, without having heard any evidence, but having read all of the papers in the Court bundle.

4. WH's biological parents were divorced prior to his birth in February 2003. The father has never met WH, nor has he played any role in WH's life. The father has not sought to play any part in these proceedings. WH has a sister, K, who is aged 13 and who resides with the mother.

**The Parties' Positions**

5. On the first day of this hearing, the parties informed the Court that the Department's application for a care order and, if a care order was made, their application under section 35(6)(b) of the Law for leave to remove WH to live out of the Cayman Islands in the United States for the purpose of attending DVC therapeutic school, was supported by the Guardian ad litem and was unopposed by his mother, SH. I shall refer to SH as the mother in this judgment.

**Good Practice for Parties in Preparation for a Child Public Law Hearing**

6. Before I can make any order, there must be before me a factual basis for consideration. The evidence before me is in documentary form. If there are facts



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in dispute which are relevant to the determination as to whether the threshold criteria has been met, or to what order should be made, the Court would in such circumstances need to hear oral evidence to make findings of fact. It is therefore the responsibility of the Department to establish any facts on the balance of probabilities.

7. When care proceedings are before the Court it is good practice for a 'threshold statement' to be prepared and filed prior to the interim or final hearing by the legal representative for the Department. This brief statement is a written outline of the facts upon which the Department relies to satisfy the threshold criteria under section 33(2). From the content of the statement, the Court should be able to adduce the essential nature of the problems that have led to the Department issuing the proceedings. Support for the adoption of this practice is given in *Re G (Care Proceedings: Threshold Conditions)* [2001] 2 FLR 1111 at para 12 where Hale J. states:

*"The local authority are not required to plead their case at the outset or indeed at all. It is now the practice in many courts to require the local authority before the final hearing to make a clear statement of the facts they wish the court to find and the basis upon which they allege that the threshold is crossed. In my view this should be routine, so that the parents can know the case they have to meet and have a fair opportunity to meet it."*



1 8. It is also good practice for all of the attorneys, especially in unopposed  
2 proceedings, to consult and present the Court with a schedule of the agreed or  
3 admitted facts. It is also helpful to set out any disputed facts. It is the  
4 responsibility of the attorneys to agree, and failing agreement the Court to rule on,  
5 the issues that have to be resolved. If the parties agree that the threshold criteria is  
6 met on the agreed facts, the parties should file a joint threshold statement setting  
7 out why that is.

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9 9. Practice Direction No. 11/2014 "Court Bundles in Family Proceedings in the  
10 Family Division of the Grand Court" issued on 2<sup>nd</sup> May 2014 provides at  
11 paragraph 4.2 (b) and (c) that in all cases the bundle should contain a statement of  
12 issues to be determined at the hearing and each party's position statement.  
13 Paragraph 4.5 of the Practice Direction provides:

14 *"The summary of the background, statement of issues, chronology*  
15 *and reading list shall in the case of a final hearing, and shall so*  
16 *far as practicable in the case of any other hearing, each consist of*  
17 *a single document in a form agreed by all parties. Where the*  
18 *parties disagree as to the content the fact of their disagreement*  
19 *and their differing contentions shall be set out at the appropriate*  
20 *places in the document."*

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22 10. At the outset of this hearing, it was unclear to the Court whether there was  
23 agreement between the parties as to the factual substratum for making an order  
24 and on what basis it may be agreed that the threshold criteria had been met. I

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accept that, since the mother’s indication that she no longer opposed the orders sought was only made shortly before the hearing, the parties would not have had sufficient time to put their mind to the basis upon which an agreed approach might be taken. Therefore, I invited the parties to consider carrying out the exercise commended by me in the above paragraphs. I am grateful to the hard work put in by all Counsel and their clients in preparing the Agreed Statement of Facts placed before the Court on this second afternoon of the hearing.

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11. Although requiring the parties to carry out such an exercise, I am fully aware that the benefit of such documents is restricted to setting out what the parties’ positions are and it ultimately is a matter for the Court to determine what facts it will base its decision on and whether the threshold criteria has been met. It is a matter for the Court if it decides whether disputed facts should be considered and therefore require there to be oral evidence. It will be a matter for the Court as to what order it should make.

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12. I am conscious of the recent decision of Mrs. Justice Pauffley in *Re NL (A Child) (Appeal: Interim Care Order: Facts and Reasons)* [2014] EWHC 270 (Fam). This was an appeal from a decision of the Justices in a Family Proceedings Court (previously known as Magistrate’s Courts) to grant an interim care order. In that case the bench was provided, at their request, with a draft set of facts and reasons for making the order which had been prepared by the local authority’s counsel.

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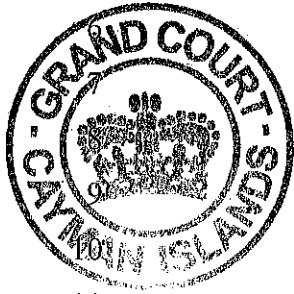
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1 The draft was amended at Court by the applicant's counsel. Copies were provided  
2 to the other parties outside of court on the day of the hearing. It appeared that the  
3 Court did not expect the document to be provided to the other parties prior to the  
4 hearing. The Learned Judge felt that this approach was highly inappropriate  
5 stating that:



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*“It is difficult to view the Justices as having been independent and impartial if, as happened here, they simply adopted the local authority's analysis of what their findings and reasons might comprise.... Just because there may be tacit acceptance on the part of many professionals within the family justice system that the practice which operated here exists, that does not mean it is right. It is patently wrong, must stop at once and never happen again.”*

14 13. As a result of this case in matters now coming before Justices in the Family  
15 Proceedings Courts in England and Wales, the local authority or any party in the  
16 proceedings are not to be involved in drafting Justices' written reasons. It matters  
17 not whether the orders are agreed or not opposed. However, the practice of  
18 inviting parties to submit their own position statement in which they set out an  
19 analysis of the facts, as well as their contentions in relation to the resulting orders,  
20 is still appropriate. Parties can still provide written details of the agreed issues as  
21 well as those which are set out in a dispute. Of course, in the Cayman Islands,  
22 public law applications are dealt with by professional judicial officers in both the  
23 Grand and Summary Courts. I am of the view that it is appropriate and good  
24 practice for the parties to provide threshold statements and schedules of agreed



and disputed factual issues. However, it is right that any order made by me today must be based on the reasons of the Court and not by a simple adaption of any reasons proffered at a hearing in any form by the parties.

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5 **The Court's Duty to Investigate**

6 14. The investigative duty of the Court is set out in section 33(2) of the Law which  
7 reads:

8 *"A court may only make a care order or supervision order if it is*  
9 *satisfied –*

- 10 (a) *that the child concerned is suffering, or is likely to suffer,*  
11 *significant harm; and*  
12 (b) *that harm, or likelihood of harm, is attributable to-*  
13 (i) *the care given to the child, or likely to be given to him if*  
14 *the order were not made, not being what it would be*  
15 *reasonable to expect the parent to give to him; or*  
16 (ii) *the child's being beyond parental control."*  
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19 15. As stated by Wall J. in *Re G (A minor) (Care Proceedings)* [1994] 2 FLR 69  
20 this section means that the Court has to be satisfied by evidence that the  
21 significant harm suffered by the relevant child is attributable to the care, or  
22 absence of care, given to the child by the parent(s) against whom the order is  
23 sought. In this context the phrase "*attributable*" should be given its normal  
24 meaning and does not mean merely capable of being attributed to the parent. Wall  
25 J. rightly cautions that:



“Care orders are at the limit of the Court’s powers. They are Draconian orders to which resort is only made when no alternative family arrangements for a child can properly be put in place.”

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Therefore, despite the parties’ agreement, I still have a duty to satisfy myself that the criteria for making a care order are met.

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16. The nature of the Court’s investigation will depend on the facts of the particular case before it. With this in mind Wall J. stated:

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“If, for example, the parties agreed not only that a care order is appropriate, but are also agreed on the factual substratum underlying the fulfilment of a threshold criteria, then the investigation may properly be limited to a perusal of documentation and approval of an agreed order (see *Devon County Council v S* [1992] 2 FLR 244). In that case there was a finding of fact by justices that the child, who was the subject of the agreed care order, had been sexually abused by the father, and agreement had been reached between the parties on every aspect of the child’s management. Thorpe J was in these circumstances critical of justices who investigated the case unnecessarily, and interfered with a proposed agreed order without alerting the parties to their intention so to do. He held that since the terms of the proposed order were agreed between the parties there was no issue in dispute for the justices to determine. At [1992] 2 FLR 247 he says this:

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“First, and foremost, whilst undoubtedly there is an overriding duty in the court to investigate proposals advanced by the parties,



4 *even where those proposals are fully agreed, the profundity of that*  
5 *investigation must reflect the reality that there is a consensus*  
6 *amongst the parties to the litigation particularly when the parties*  
7 *include a public authority with statutory duties and the Guardian*  
8 *ad litem on behalf of the child."*

7 17. The approach of Thorpe J., which was adopted by Wall J., makes it clear that the  
8 Court has an overriding duty, even if agreement is reached, to investigate the  
9 material placed before it before making a care order under section 33. The making  
10 of such orders is not a rubber stamping exercise.

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12 **Background**

13 18. This matter is not one of those cases in which a child was living with and being  
14 cared for by the parent(s) at the time the proceedings were commenced. In fact,  
15 the child has been placed away from the mother for the majority of his life, save  
16 for a few intervening relatively short periods of time, under a series of fit person  
17 orders made in the Summary Court pursuant to section 31(1)(A) of the Juvenile  
18 Law 1990. I am informed that, following the enacting of the Children Law in July  
19 2012, the Department has been endeavoring to carry out an exercise to bring  
20 orders made under the old legislation in line with the new public law orders.  
21 Importantly, this is one of those very cases. These are not care proceedings in  
22 which the Department is seeking to remove the child from the parent's care, it is



seeking an extension of the status quo, namely confirmation that it is to continue to be responsible for the child's care.

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4 19. To put the current proceedings into context, it is necessary to outline the  
5 procedural background. To her credit, the mother successfully completed a young  
6 parents program in 2001 after K was born. Regrettably, WH's father left the  
7 country in April 2003 when the mother was seven months pregnant with WH and  
8 already trying to cope with looking after K. Things did not get any better for the  
9 mother because, in September 2004, her apartment was destroyed in Hurricane  
10 Ivan. The mother was evicted from the shelter and as a consequence requested the  
11 Department's assistance by taking the two children into their care as her  
12 temporary living arrangements were not safe for the children. Regrettably, due to  
13 resource issues at that difficult time, this appropriate request for placement was  
14 initially denied. However, in October 2004, when again seeking their assistance,  
15 the Department agreed to take the children into their care whilst the mother  
16 sought gainful employment and located a safe place to live. An application was  
17 made for a fit person order and for a warrant for detention of both of the children  
18 in a place of safety. On 5<sup>th</sup> November 2004 a fit person order was made in favour  
19 of Mr. and Mrs. E, foster parents. This was the first order made in relation to WH.

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21 20. By April 2005 the mother had found employment and the children started to stay  
22 with her on a trial basis in July 2005. In August, after the mother had secured a



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helper, K returned to live with her, but as WH was more testing it was agreed that he would remain with the foster parents until the mother was able to make a long-term decision. The parties agree that there were "*variances in respect of the rules and discipline in each home and this became challenging for (WH).*"<sup>1</sup>

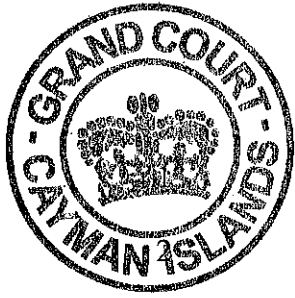
21. Eventually, on 11<sup>th</sup> January 2006 WH returned to his mother's care. On 2<sup>nd</sup> February 2006 the fit person order was revoked and a supervision order was made in respect of both children, the supervisor being a social worker, Ms. Lucille Bodden.

22. Both of the children were then cared by the mother for almost two and half years. However, in June 2008 the social worker received allegations of possible sexual abuse permitted by or at the hands of the mother. A warrant was obtained and the children were removed from her care and placed with a maternal aunt. On 4<sup>th</sup> July 2008 fit person orders were obtained in the Summary Court and the children were placed with different aunts pending further investigation. The mother had been accused of lewd or inappropriate play with WH. Due to lack of evidence, no criminal proceedings were pursued. At paragraph 21 of the agreed schedule of issues the Department makes clear that it does not seek findings concerning these allegations contending that they are not required for the making of a care order.

Although I have the discretion, as set out in *Re G (A Minor) (Care Proceedings)*,

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<sup>1</sup> Paragraph 6 of the Agreed Facts document.



to investigate these issues if I feel it necessary, I am satisfied that I need not in this case.

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4 23. It is agreed by the parties that WH's fit person order to his aunt had to be revoked  
5 and replaced with the Department as the mother undermined the placement. It  
6 was decided that the mother needed to attend counselling for assessment in anger  
7 management classes and deal with issues around drinking. The Department  
8 arranged supervised contact for the two children with their mother.

9

10 24. In August 2008 a fit person order was made in relation to WH with his former  
11 Foster parents Mr. and Mrs. E, who were then living in Cayman Brac. He was  
12 enrolled in the local primary school, but he exhibited behavioural problems  
13 requiring him to be referred to an educational psychologist in June 2010. He  
14 received therapy to address his attachment disorders, behavioural difficulties and  
15 his hyper attentiveness issues which had been highlighted in two psychosocial  
16 reports. The psychologist noted that he had "*significant emotional and*  
17 *behavioural difficulties*" and that the attachment disorder was caused by early  
18 childhood experiences. This is an indication that he had suffered emotional harm  
19 due to the mother's care. It was recorded by the school at the time that the mother  
20 did not appropriately support the behavioural modification program the school  
21 was attempting to put in place for WH, and in fact she was disruptive. The  
22 Department recorded that she was also disruptive in her interaction with them.

1 25. In July 2011, on the basis that the mother would attend counselling, a supervision  
2 order was made in her favour in relation to K.

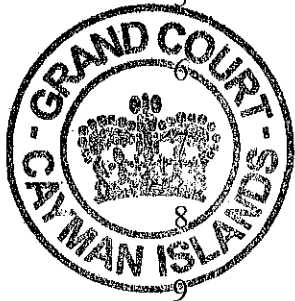
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4 26. In September 2011 WH's foster parents moved to Grand Cayman and he attended  
5 the local primary school. His behavioural difficulties continued and it became  
6 evident that the bonding and attachment disorders remained. He was suspended  
7 on a number of occasions, including on one having to be isolated from other  
8 students for their protection. WH had to be placed in a special class and  
9 supervised by his own support teacher.

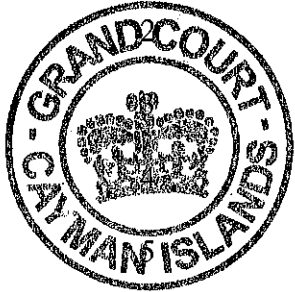
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11 27. In March 2012 the mother sent a letter indicating concern about what she termed  
12 to be physical and emotional abuse of WH by the foster parents. There was found  
13 to be no merit in these allegations, again an indication of the mother seemingly  
14 undermining his placement.

15

16 28. On 16<sup>th</sup> March 2012 the fit person order was continued, under which WH  
17 remained with the foster carers. The mother was required to address parenting  
18 skills and symptoms of an adult with an attachment disorder. In order to minimise  
19 disruption to the school and to the foster parents, an order was made preventing  
20 the mother from entering his primary school or the property of the foster parents.  
21 Any contact the mother was to make had to be through the Department and it was  
22 to be supervised.





1 29. The fit person order was renewed and eventually on 29<sup>th</sup> June 2012 a juvenile  
rehabilitation order was made in relation to WH. This order required WH to  
attend the Francis Bodden Children Home. Shortly thereafter his placement with  
the foster parents broke down as he threatened them and he was exhibiting  
inappropriate sexualised behaviour with other boys.

6

7 30. In August/September 2012 WH attended a new primary school. Regrettably his  
8 behaviour deteriorated. He continued to be defiant, using expletives to members  
9 of the school body and approaching other students using sexual gestures. Even  
10 though he was again suspended on a number of occasions, his misconduct  
11 continued. Eventually he was placed on an indefinite suspension.

12

13 31. It appears that at this time the Summary Court, upon application by the  
14 Department, was reviewing the status of children who were subject to fit person  
15 orders and considering the applicability of the new Children Law to their  
16 circumstances. It is unclear to me how this was procedurally being done and on  
17 what basis section 33 orders were being made.

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19 32. A care order was made in relation to WH, but it was limited to one year. This is  
20 confusing because if it was intended to be a final care order it would not have  
21 been expressed as limited in time. However, an interim care order should not have  
22 been made at that time to last initially beyond eight weeks. I understand that the

1 Summary Court is now having regard to section 40(4) of the Law and the time  
2 limits imposed therein when making interim care orders.

3

4 33. In October 2012 the Summary Court reviewed the care order and again ordered it  
5 to last for one year or until further order. It appears that the Summary Court was  
6 intending to make an interim care order, albeit with an inappropriate expiry date.

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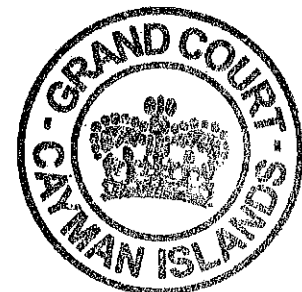
8 34. Things became even more confusing in November 2012 when the face of the  
9 court order indicated that the Summary Court made a supervision order. However,  
10 upon review, it was evident that the Summary Court had intended that order to be  
11 a care order. It appears that the order may have then been amended by the  
12 Learned Magistrate under the slip rule.

13

14 35. The confusion caused by the various orders may have been prevented if reasons  
15 for the order had been given. In the absence of reasons for the decision, after a  
16 case is transferred to the Grand Court or to a different Judge or Magistrate, it may  
17 be difficult for the judicial officer to understand on what basis or why certain  
18 orders have been made. Rule 21 of the Children Law (Summary Court) Rules,  
19 2013 sets out the requirement for reasons to be given.

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1 36. Rule 21(5) provides:

2           *“When the court makes an order or refuses an application or*  
3           *request, the court shall record in writing the reasons for the*  
4           *court’s decision and any findings of fact.”*

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6 37. Rule 21(6) provides:

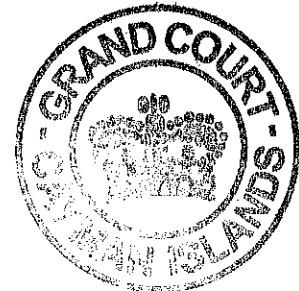
7           *“When making an order or refusing an application, the court*  
8           *shall-*

- 9           (i) *where it makes findings of fact state such findings and*  
10           *complete form C23; and*  
11           (ii) *state the reasons for the court’s decision.”*

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14 38. WH was enrolled in the Stepping Stones program and a counselor was assigned to  
15 him. Regrettably, WH did not positively respond to the therapy sessions and, due  
16 to his lack of cooperation, same had to be brought to an end.

17  
18 39. In late 2012 WH commenced his current residency at the Francis Bodden  
19 Children’s Home. His behaviour did not improve. In May 2013 there were reports  
20 of him kicking a member of staff in the stomach, in August 2013 using abusive  
21 language towards a staff member and slapping her, and in September 2013 using  
22 expletives to members of staff, refusing to cooperate with their directions and  
23 slapping a security guard.

24



1 40. At this time WH was being seen by both Ms. Chandler, child psychologist and Dr.  
2 Barnaby, consultant psychiatrist.

3

4 41. In her report dated 28<sup>th</sup> February 2013 Dr. Barnaby diagnosed WH as being an  
5 abused child with oppositional defiant disorder, attention deficit hyperactivity  
disorder and conduct disorder. She found that he presented with:

*“a history of behavioural disturbance and unsettled family life  
environment.”*



11 She noted his verbal and physical aggression, especially directed towards  
12 authority figures. She placed Warren on medication.

13

14 42. In a report dated 19<sup>th</sup> January 2014 Dr. Barnaby stated that WH may also be  
15 suffering from disruptive mood dysregulation disorder and that his current therapy  
16 and treatment was not improving his behaviour. In that same report she  
commented that:

17 *“Warren is troubled. His current therapy does not seem to have*  
18 *made any serious improvement in his behaviour. He is young, but*  
19 *his life experience and manner are those of a much older person.*  
20 *He has been exposed to enough that an intensive and therapeutic*  
21 *intervention at this time may prevent a negative outcome later.*  
22 *Such services are not at this time available in Cayman.”*

23

24 It was in this report that she supported the need for him to attend a therapeutic  
25 boarding school placement, which she viewed to be the best option for him and



management of him. Dr. Barnaby echoed the same conclusion in her recent report dated 10<sup>th</sup> April 2014.

3

4 43. Ms. Chandler recorded in her detailed report of 29<sup>th</sup> November 2012 that WH had  
5 an inconsistent coping style, and that his disruptive impulsiveness and evidenced  
6 unpredictable behaviour posed a danger to himself and to others. She expressed  
7 her view that he came into the care system:

8 *“as a result of instability in his home.”*

9

10 She stated that:

11 *“the current instability in (WH’s) home life eventually spilled into*  
12 *school life and the gains made in his participation in the primary*  
13 *behaviour program became less apparent.”*

14

15 She stated that:

16 *“(WH) has an extensive history as being a child with need for*  
17 *special support. The students special education needs file speaks to*  
18 *a child who appears to be quite intelligent but who also seems to*  
19 *have fallen victim to his personal circumstances.”*

20

21 She said that:

22 *“the overall picture is of a nine-year-old boy who has been*  
23 *emotionally and behaviorally tested to his limit by abuse,*  
24 *inappropriate exposure to vice and instability in his home*  
25 *situation. The maladaptive coping skills he has developed have*



*served him although they have also served to develop mistrust, anger and a sense of abandonment.*

4 She noted that in the past when he had contact with his mother there were periods  
5 of unsettlement and escalated mis-behaviour.

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7 44. Ms. Chandler recommended environmental management and behavioural  
8 modification and also recommended an overseas placement. When considering  
9 whether he should attend the therapeutic school, the following words of Ms.  
10 Chandler are most telling:

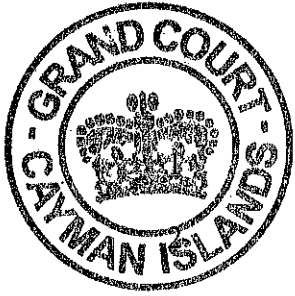
11 *“(WH) works hard to keep negative ideation from affecting his*  
12 *damaged self-esteem and has developed an unrealistic manner of*  
13 *seeing and experiencing the world. While it is still the belief of this*  
14 *writer that there is still a child within WH there is concern for how*  
15 *long this will remain the case.”*

16

17 The opportunities that the therapeutic school will offer WH, especially if he  
18 embraces them, could be considerable. However, the words of Ms. Chandler,  
19 when considered side-by-side with the delay principle set out at section 3(2) of  
20 the Law, make clear why this placement should start as soon as possible.

21

22 45. By April 2013 Mr. David Hunter, the allocated social worker, was recommending  
23 that WH be placed at the therapeutic school in Florida. Having regard to the  
24 nature of the application being made the Summary Court transferred the



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proceedings to the Grand Court. Having regard to my sentiments expressed above, there has been a most regrettable delay in the Court being able to finally determine the applications before it. One of the reasons for the delay was the difficulties with the mother securing legal representation. The delay has also been contributed to by the mother's changing position in relation to the order that should be made. At the hearing on 2<sup>nd</sup> August 2013, the mother's then Counsel indicated that there was agreement about the care order and WH's attendance at the school, although earmarking issues about contact. By the time the matter came back to Court in September 2013 the mother's position had changed. As a consequence of her position the Court gave directions to trial. The parties were directed to consult and then contact Listing with their dates to avoid to fix a final hearing date. It appears that this was not done by them and it was not until the matter came back before the Court in January 2014 that the applications managed to be actively listed.

46. In mid-2013 contact between WH and his mother was supervised. At that time there were concerns about the mother leaving the home at the allocated time, attending without appropriate notice or permission and on occasion being disrespectful and disruptive to staff in the presence of WH. However, since November 2013 the mother has had unsupervised contact with WH, which both have seemed to enjoy.

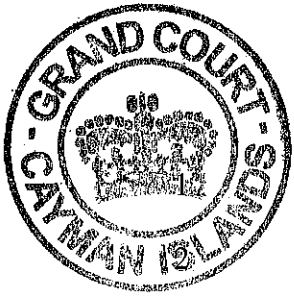


1 47. When I consider this background I accept that this case is an unusual case when  
2 compared with those that frequently come before the Courts in England and  
3 Wales where public law proceedings similar to those new to this jurisdiction have  
4 been in place for a while. If the current legislation had been in place, the  
5 Department empowered by a care order may have felt able to have made a more  
6 structured approach to the welfare of WH. What is clear, is they would have had  
7 to submit interim care plans, and the Court would have required them to have  
8 approached the care for WH in a more structured manner, especially having  
9 regard to their medium to long-term planning. It is hoped that the new legislative  
10 framework in place will in future cases reduce a child being so unsettled, moving  
11 from home to home in a relatively unstructured manner. As Ms. Chandler  
12 highlights:

13 *“in some instances WH was court ordered to stay with his foster*  
14 *parents and others he was relinquished by his mother.”*  
15

### 16 **The Threshold Criteria**

17 48. What is clear is that WH has suffered emotional harm, due to the mother’s  
18 inability at the time of the initial fit person order in 2004, but more importantly  
19 prior to and then following the August 2008 fit person order (which has been  
20 continually renewed until superseded in 2012 by the interim care orders) to offer  
21 him the emotional and physical care that he required. I accept, and am  
22 sympathetic, to the fact that the mother has had her own personal difficulties,



including supervening events beyond her control, and that these have impacted on her ability to offer care to the requisite standard.

3

4 49. In relation to the threshold criteria, it is right that the burden of proof rests upon  
5 the applicant Department on the balance of probabilities. The test of likelihood of  
6 harm is not that it should be more likely than not, but that there should be a real  
7 possibility, a possibility that cannot be sensibly ignored. The facts set out herein  
8 coupled with the psychological evidence are quite sufficient to support a finding that the  
9 threshold criteria in substance has been made out of actual likelihood of significant harm  
10 to WH.

11

12 50. I am satisfied that the protective proceedings initially taken under the Juvenile Law and  
13 continued under the current legislation were required due to WH suffering significant  
14 emotional harm as result of the inadequate parenting given by his mother.

15

16 51. He has suffered significant harm in his emotional and social development as set  
17 out in the medical evidence as a direct result of the lack of adequate consistent  
18 parenting care from his mother. However, I accept that it is likely that over the  
19 years this has been exasperated by the lack of a proper consistent structure and the  
20 absence of a care plan to formulate the long term planning for WH's care.

21

22

1    **The Welfare Checklist**

2    52.    I have considered the welfare checklist set out at section 3(3) of the Law. Over the  
3           past few months WH has expressed differing views about his future. He has not  
4           indicated that he does not wish there to be a care order. He has been inconsistent  
          in relation to his wishes about attending the school in Florida. Earlier in the year  
          he had indicated to the Guardian that he would like to go and understood the  
          reasons why it may be beneficial to him. More recently he has expressed to his  
          Guardian that he does not wish to attend and that he will miss the equestrian  
9           activities that he so enjoys here. Ms. Chandler in her report dated 8<sup>th</sup> April 2014  
10          rightly highlights the importance of the Court recognising that WH has expressed  
11          his disagreement to her about the proposed move. In fact he informed her that he  
12          would act in such a way that his time at the school would be brought to an end  
13          due to lack of cooperation. She concludes that he may:

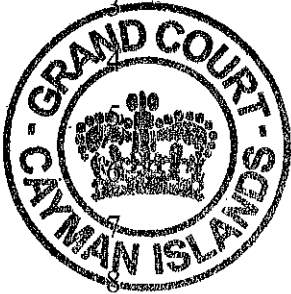
14                    *“attempt to test every boundary that he can...that a concerted and*  
15                    *well-informed effort will be required to successfully reach WH and*  
16                    *this will involve patience and the ability to develop a therapeutic*  
17                    *alliance built upon genuine confidence and respect.”*

18  
19          She rightly notes that the school will be experienced in dealing with students who  
20          initially have this negative view. Despite WH’s expressed wishes, she states that  
21          she continues to believe that:

22                    *“the level of care required for him would be best provided in the*  
23                    *school where there would be a complete cohesion between his*  
24                    *therapeutic, home, medical and school environment.”*



1 She concludes that:



2

*"I again would wish to reiterate the potential still visible in WH but would again wish to caution that as he is fully beginning his adolescent journey there will be other complications to his already complicated life which will not serve him well without careful structured and delivered intervention. Although it is felt that he is being managed with the best intentions and with access to as much as can be afforded to him, this young man is in need of much more if he is to successfully navigate through adolescence and into a productive life as a citizen and positive contributor to his country and the wider world."*

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13 53.

When I have regard to WH's wishes it is clear that he is an 11-year-old boy, but not one blessed with sufficient maturity that his wishes should be given precedence over the obvious need for him to receive the therapeutic input that would be offered under a care order and this placement. It is hoped that the much needed assistance which the school in America will give will open doors for him. It is also hoped that this will be even more achievable due to the support to the placement given by his mother today. Although a care order is made it is not with the intention of him being adopted, it is with the intention of hoping that he as an individual will have all that he requires to become a productive member of society. It is done hoping that in the future he and his mother and his sister will have a positive relationship.

24



1 54. It is clear that his mother has been and remains unable to meet his physical,  
2 educational and emotional needs. It is imperative that there be a care order, to  
3 enable the Department to exercise parental responsibility. It is also imperative that  
4 his educational and emotional needs are met by his attendance at the therapeutic  
5 school in Florida.

6

7 55. I have considered the effect on him of any change in his circumstances. The  
8 making of a care order, unlike in a case where the child is being removed from the  
9 care of his parent, is not a change of circumstances in this case as he has been  
10 subject to the Department's care for the majority of his life, including recent  
11 years. It is clear from the expert evidence that, even against his current wishes,  
12 attendance at the school in America is likely to have an extremely positive effect  
13 on his welfare in the medium and long-term.

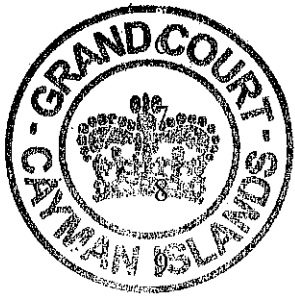
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15 56. I have had regard to his age and sex. Ms. Chandler has expressed the importance  
16 of WH, at the cusp of his adolescent years, receiving the necessary therapeutic  
17 assistance which the proposed school can provide without delay. I have regard to  
18 the fact that he is a male when making the placement at this school. I have regard  
19 the fact that he is Caymanian when attending an American school, but at the same  
20 time have regard to the experience of the school receiving students from all  
21 backgrounds, including this region.

22

1 57. When dealing with the threshold criteria I have considered the harm that he has  
2 suffered and would still be at risk of suffering if he does not receive the care,  
3 attention and assistance that he requires and deserves.

4  
5 58. I have considered whether his mother is able to meet his needs. I am satisfied that  
she is not and in fact has not kept him for the majority of his life. She does not  
have the professional training required to deal with his behavioural and health  
problems. If he were to remain in the jurisdiction there may be issues with her  
being able to consistently promote the efforts being made by the Department.



10

11 **Conclusions**

12 59. Bearing in mind all the relevant factors set out in the welfare checklist section  
13 3(3), and the threshold criteria having been met, I find that it is in WH's best  
14 interests for a full care order to be made and for him to be placed in accordance  
15 with the Department's care plan. I am of the firm view that it would be in his  
16 interests for him to promptly attend the therapeutic school in Florida, United  
17 States. I recognise that in recent months he has changed from saying that he  
18 would like to attend, to saying that he does not want to attend. This may partly be  
19 due to him wishing not to go against what he perceives to be the wishes of his  
20 mother. All of the professionals, importantly including WH's Guardian,  
21 unanimously recommend the placement. As I have already stated, to her great  
22 credit, the mother is now supportive of the placement.

1   **Contact between WH and his mother**

2   60.   There is an obligation on the Department to promote contact between a child in its  
3           care and his parents. It is right that WH have contact with his mother, although  
4           this contact must be supportive of the placement and in no way should it be  
5           permitted to undermine that placement. I am satisfied that the contact agreed by  
6           the parties as set out in the draft consent order is sufficient and appropriate.



7

8   **The Order**

9   61.   In light of my findings I am content to make the unopposed consent order, a draft  
10           of which has been presented to me.

11

12   62.   Accordingly I order:

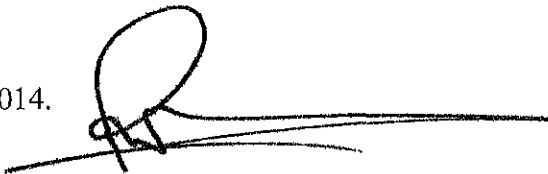

- 13           (i)   that a care order be made to the Department in relation to WH.
- 14           (ii)   that the Department is permitted to temporarily remove WH from the  
15           Cayman Islands for the purpose of his attendance at the DVC Therapeutic  
16           School<sup>2</sup> or other suitable school to be determined by the Department.
- 17           (iii)   that WH's enrolment at DVC be for an initial period of one year, after  
18           which the Department will review his progress to determine whether  
19           continued registration/attendance is required.
- 20           (iv)   that the Department in writing makes available to the mother a report of  
21           the review conducted at the end of the initial period.

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<sup>2</sup> For reasons of anonymity the full details of the school have not been put in this judgment, but they should be set out in the order.

- 1 (v) that whilst WH is residing in the Cayman Islands the mother is allowed  
2 unsupervised contact visits with the child upon the prior arrangement and  
3 consent of the staff at Francis Bodden Children's Home.
- 4 (vi) that whilst WH is residing overseas the Department shall arrange for the  
5 mother to have telephone or Skype contact with the child twice per week  
6 subject to the requirements of relevant rules of the DVC.
- 7 (vii) that the Department in writing provides the mother with monthly reports  
8 on WH's progress.
- 9 (viii) that the Department immediately notifies the mother of any significant  
10 changes in WH's circumstances.
- 11 (ix) that WH during his attendance at school overseas be allowed to return  
12 home from holiday visits at least once in every year.
- 13 (x) that the mother at the expense of the Department and CINICO be allowed  
14 to accompany the child and the social worker to DVC to assist with  
15 helping him to settle in provided she complies with the rules of the  
16 Department and the DVC regarding conduct.

17  
18 Dated this 7<sup>th</sup> day of May 2014.

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21 

20 **THE HONOURABLE MR. JUSTICE RICHARD WILLIAMS**  
21 **JUDGE OF THE GRAND COURT**

22 The judgment in this matter is being distributed on a strict understanding that in any report no person other  
23 than the attorneys (and any other person identified by name in the judgment itself) may be identified by  
24 name or location and in particular the anonymity of the child and the adult members of their family must be  
25 strictly preserved.