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IN THE GRAND COURT OF THE CAYMAN ISLANDS
FAMILY DIVISION

CAUSE NO. FAM 276 OF 2017

BETWEEN:	**DT**	**APPLICANT**
AND	**MP**	**RESPONDENT**

Appearances:	Ms. Vanessa Allard of Brooks & Brooks for the Applicant David Holland of KSG Attorneys for the Respondent
Before:	Hon. Justice Richard Williams
Heard:	29-31 May 2018, 1 June 2018, 4-11 July 2018
Written submissions:	24 July 2018 and 26 July 2018
Draft Circulated:	19 October 2018
Handed Down:	30 October 2018

HEADNOTE

Children Law (2012 Revision) - Father application for Residence - Maternal Grandmother application for residence - A child's welfare is the paramount consideration in the determination of residence application - No presumption in favour of biological parent - The importance of parenthood in private law dispute about residence firmly rooted in an examination about what is in child's best interest

JUDGMENT

Background

1. This matter concerns two young girls: D, born on 21 March 2013 and who is, therefore, almost 5½ years old and G, born on 6 November 2014 and who is,

therefore, almost 4 years old. I shall refer to them individually as as "D" and "G" or collectively as "the children" in this Judgment. DT, the Applicant father ("F") is a 35 year old Jamaican national. MP, the Respondent maternal grandmother ("GM"), aged 48, has Caymanian status and has lived in Grand Cayman since 1993. I shall refer to the parties as F and GM.

2. F and the children's mother ("M"), who was also a Jamaican national, began a relationship in 2008. M was still married at the time that she and F began their relationship and when they began to cohabit in 2009. They were married in May 2016, about two weeks after the Certificate of Dissolution of Marriage had been granted to M. The children were planned. Due to medical conditions, considerable sums had to be spent related to the pregnancy. A, aged 12 and with Caymanian status, who is M's child from her previous marriage and the children's half-sibling child, resided with them. Sadly, M passed away in early April 2017 after battling cervical cancer[1].

3. F reluctantly had to leave the Cayman Islands on 10 September 2016 as he was 'rolled-over', meaning that his immigration status here had expired and could not be extended. It appears that GM made enquiries with her Member of the Legislative Assembly to assist in getting a visa for him to return to the Cayman

[1] Diagnosis received in June 2016.

Islands.[2] The children remained in the Cayman Islands under the care of GM at the maternal aunt's home, as at that time M was in Jamaica receiving treatment. F resides in Jamaica with the paternal grandmother and he has, since 1 April 2017, been employed as an entertainment coordinator in Negril.

4. Although F and M were not married at the time of the children's birth, pursuant to s.4(2)(b)(i) of the Children Law (2012 Revision) ("the Law"), F has parental responsibility in relation to them both as he, along with the mother, registered their births[3].

5. On 26 April 2017, the Learned Magistrate granted leave to GM and a maternal aunt[4] to apply for residence orders. The then unrepresented father consented to an Interim Residence Order being made in favour of GM and the maternal aunt until he was able to seek legal advice[5]. F's Counsel, who came on the record in the interim, indicated that, despite her making objections, she was not afforded the opportunity by the Learned Magistrate at the hearing on 5 May 2017 to properly pursue F's objections to the extension of the Interim Residence Order. The Learned Magistrate went on to order, regrettably not supported by any written

[2] Letter from Archer dated 11 May 2017. The MLA reached out to Immigration and advised GM to see Mr. Wong at the Immigration Department.
[3] G's birth certificate is dated 10 November 2014, and D's birth certificate is dated 28 March 2013. The certificates record F as the father.
[4] The maternal aunt later withdrew as a party to the proceedings. She informed the Court at the close of her oral evidence that the joint application was made at a time when the children and GM lived with her and that GM *"was always the primary applicant."*
[5] Paragraph 2 of the Order dated 26 April 2017.

reasons for her decision, that the Interim Order stay in place until the final order. That Interim Order remains in force.

6. Pursuant to s.14(2) of the Law, parental responsibility is conferred on a person who is not a parent or guardian of the child concerned in whose favour a residence (including interim residence) is made for the period the order remains in force. Accordingly, GM also has parental responsibility.

GM's Application

7. GM's application is brought by means of her C1 Form dated 11 April 2017 which was not issued in the Summary Court until 20 April 2017. In the C1 Form she seeks residence orders and Schedule 1 financial provision orders to be made in her favour in relation to the children. GM contends that M wished the children to reside with her after her passing as set out in M's draft Will.

F's Application

8. F's application is brought by means of his C3 Form dated 8 May 2017 issued in the Summary Court and later by his C3 Form dated 6 December 2017 issued in the Grand Court. In both C3 Forms he seeks residence orders to be made in his favour in relation to the children in the existing Children Law proceedings.

The Court Welfare Officer's Recommendation

9. Mrs. Kai Mowatt has filed three Court Welfare Officer's Reports during the course of these proceedings.[6] In her most recent report she states at paragraph 29 that:

> *"Based on the information garnered, the Department is of the opinion that the children should reside with their father with access to the grandmother. It is important that the children maintain their relationship with their grandmother as well as their older sibling."*

Mrs. Mowatt then goes on in her report to make the following recommendations:

> *"1. That (D) and (G) commence frequent therapeutic session with Chatterbox to address the immediate trauma (regression of potty training) and possible residing with (F).*
> *2. That (D) and (G) reside with their father, (F).*
> *3. That D and G complete this (summer) term in Grand Cayman and transition to their father in the summer.*
> *4. That D and G attend age appropriate school in Jamaica*
> *5. That D and G maintain daily contact with their grandmother and older sibling.*
> *6. That D and G spend holidays with their grandmother.*
> *7. That D and G continue(s) to attend counselling in Jamaica."*

10. Mrs. Mowatt, during her oral evidence, confirmed her recommendation that the children reside with F. Mrs. Mowatt's recommendations are consistent with those

[6] Reports are dated 21 November 2017, 28 February 2018 and 30 April 2018.

expressed by the previous Welfare Officer, Mrs. Tynsia Forsythe, in her oral and written evidence.

11. F relies upon the evidence of the Welfare Officers. GM challenges that evidence characterising it as being:

> *"fundamentally flawed"* and that it "*should be treated with a large degree of caution by the court.*"

It is submitted that the reporting officers were:

> *"obstinate and defensive throughout their oral evidence and for the most part, refused or failed to acknowledge the fundamental flaws in their reporting."*

It is contended that the Welfare Officers failed to consider what was in the children's best interests and were biased, as they wrongly operated under a misconception that there was a presumption for children to be brought up by their father rather than by a non-parent. In light of these forcefully expressed concerns, I remind myself that the Court, when reviewing the potentially important evidence of Welfare Officers which may provide valuable background information to the Court, must always analyse it as carefully and with an open mind as it does all of the other evidence. I will further address the Welfare Officers' evidence later herein.

12. The Court has reviewed all of the above-mentioned Court Welfare Officer Reports filed by Mrs. Forsythe in the Summary Court[7] and those filed by Mrs. Mowatt in the Grand Court. In addition, I have read the Home Study Reports dated 23 June 2017 and 22 November 2017 filed in the Summary Court by Adria Brown (Children's Officer, Child Development Agency, Westmoreland, Jamaica) and her report dated 28 June 2018 filed in the Grand Court. I have reviewed all of the documents contained in the bundle as well as the additional material belatedly produced during the hearing.

Procedural History

13. These proceedings were commenced in the Summary Court, with the parties' first attendance at Court being on 26 April 2017, when the holding Interim Orders outlined in paragraph 5 above were made. There then followed, between that date and 29 November 2017, eight hearings before two Magistrates. The significant orders, save for the ones mentioned above, were:

    (i) On 5 May 2017 - (a) interim contact to F on 5 May 2017 from 3:30 PM to 6 May 2017 at 7:30 PM; (b) liberal contact to F after his return to Jamaica by Skype or other social medium, at a reasonable time of the day; and (c) by consent F is to pay Interim Financial Provision Order for the children of $150 per month to GM until final order.

[7] 22 August 2017, 29 June 2017 and 14 June 2017.

(ii) On 15 June 2017 - liberal contact using social media for F with the children to be facilitated by GM and the maternal aunt.

(iii) On 5 October 2017 - (a) by consent parties to take steps to arrange contact between F and the children, to be effected by GM and the maternal aunt travelling to Jamaica to facilitate the same; (b) attorneys to write to the Chief Immigration Officer to seek clarification about the immigration status of the children if GM was granted a residence order; and (c) attorneys to write to the Attorney General's Chambers to seek guidance about the legal position regarding the immigration status of the children if a residence orders was granted to GM.

(iv) On 13 October 2017 - (a) F to have daily contact with the children via WhatsApp video at 7:30 AM and 7:00 PM; (b) the parties to discuss and make arrangements for F to have face-to-face contact with the children as soon as possible in the Cayman Islands, such contact to be facilitated in full by GM and the maternal aunt; and (c) to facilitate face-to-face contact it is agreed that the payment by F of one month's maintenance will be waived;

(v) 24 October 2017 - (a) once F finalises his plans to travel to Cayman Islands face-to-face contact with the children and a mention hearing should be fixed to settle details of face-to-face contact; (b) the Department of Children and Family Services ("DCFS") shall ensure that a representative is made available to attend the mention hearing in order to

assist in the settling of (and to facilitate) the contact arrangements with the children; and (c) the final hearing of the applications to be fixed for five days from 4 December 2017.

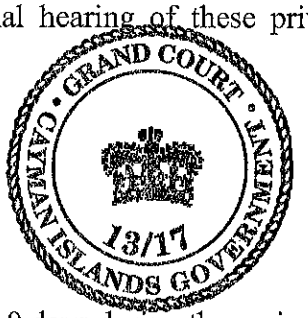
14. On 29 November 2017 the Learned Magistrate vacated the final hearing date fixed to commence on 4 December 2017 and, on the Court's own motion and pursuant to s.6 of the Children (Allocation of Proceedings) Order 2013, he ordered that the proceedings be transferred to the Grand Court:

"due to the complexity of the issues to be determined".

The issues highlighted by the Learned Magistrate included a criminal/child protection investigation in relation to the children, the uncertain immigration status of the children and consideration as to whether a Guardian ad Litem should/could be appointed for the children.

15. The matter first came before the Grand Court on 1 February 2018 when, by consent, the maternal aunt was removed as a party. In light of concerns about the children's welfare, the DCFS were directed, pursuant to s.39 of the Law, to conduct an investigation into the children's circumstances and consider whether they should apply for a care/supervision order or whether they should provide services or assistance for the children or their family.

16. At the hearing on 9 March 2018, the Court was informed that the DCFS did not feel it appropriate to initiate any child public law proceedings. The Court then gave comprehensive directions to the final hearing of these private law child proceedings.



The Hearing

17. The hearing came on before the Court for 10 days during the period 29 May 2018 to 11 July 2018. The hearing was due to commence on 28 May 2018. However, on the morning of the hearing, I was informed in an email from Mrs. Mowatt that she had received an email from Inspector Ashworth informing her that the Police had responded to a walk-in report from GM on 27 May 2018 and that the information disclosed was that D had shared with GM that F had touched her "*private area and her bottom*". Mrs. Mowatt added that the Multi-Agency Safeguarding Hub ("MASH") was investigating. Having regard to the 'delay principle' at s.3(1)(2) of the Law, I did not feel it appropriate to vacate the final hearing on the limited information before me. However, at the opening of the hearing, I adjourned to the following day and invited members of the MASH team to attend.

18. On 29 May 2018 representatives from MASH attended and informed the Court that they had interviewed D and others. They stated that their investigations had not revealed any evidence of a criminal offence of inappropriate sexual conduct.

They explained that they had a few related matters to attend to on that day before their final conclusion could be reached. The members of the MASH and the parties agreed that it would be better to adjourn the hearing until the following day to enable those final enquires to be made.

19. At the outset of the hearing on 30 May 2018 DC Tamara Jackson from MASH stated that D was interviewed and:

> *"made no disclosure of any type of sexual things happening to her"* and that there were *"no alarm bells from her demeanor."*

The Officer concluded that:

> *"Based on the information I have so far, I see no reason to pursue this matter. At this time I find nothing to suggest that there is anything for me to do a further investigation, unless new or more information comes in."*

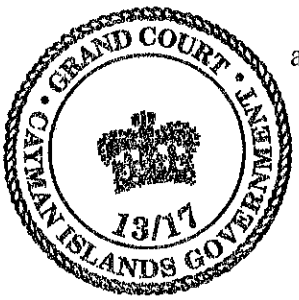
In light of the Officer's evidence, the parties agreed that the final hearing could and should proceed.

20. The hearing concluded on 11 July 2018. The matter was adjourned for this reserved Ruling to be delivered after the provision by the parties of their Written Closing Submissions directed to be filed by 25 July 2018. The Closing Written Submissions prepared for F were filed on 24 July 2018. The Closing Written Submissions for GM were filed on 26 July 2018. This is the reserved Written

Judgment, regrettably delayed due to my absence from the jurisdiction during a large part of the intervening period.

The Law

21. When I consider the background and the orders to be made I have regard to the fact that, pursuant to s.3(1) of the Law, the children's welfare is my paramount consideration. As Lord Fraser said in ***Gillick v West Norfolk and Wisbech Area Health Authority and Department of Health and Social Security*** [1986] AC 112 at 170:



> *"...parental rights to control a child do not exist for the benefit of the parent. They exist for the benefit of the child and they are justified only in so far as they enable the parent to perform his duties towards the child."*

22. In exercising my broad discretion when determining what orders are in the children's best interests, I must consider the factors contained in what has become known as "*the welfare checklist*" found at s.3(3) of the Law.[8] Among the seven factors to which I must have regard is, as set out at s.3(3)(f) of the Law, the question of how capable each of their parents, and any other person in relation to whom the Court considers the question to be relevant, is of meeting their needs. This question, of course, is relevant to GM in the matter before me.

[8] See from paragraph 101 below.

23. I must have regard to the general principle set out in s.3(2) of the Law that any delay in determining the questions before me is likely to be prejudicial to the children's welfare. I also must have regard to Article 9[9] rights. This means not only the Article 9 rights of the children and F but also those of GM who has been their primary carer since at least the passing of their mother in April 2017.

24. This case involves the competing claims for residence made by F, the genetic parent of the children, and by GM. Thankfully child law in the Cayman Islands has moved on significantly since the then correct Court of Appeal decision in ***Watson-Morgan v T Grand, H. Grant and G. Grant*** 1990-91 CILR 81. The Court of Appeal, when considering the Guardianship and Custody of Children Law (1977 Revision), found that the Court did not have the jurisdiction to make a custody order in favour of a putative father of an illegitimate child and that grandparents had no standing to make an application for custody of a child.

25. I have not been able to locate a judgment from the Cayman Islands in which a Court has considered and outlined the approach to be taken to applications for s.10 Orders made by a grandparent post the enactment of the Law. With this in mind, I see merit in conducting a more detailed review than would ordinarily be called for, to include an analysis of how the case law in residence disputes involving a non-parent has evolved to its current position as set out in the

[9] The Bills of Rights - Cayman Islands Constitution Order 2009.

important decision made by the Supreme Court in ***Re B (A Child)*** [2009] UKSC 5 (***"Re B"***)[10].

26. Prior to the enactment of the Children Act, the House of Lords in ***J and Another v C and Others*** [1970] AC 668 considered a case under the Guardianship of Infants Act 1925. The case involved a 10 year old Spanish boy who had, save for 18 months in his early life, lived with foster parents in the UK. The Court found that the test in the legislation applied to non-parents as well as to natural parents and there existed no presumption in law in favour of the latter in a contested custody case.

27. After ***J v C*** the Courts began to depart from the no-presumption approach seen in that case, placing greater importance on the ties between a parent and child. The decisions created a *de facto* presumption in favour of the natural parents, although that may have been phrased in differing ways.

28. In ***Re KD (A Minor) (Access: Principles)*** [1988] 2 FLR 139 the House of Lords placed emphasis on the rights of the parents and of children to be brought up by their natural parent. Lord Templeton stated at paragraph 141A:

> *"The best person to bring up a child is the natural parent. It matters not whether the parent is wise, rich or poor, educated or illiterate, provided that the child's moral and physical healthcare are not endangered."*

[10] See paragraph 47 below.

29. Although Lord Templeton was expressing a view in public law proceedings that the Court should not get involved in social engineering and should protect families from unwarranted interference by local authorities, his views were subsequently also applied, arguably out of context, in private law cases. This led to the Courts creating a presumption, with no statutory foundation for it, in favour of natural parents as long as the child was not at risk of harm due to the care provided by the parent.

30. In ***Re K (A Minor) (Custody)*** [1990] 2 FLR 64 the mother of a 4 year old child committed suicide and he went to live with his aunt and uncle and had regular access to his father at weekends and on one night in the week. The father applied for care and control of the child contending that he, as the natural father, was the best person to bring up the child. His view was supported by the Welfare Officer. The Judge found that the father would be a satisfactory parent and could adequately care for the child. However, the Judge also found that the uncle and aunt's care would be far superior to that provided by the father and concluded that the child's interests would be better served by an order being made in their favour.

31. The Judge's Order was appealed and at page 67 in the Court of Appeal's decision, Fox L.J. referred to the House of Lords' reasoning in ***Re KD (A Minor) (Access: Principles)*** [1988] 2 FLR 139. He repeated Lord Templeman's abovementioned statement at 141A. Fox L.J. also noted that, at page 590 in ***Re KD***, Lord Oliver

had cited the observations of Fitzgibbon L.J. in ***Re O'Hara*** (1900) 2 IR 232, and also cited by Lord MacDermott in ***J v C*** [1969] 1 All ER 788 at pages 817–818:

> *"In exercising the jurisdiction to control or to ignore the parental right the court must act cautiously, not as if it were a private person acting with regard to his own child, and acting in opposition to the parent only when judicially satisfied that the welfare of the child requires that the parental right should be suspended or superseded."*

32. Fox L.J. termed the presumption seemingly created by the decision in ***Re KD*** as being a parental right, stating at page 68 that the question for the Court was:

> *"...was it demonstrated that the welfare of the child positively demanded the displacement of the parental right. The word 'right' is not really accurate in so far as it might connote something in the nature of a property right (which it is not) but it will serve for present purposes. The 'right', if there is one, is more that of the child."*

33. Waite L.J. stated at page 70 that the correct question for the Court to ask was:

> *"...are there any compelling factors which require me to override the prima facie right of this child to an upbringing by its surviving natural parent?"*

Waite J. added, referring to ***Re KD***, that:

> *"The speeches in the House of Lords make it plain that the term 'parental right' is not there used in any proprietary sense, but rather as describing the right of every child, as part of its general welfare, to have the ties of nature maintained wherever possible with the parents who gave it life."*

The Court of Appeal upheld the father's appeal and substituted its own discretion for that of the Judge, granting care and control to the father with appropriate access to the aunt and uncle. They found that the best person to bring up a child was the natural parent and that there were no concerns about this father's commitment and ability to look after the child and no reasons to find that the level of care that he could provide would be inadequate to meet the child's needs. They found that the Judge had taken the wrong approach by applying an erroneous test by asking himself the question as to who would provide a better home for the child. The Court of Appeal stated that the question the Judge should have asked himself was whether there were any compelling factors requiring him to override the *prima facie* right of the child to be brought up by his sole surviving natural parent. The Welfare Officer and the Social Worker had no doubts about the father's commitment and ability to look after his son. There was no evidence that the level of care offered by the father would be inadequate to the child's needs. Comparisons with the care of the aunt and uncle were not the issue in that case where the father had always been in touch with his child and could provide adequate housing and care for him.

34. In ***Re H (A Minor) Custody: Interim Care and Control)*** [1991] 2 FLR 109 a 9 year old's parents had divorced and she lived with the mother, until the father retained her after an access visit. The mother was awarded custody and control of the child. The child lived with her mother and her stepfather and had considerable

contact with the maternal grandmother. The mother died. In her will she appointed the stepfather and the grandmother to be testamentary guardians and she excluded the father from the control of the child. A week before the mother's passing the child was taken to her grandmother's house. The father and the grandmother could not agree which of them should have care and control of the child, who was then made a ward of court. The Judge decided in favour of the wardship continuing and that the father was the natural parent to have the child. The grandmother appealed. The Court of Appeal decided that the case should be remitted for a rehearing at which Scott Baker J. decided that the child should live with her grandmother in the interim. The father appealed that decision to the Court of Appeal.

35. The Court of Appeal upheld the Judge's decision and indicated that a child's temporary needs might not be the same as her long-term needs and that needs may vary according to the circumstances. The Court stated that it was in the interests of every child to remain with its natural parents, but that supposition had to give way to particular needs in particular situations. Lord Donaldson, when considering the approach to any presumption, sought to clarify the law after ***Re K*** and he stated at page 113 that:

> *"...it is not a case of parental right opposed to the interests of the child, with an assumption that parental right prevails unless there are strong reasons in terms of the interests of the child. It is the same test which is being applied, the welfare of the child. And all that Re K is saying, as I*

understand it, is that of course there is a strong supposition that, other things being equal, it is in the interests of the child that it shall remain with its natural parents. But that has to give way to particular needs in particular situations: in this case, a particular need in a temporary situation."

36. In ***Re D (Residence: Natural Parent)*** [1999] 2 FLR 1023 the father of the relevant child had died. Eight years later, one of the child's elder siblings, who had been in local authority care, returned to live at the family home. The mother arranged for the child to stay with a paternal aunt because of the risk that the returning sibling posed to the child. When the returning sibling was removed from the home by the Police, the mother waited 3 to 4 months to seek the return of the child from the aunt. By that time the child had settled in his aunt's home and was doing well at his new school. The aunt applied for and obtained a residence order in her favour in the Family Proceedings Court.

37. Johnson J. allowed the mother's appeal and remitted the matter back for rehearing. When reaching his decision, Johnson J. referred as follows to two cases, both of which adopted the above-mentioned approach set out in ***Re H***:

"The approach of a court asked to determine a matter such as this is now well established. In Re W (A Minor) (Residence Order) [1993] 2 FLR 625, 633G Balcombe LJ said:

'It is the welfare of the child which is the test, but of course there is a strong supposition that, other things being equal, it is in the interests of the child that it shall remain with its natural parents,

but that has to give way to particular needs in particular situations.'

Now, with the emerging interest in the Convention for the Protection of Human Rights and Fundamental Freedoms ('the European Human Rights Convention'), Art 8 emphasises the importance of respect for family life. In Re D (Care: Natural Parent Presumption) [1999] 1 FLR 134, 144H, Sumner J put the position thus in relation to the facts of that case:

'The clear inference I draw from considering the judgment as a whole is that it was that balancing exercise between the two households which the judge carried out. This he is not permitted to do. He should have first considered the father as a potential carer for A. On the totality of the evidence were there good grounds to reject the supposition in his favour?'

38. However, the natural parent presumption which seemed to emerge from the above cases was not always adopted by the Courts. In ***Re H (a Child) Residence*** [2002] 3 FCR 277 the Court of Appeal considered a case in which a child had been living with the maternal grandmother for five years, three of which had been when a residence order was in place in favour of the grandmother. The appeal was by the mother following the Judge's refusal to vary the residence order made in favour of the grandmother. The mother argued that the Judge had erred as he had ignored a presumption that existed in favour of residence being with the natural parent. The Court of Appeal upheld the Judge's decision. The Court felt that the grandmother had become the child's psychological parent, and in the child's eyes she would seem to be her 'natural' carer. The Court of Appeal felt that little weight should be given to the supposition that children's interests will be furthered by living with their natural parents. The overriding principle was the

paramountcy test contained in s.1(1) the Children Law Act (1989) ("the Act"), namely the best interests of the child, and that this was not displaced by any supposed presumption in favour of the blood tie with a natural parent, a presumption that could not be found anywhere in the Act. The Court of Appeal made clear that a court, when deciding in cases where there was a dispute between parties of this nature upon which placement was in a child's best interests, had to arrive at its choice on the application of the welfare test, and while the Court had properly to pay regard to parental rights, such considerations had to be qualified by what was best for the welfare of the child.

39. Thorpe J., at paragraphs 39-41, understandably saw merit in repeating the Judge's comments as follows:

> *"39. ... He rightly, in my view, referred to an earlier decision of the court in RE W (a minor) (residence order) [1993] 2 FCR 589 at 599, where Balcombe LJ had said:*
>
> > *'It is the welfare of the child which is the test, but of course there is a strong supposition that, other things being equal, it is in the interests of the child that it shall remain with its natural parents, but that has to give way to particular needs in particular situations.'*
>
> *Waite J stated (at 605):*
>
> > *'I agree that the principle is best and most succinctly expressed by Lord Donaldson in Re H (A Minor) Interim Custody) [1991] 1 FCR 985 to the general effect that the welfare of the child is indeed the test, but there is a strong supposition, other things being equal, that it is in the best interests of the child to be brought up by his natural parents.'*

40. Mr. Mostyn then said:

> *'It does seem to me that the reference to a "strong supposition" is intended to denote a monolith, that is to say a supposition of equal strength in every case irrespective of the circumstances in question. It seems to me that while I must recognise the existence of the supposition the weight I attach must depend on and yield to the circumstances of the particular case. For example, it must be truistic that the longer the length of time that the child has been with the non-parent the less potent the supposition is....."*

41. For my part, I can see no error in that direction. There is a question that can well be posed in relation to the citation from the judgment of Balcombe LJ: who is the natural parent? Of course the judge, by using that description intended the biological parent. But the biological parent may not always be the natural parent in the eyes of the child. In cases such as those to which Mr Mostyn refereed, where the child has been for long in settled care of a non-parent, that non-parent will effectively have become the child's psychological parent and in circumstances such as that, in weighing the rival claims of the biological parent over the psychological parent, the court must arrive at its choice on the application of the welfare test, the paramountcy test contained in s.1, having particular regard to the welfare checklist contained in s.1(3). That is precisely what the judge did in the case."

41. Thorpe L.J., when highlighting that there was no presumption in the statutory code of the Children Act which could displace the welfare principle at s.1(1), then added at paragraph 43:

> *"43. Presumptions in favour of a natural parent are nowhere to be found within the section [section 1 of the Law], and judicial overlay on that section must obviously be treated with caution. The seminal cases are, in any event, in the House of Lords, particularly the decision of the House in*

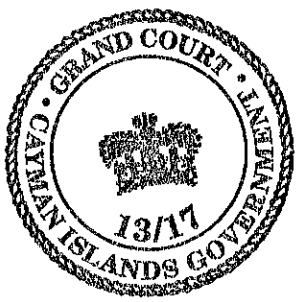
J v C [1970] AC 668, [1969] 1 All ER 788 and the decision in RE KF (a Minor) (ward: termination of access) n[1988] FCR 657, [1988] AC 806. The speech of Lord Oliver of Aylmerton in the latter case (with which all the other members of the House agreed) proceeds on the basis that parental rights, to which proper regard must always be paid by the court, must also be qualified by considerations of what is best for the welfare of the child."

What was important was what is in the best interests of the child and there were no weighted factors to displace that fundamental principle.

42. In the House of Lords decision in ***RE G (Children)*** [2006] 2 FLR 629 the Court reviewed the conflicting line of authorities and sought to clarify the issue of a natural parent presumption. In ***Re G*** two girls were born to a mother who was in a lesbian relationship. Her partner also had a son, who was aged 17 at the time of the hearing. Until the end of the relationship the three children lived with them as a family unit. The biological mother of the two girls left the home and her former partner applied for contact and a shared residence order. The Judge rejected the proposal for a shared residence order largely due to the level of hostility between the parties and she continued the established alternate weekend contact, defined holiday contact on a roughly equal basis and provided for the former partner to be informed about the girls' education and medical treatment. The Learned Judge also ordered that the biological mother continue to live with the girls in the East Midlands until further order, but the mother removed the girls to the West

Country. The High Court then granted primary care of the girls to the biological mother's former partner, finding that the girls' relationship with her was essential and that their relationship was unlikely to be maintained if the children remained in the West Country.

43. The Court of Appeal rejected the biological mother's arguments that there should be cogent reasons for a court to prefer the claims of a person who was not the natural parent over those of one who was the natural parent and dismissed the appeal. Thorpe L.J. did not feel it right to consider the dispute to be one between a parent and non-parent. He stated, when analysing the term 'natural parent' at paragraph 44 in ***Re G (Residence: Same-Sex Partner)*** [2006] EWCA Civ 372:



> *"I pose again a question which I raised in judgment in the case of Re: H [2002] 3 FCR 277, a case cited by Mr Jackson. The question is: who is the natural parent? In the line of authorities relied upon by Mr Jackson all the judges spoke of the biological parent as the natural parent, but in the eyes of the child the natural parent may be a non-biological parent who, by virtue of long settled care, has become the child's psychological parent. That consideration is obviously pertinent to any resolution of the competing claims of same sex parents. As in the present case the family may be created by mutual agreement and with much careful planning. Both partners seek the experience of child-bearing and child-rearing in one capacity or another. Where, as here, the care of the newborn, and then the developing baby, is broadly shared the children will not distinguish between one woman and the other on the grounds of biological relationship. Depending on circumstances the psychological attachment*

may be to each more or less equally or more to the biological parent or more to the non-biological parent. As I said in my judgment in Re: H:

> *"...in weighing the rival claims of the biological parent over the psychological parent, the court must arrive at its choice on the application of the welfare test, the paramountcy test contained in s 1, having particular regard to the welfare checklist contained in s 1(3)..."""*

44. The House of Lords allowed the appeal and reversed the allocation of time between the two households. Their Lordships, although not directly affirming there to be a presumption to be exercised in favour of a natural parent, when making clear that the welfare of the child was the paramount consideration which could not be overridden by any question of a parental right, still re-emphasised the importance of that relationship for a child. Baroness Hale, like Thorpe L.J., did not view the dispute as being one between a parent and non-parent, and also accepted that a non-biological psychological parent could fall under the term natural parent. Baroness Hale made reference to ***Re KD***, ***Re K***, ***Re H*** and ***Re W*** and then stated:

> *"[30] My Lords, the Children Act 1989 brought together the Government's proposals in relation to childcare law and the Law Commission's recommendations in relation to the private law. In its 1986 Review of Child Law: Custody, Working Paper No 96 (HMSO, 1986), at para 6.22, having discussed whether there should be some form of presumption in favour of natural parents, the Commission said this:*
>
> > *"We conclude, therefore, that the welfare of each child in the family should continue to be the paramount consideration whenever their custody or upbringing is in question between private individuals. The welfare test itself is well able to encompass any special contribution which natural parents can make to the emotional*

needs of their child, in particular to his sense of identity and self-esteem, as well as the added commitment which knowledge of their parenthood may bring. We have already said that the indications are that the priority given to the welfare of the child needs to be strengthened rather than undermined. We could not contemplate making any recommendation which might have the effect of weakening the protection given to children under the present law."

Nor should we. The statutory position is plain: the welfare of the child is the paramount consideration. As Lord MacDermott explained, this means that it 'rules upon or determines the course to be followed'. There is no question of a parental right. As the Law Commission explained, 'the welfare test itself is well able to encompass any special contribution which natural parents can make to the emotional needs of their child' or, as Lord MacDermott put it, the claims and wishes of parents 'can be capable of ministering to the total welfare of the child in a special way".

[31] None of this means that the fact of parentage is irrelevant. The position in English law is akin to that in Australian law, as explained by Lindenmayer J in Hodak, Newman and Hodak (1993) FLC 92-421, and subsequently approved by the Full Court of the Family Court of Australia in Rice v Miller (1993) FLC 92-415 and Re Evelyn [1998] Fam CA 55:

> *"I am of the opinion that the fact of parenthood is to be regarded as an important and significant factor in considering which proposals better advance the welfare of the child. Such fact does not, however, establish a presumption in favour of the natural parent, nor generate a preferential position in favour of the natural parent from which the Court commences its decision-making process ... Each case should be determined upon an examination of its own merits and of the individuals there involved."*

[32] So what is the significance of the fact of parenthood? It is worthwhile picking apart what we mean by "natural parent" in this context. There is a difference between natural and legal parents. Thus, the father of a child born to unmarried parents was not legally a "parent" until the Family Law Reform Act 1987 but he was always a natural parent. ...To be the legal parent of a child gives a person legal standing to bring

and defend proceedings about the child and makes the child a member of that person's family, but it does not necessarily tell us much about the importance of that person to the child's welfare.

[33] There are at least three ways in which a person may be or become a natural parent of a child, each of which may be a very significant factor in the child's welfare, depending upon the circumstances of the particular case. The first is genetic parenthood: the provision of the gametes which produce the child. This can be of deep significance on many levels. For the parent, perhaps particularly for a father, the knowledge that this is "his" child can bring a very special sense of love for and commitment to that child which will be of great benefit to the child (see, for example, the psychiatric evidence in Re C (MA) (An Infant) [1966] 1 WLR 646). For the child, he reaps the benefit not only of that love and commitment, but also of knowing his own origins and lineage, which is an important component in finding an individual sense of self as one grows up. The knowledge of that genetic link may also be an important (although certainly not an essential) component in the love and commitment felt by the wider family, perhaps especially grandparents, from which the child has so much to gain.

[34] The second is gestational parenthood: the conceiving and bearing of the child. The mother who bears the child is legally the child's mother, whereas the mother who provided the egg is not: 1990 Act, s 27. While this may be partly for reasons of certainty and convenience, it also recognises a deeper truth: that the process of carrying a child and giving him birth (which may well be followed by breast-feeding for some months) brings with it, in the vast majority of cases, a very special relationship between mother and child, a relationship which is different from any other.

[35] The third is social and psychological parenthood: the relationship which develops through the child demanding and the parent providing for the child's needs, initially at the most basic level of feeding, nurturing, comforting and loving, and later at the more sophisticated level of guiding, socialising, educating and protecting. The phrase "psychological parent" gained most currency from the influential work of Goldstein, Freud and Solnit, Beyond the Best Interests of the Child (1973), who defined it thus:

> *"A psychological parent is one who, on a continuous, day-to-day basis, through interaction, companionship, interplay, and mutuality, fulfils the child's psychological needs for a parent, as well as the child's physical needs. The psychological parent may be a biological, adoptive, foster or common law parent."*

[36] Of course, in the great majority of cases, the natural mother combines all three. She is the genetic, gestational and psychological parent. Her contribution to the welfare of the child is unique. The natural father combines genetic and psychological parenthood. His contribution is also unique. In these days when more parents share the tasks of child rearing and breadwinning, his contribution is often much closer to that of the mother than it used to be; but there are still families which divide their tasks on more traditional lines, in which case his contribution will be different and its importance will often increase with the age of the child.

[37] But there are also parents who are neither genetic nor gestational, but who have become the psychological parents of the child and thus have an important contribution to make to their welfare. Adoptive parents are the most obvious example, but there are many others."

45. Baroness Hales concluded by saying at paragraph 44:

> *"First, the fact that CG is the natural mother of these children in every sense of that term, while raising no presumption in her favour, is*

undoubtedly an important and significant factor in determining what will be best for them now and in the future."

46. Baroness Hale reinforced the importance of the welfare of the child by requiring courts to consider the factors in the welfare checklist. She highlighted that the Legislature did not intend there to be a presumption in favour of a natural parent in s.8[11] proceedings and therefore no mention was made of a presumption in s.1 of the Act and it did not appear as a separate factor in the checklist. The English Act and our Law require the Court to look at any change of circumstances and the capability of other persons, who are not parents, of meeting a child's needs.

47. The Supreme Court in ***Re B (A Child)*** **[2009]** UKSC 5 provided clarification following ***Re G.*** The case involved a 3 year old child whose parents had separated before he was born. From the time of his birth until shortly before the hearing, apart from weekends, he had lived with his maternal grandmother. In late 2006 the grandmother was granted a residence order by consent and the father was granted a parental responsibility order. From July 2007 until March 2008 the father was serving a custodial sentence for racially aggravated assault. He married shortly after his release and had a daughter in February 2009. In May 2008 the mother applied for residence and shortly thereafter the father did the same. The mother supported the father's unsuccessful application. A staying contact order was made in the favour of each parent. He successfully appealed to the High

[11] Section 10 proceedings in the Cayman Islands.

Court and was granted a residence order by the Learned Judge. The Judge interpreted ***Re G*** as meaning that it was preferable for children to be raised by a biological parent, and that a child had a right to that if that parent could provide parenting that was "*good enough.*" Even if the grandmother's care could be regarded as being better. The order made by the Judge was upheld by the Court of Appeal.

48. When delivering the ruling given by the Supreme Court, Lord Kerr opened at paragraph 2 by setting the background as follows:

> *"This appeal requires a revisiting of a vexed but highly important topic. The significance of parenthood in private law disputes about residence and contact has exercised many courts over many years but one might have thought that the final word on the subject had been uttered in the comprehensive and authoritative opinion of Baroness Hale of Richmond in In re G (Children) (Residence: Same-sex Partner) [2006] UKHL 43, [2006] 1 WLR 2305. As this case illustrates, however, misunderstandings about the true import of that decision and the applicable principles persist."*

49. Lord Kerr disagreed with the approach taken in the High Court, stating:

> *"18. The judge referred to the decision of* In re G, *(which had received a passing reference in the justices' statement of reasons that we will consider later in this judgment). He suggested, at para 23, that the House of Lords had made clear in that case that "in the ordinary way ... the rearing of a child by his or her biological parents can be expected to be in the child's best interests, both in the short term and, more importantly, in*

the longer term". For reasons that we shall give presently, we do not consider that this is a proper representation of the decision in In re G and we believe that it was the failure to properly understand the burden of the decision in that case that led the judge into error."

50. Lord Kerr went on to comment upon the Learned Judge's interpretation as follows:

"19. The theme that it was preferable for children to be raised by their biological parent or parents was developed by the judge in paras 24 and 25 of his judgment. He stated that it was the right of the child to be brought up in the home of his other natural parent. (It is clear from the context that the judge was using the term 'natural parent' to mean 'biological parent'.) We consider that this statement betrays a failure on the part of the judge to concentrate on the factor of overwhelming - indeed, paramount - importance which is, of course, the welfare of the child. To talk in terms of a child's rights - as opposed to his or her best interests - diverts from the focus that the child's welfare should occupy in the minds of those called on to make decisions as to their residence.

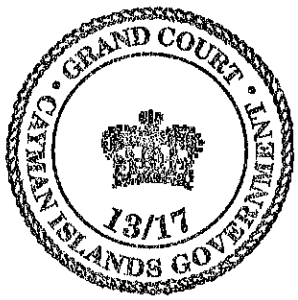
20. The distraction that discussion of rights rather than welfare can occasion is well illustrated in the latter part of Judge Richards' judgment. In paras 28 and 30 he suggested that, provided the parenting that Harry's father could provide was "good enough", it was of no consequence that that which the grandmother could provide would be better. We consider that in decisions about residence such as are involved in this case; there is no place for the question whether the proposed placement would be "good enough". The court's quest is to determine what is in the best interests of the child, not what might constitute a second best but supposedly adequate alternative. As the Court of Appeal pointed out at para 61, the concept of

'good enough' parenting has always been advanced in the context of public law proceedings and of care within the wider family as opposed to care by strangers."

51. Lord Kerr when interpreting ***Re G*** reasserted that there was no presumption. He stressed that a careful reading of Lord Nicholl's speech in ***Re G*** did not support a contention that the Court was stating that a child should be removed from the care of a biological parents. Instead Lord Nicholls had been expressing the general experience that there are some benefits for children being brought up by their birth parents. Lord Kerr stated:

"35. When Lord Nicholls said that courts should keep in mind that the interests of a child will normally be best served by being reared by his or her biological parent, he was doing no more than reflecting common experience that, in general, children tend to thrive when brought up by parents to whom they have been born. He was careful to qualify his statement, however, by the words "in the ordinary way" the rearing of a child by his or her biological parent can be expected to be in the child's best interests" (emphasis added). In the ordinary way one can expect that children will do best with their biological parents. But many disputes about residence and contact do not follow the ordinary way. Therefore, although one should keep in mind the common experience to which Lord Nicholls was referring, one must not be slow to recognise those cases where that common experience does not provide a reliable guide."

52. Lord Kerr made clear that the core issue was:



"37...All consideration of the importance of parenthood in private law disputes about residence must be firmly rooted in an examination of what is in the child's best interests. This is the paramount consideration. It is only as a contributor to the child's welfare that parenthood assumes any significance. In common with all other factors bearing on what is in the best interests of the child, it must be examined for its potential to fulfil that aim...."

53. The Supreme Court, by its comprehensive judgment made it clear that there is no presumption in favour of a biological parent. The Court ruled that the paramount consideration is the welfare of the child and that the natural-parent bond may be a factor to be taken into account when carrying out the welfare assessment. That has been the approach taken by the Courts in England and Wales after ***Re B***. For instance in (i) ***Re T (Children)*** **2010 EWCA Civ 1644** Wilson L.J. stated at paragraph 14:

"The judge noted the recent decision of the Supreme Court in Re B (A Child) [2009] UKSC 5, [2010] 1 FLR 551. In the light of that decision he correctly proceeded on the basis that the closer biological link of the mother with the children was not what he described as a "stand-alone feature" but was relevant only insofar as it impacted on where the welfare of the children lay."

and (ii) in ***Re B (Residence: Premature Order)*** [2012] EWCA CIV 632 Hughes L.J. felt that the Judge had not made:

"the elementary error of misunderstanding"

Re G and ***Re B*** adding at paragraph 21:

"She did not, it seems to me, make the mistake of thinking that the mother's status as a parent gave her rights which governed the outcome of an issue as to residence. What she clearly did do was to assume that there simply had to be in the interests of the welfare of the child an immediate order for residence with a view to assessment."

54. In ***Re E-R (A Child)*** [2015] EWCA Civ 405 the parents of a 5 year old child separated in March 2011, but they unsuccessfully attempted a reconciliation after the mother had been diagnosed with terminal cancer. It was an unpleasant breakdown during which mother had to obtain a restraining order against the father, which he breached. The mother and child remained living in the West Country but the father moved to Suffolk in the East of England. There was then a two year break in contact between the child and the father. The mother moved into a friend's home with the child. The mother stated in her Will that she wanted that friend and her partner to be appointed as the child's testamentary guardian. The couple applied for a special Guardianship Order, so that she would have parental responsibility. The father opposed and, in line with a recommendation made by the allocated Social Worker, he was granted a Child Arrangement Order whereby he would have care of the child after the mother's death. The couple appealed and King L.J., allowing the appeal, applied the approach set out in ***Re G*** and ***Re B*** finding that the Judge had wrongly considered there to have been a presumption in law in favour of the father as he was a biological parent. She also stated that the fact that a child has been living with a party for a significant period

of time does not create a presumption in favour of that person. Although not presumptions, these are both factors which may be significant and taken into account, and the importance may differ depending on the particular case, when the Court is considering the child's welfare and what is in its best interests. At paragraph 39, King J. stated:

> *"In the present case, the fact that there is a natural father wishing to care for his child, that the status quo may appear at first blush to point to T remaining where she is and that the mother's dying wish was for T to stay with SJH, are each features of this case. Those features make the case sensitive, difficult and distressing, but none of them, individually or together, affect the essential approach of the court which is, and is always, that T's welfare is paramount. As Lord Hope said in Re B:*
>
> > *"In common with all other factors bearing on what is in the best interest of the child, it must be examined for its potential to fulfil that aim."*

55. I am satisfied, having conducted the above detailed review of how and why the law developed in England and Wales and how it was interpreted in ***Re B*** and how that approach has since been applied consistently by the Courts, that the Supreme Court's approach is the correct one to be applied in the Cayman Islands under the Children Law. From the parties closing written submissions it is evident that this is not a contentious conclusion.

56. It is hoped that the above detailed and historical analysis of the case and how the now governing approach set out in ***Re B*** was arrived at and has since been applied

will provide helpful guidance to those involved in future s.10 cases involving a non-biological parent party.

Factual Background and Contentions

57. Having satisfied myself of the applicable law, namely that there is no presumption for the children to live with F or GM and that the children's welfare is paramount, I will now go on to review and place the relevant factual background in that context. In light of the detailed evidence placed before the Court, a great deal of which has not been particularly helpful, I adopt the observations of Thorpe L.J. in ***Re F (Shared Residence Order)*** [2003] EWCA Civ 592, [2003] 2 FLR 397, namely that one of the functions of the judge is to make findings and that another function is to be selective and to make findings that are relevant and necessary for the disposal of the issue. Accordingly, when considering what orders would be in the best interests of the children at this time, I am not required to make findings on every area or issue that has been presented to me or which have become apparent during the hearing. I must determine the factual issues that have implications for the decisions that I have to take in relation to the children.

Immigration Status of Children in the Cayman Islands and Education Opportunities if a Residence Order is Made in Favour of GM

58. A preliminary issue concerning whether the children would be permitted to live in the Cayman Islands and/or attend public school after the conclusion of these

proceedings, if the Court made a residence order in favour of GM, was addressed on the first day of the hearing. Mr. Garfield Wong, the Deputy Chief Immigration Officer, attended Court. I am grateful to him for his attendance and great assistance. He stated that, if the Court "*issued a residence order*" in relation to the children, the Immigration Department "*will comply with it*" and "*will not seek to have them removed.*" He added that in such circumstances Immigration "*could not refuse them an extension or a right to stay*" in the Cayman Islands. Mr. Wong said that a residence order would allow the children to stay and attend school here. He stated that the children would extend their immigration status by obtaining a visitors permit, for no fee, every six months. Mr. Wong confirmed that the children would be permitted to travel in and out of the country during the six month period and that they could apply for residency in their own right after 8 years. He highlighted that there was no provision under the Immigration Law governing such a situation. He could not confirm whether GM would be successful if she applied to have the children recorded as being her dependents, as that would be a matter for the Immigration Board or for the Chief Immigration Officer to determine. Mr. Wong concluded by saying that:

> *"You should feel confident that if a renewal (application) is made every 6 months and they hold a current passport, the visa would be renewed until they were aged 18*" and that he was "*sure*" the Immigration Department "*could craft a letter to that effect in this case.*"

59. The Department of Education confirmed in an email dated 29 May 2018 that D:

"is currently registered and approved to attend government school for the school year 2018/19 pending receipt of a final resident/interim order to the legal guardian (GM)."

60. As a consequence of Mr. Wong's evidence, which I accept, and the above email I am satisfied that the children would be permitted to remain in the Cayman Islands during their minority and attend public school if residence orders were made in GM's favour. I am also satisfied that they would be able to leave and return to the jurisdiction if they were visiting their father overseas.

The Allegations, Raised and Relied Upon by GM, of Sexual Abuse by the Paternal Grandfather against A, the Children's Half-Sibling

61. The allegations made include inappropriate touching of A's private parts by touching her bottom, one time using his long finger nail:

"to stick the child on her bottom making contact with her vagina", once saying that she was *"a very sexy child"*

and going into the bathroom and urinating when she was taking a bath. GM said that she did not see him going into the bathroom but that was something that A had said to her more recently and, although not saying that he touched her, she said it made her feel uncomfortable.

62. The aunt indicated that the mother telephoned her and said that the paternal grandfather, who was in the Cayman Islands at the time, had slapped and touched

A's bottom. The aunt stated that when she went to their home that F was laughing, and told her that it "*was not anything*". The aunt stated that A had not mentioned anything specifically to her about the paternal grandfather, until shortly before D's birth, when A told her that he had touched her *"years ago."* She said that she raised it with the parents and that A confirmed that he had:

> *"touched her on her bottom*" and that *"she did not like it, and he kept doing it".*

63. GM contends that F gave inconsistent and dishonest evidence in relation to this issue and that this goes to his credibility when reviewing all of the evidence. Although not specifically stated in the Closing Written Submission, it appears that GM has concerns about F's failure to prevent the alleged abuse against A and that he may permit the two relevant children to come into contact with his father if they live with him in Jamaica under a residence order.

64. GM stated that she relayed all of these concerns to Mrs. Forsythe at their first or second meeting and at the initial case conference. Mrs. Forsythe stated that "*at no time"* did GM mention sexual abuse and that she did not explore any such concerns with GM. She said that if she had been told this it would have been written down and recorded in the DCFS' file on the family and that the Police would have been contacted and a statement taken "*almost immediately."* Although there may be some concern about the level of some of the inquiries made, I do not find that the Social Worker is misleading the Court on this point.

The conclusion in a DPP Ruling Form prepared by Crown Counsel Darlene Oko dated 19 April 2018 concerning the allegations made against the paternal grandfather relating to A[12] was that there was no realistic prospect of a conviction for indecent assault and that the evidence was insufficient to prove such an allegation. Crown Counsel carefully reviewed the content of the ABE interviews with A. Ms. Oko, although quite fairly acknowledging that the interviews should have been conducted in a more thorough manner, noted at page 6-8 of her report apparent inconsistencies in the evidence which would undermine the credibility of the relevant witnesses, including GM and the children. Of course, it will be my conclusions reached after my own review of the more detailed evidence before me that are of importance, including that given by the Aunt. However, having conducted such an exercise, I see force in the conclusions reached by Crown Counsel in relation to the allegations concerning A.

GM's allegations - (i) Acts of Domestic Violence by the Father Against the Mother and - (ii) Physical and Sexual Abuse on the Children Perpetrated by the Father

65. A considerable amount of time at the hearing was occupied with the allegations made by GM against F concerning his alleged abusive treatment of M and the children. The allegations were both historical and very recent, including some arising on more than one occasion just before crucial parts of these proceedings

[12] As well as the GM's report in November 2017 that D had told her that F showed her blood that was in G's vagina and kissed her on the vagina and pinched her vagina. It is contended that D drew a picture of F kissing her vagina.

and the final hearing. F contended that GM was fabricating these serious allegations and coaching the children in a bid to weaken his case, and that she was thereby causing emotional harm to the children. F told the Court that he was unaware of some of the allegations until November 2017 and some of the other allegations about his treatment of the children until the Police informed him of them when he came to Cayman in March 2018 for contact with the children. He said he was content for the earlier contact visits in 2018 to be supervised, primarily because he wanted there to be a witness so that further unfounded allegations of abuse could not be levied against him. This is also one of the reasons why he wanted the handover of the children after their return from Jamaica to take place at the DCFS office rather than at the airport to GM. I note that GM stated that she "*felt fearful*" to go to the airport by herself as she:

> "*felt that (F) would hurt*" her and she "*thought that something would happen at his hands or at his friends.*"

There was no supporting evidence to justify GM's troubling assertion that F would actually behave in this highly improper manner in the presence of the children at a very public place upon his return. This is a further example of GM's exaggeration and attempt to portray F '*in a bad light.*'

66. The more recent allegations raised by GM for the first time at different stages of the hearing have greatly increased the length of the hearing and have caused significant delay because, due to their serious nature, the Court felt it appropriate

for there to be an opportunity, prior to the determination of the case, for the child protection agencies to conduct any investigations they felt to be necessary.

67. Counsel states in the Closing Written Submission prepared on behalf of GM that, in relation to the allegations made against both F and his family members:

> *"The Court will find it extremely difficult to make findings of fact in relation to most of these matters and a conclusive risk assessment will prove challenging."*

I agree that the nature and content of the available evidence relied upon by GM makes it problematic for her to establish, even on the civil balance of probabilities, that the alleged abuse by (i) F against M and the children and (ii) by the paternal grandfather against A occurred. It is highly significant that all of the independent evidence arising from the investigations carried out by the various child protection agencies, did not lead them to a conclusion that there was any risk of physical harm to the children from F.

68. I do not accept GM's contention that F was raising an allegation against her when he messaged her on 23 April 2017 about the blood he said he had noticed around G's vagina and on the wipes and when asked whether the child minder had noticed it. In the same message he states that GM and the aunt:

> *"have done a wonderful job taking care*" of the children.

F has not referred to this during the proceedings to criticise the level of the care given by GM. Interestingly, rather than replying to the message, GM was the one who contacted the Police and inferred to them that they had been abused by F.

69. GM has raised a number of allegations about F's conduct towards M, a concern which she raised at the first case conference with the DCFS which was called in April 2017, a time when F felt that the GM was actively preventing him from seeing the children. Mrs. Forsythe accepted that GM did raise this, but also added that, at the time, she observed:

"The father presented himself as a concerned individual about the children and his right to the children, who needed answers as to what was happening...He strikes me as a father who wants to play an unlimited role in the children's lives."

GM contends that F physically abused M and that there is sufficient evidence for the Court to find on the balance of probabilities that there has been domestic violence in the past. She relies on (i) hearsay evidence of what GM says M told her; (ii) the contents of text and social messages she said she had read, some of which she was able to produce; (iii) a time when she says she saw F push M out of a car; (iv) a time when she said she saw F throw a plate at M; (v) the limited evidence of the aunt about a text that she had read; (vi) a limited number of comments made by M to friends on social media; and (vii) the fact that on occasion the Police attended at the property.

70. The maternal aunt's evidence in cross-examination when asked about the allegation of domestic abuse gives quite some insight. She stated:

> *"I came in (the) picture when (the mother) called me about these things. I have never seen these things. I was aware of their arguments and the abusive behavior. I have seen the arguments... I have never seen him hit her. (The mother) was giving as good as she got in the arguments.*[13] *Neither of them laid hands on each other when with me."*

71. The evidence in its nature and content is clearly insufficient for the Court to make a finding on the balance of probabilities that F physically abused M. I do not accept the submission made on behalf of GM that the "*historical Police reports* of *domestic violence*" between F and M, the messages between F and a friend in which she said F hits her and the oral evidence establish on the balance of probabilities that F likely inflicted domestic violence on M. What does emerge from the evidence is that M and F's relationship was characterised by frequent heated arguments in which they both played a pro-active role. The police reports are consistent with this, and I note that the Police recommended that the parents attend counselling. The parents in their relationship appeared to place great importance on their active social life, possibly partly due to the nature of F's employment in the entertainment industry as a Production Director and Manager at a broadcasting company and as a Radio Disc Jockey. This was often a catalyst for the arguments between them. Although not contained in her affidavits, GM stated during cross-examination that the parents:

[13] My emphasis by underlining.

"left the children with drunk people so that they could go out... the first priority was themselves."

and that she had *"big arguments"* with them about that.

72. Before I move away from GM's allegations of domestic violence, it is appropriate to address a concerning part of her evidence surprisingly only raised for the first time during her cross-examination. GM said that whilst she was with M when she was receiving treatment in Jamaica they had to move three times in one night as F *"was going to kill"* M. GM stated that M had received messages from F which had caused her to feel that her life was in danger. GM said that at 5:00 PM they checked into the Bath Fountain Hotel in St. Ann's for a two-day stay, but checked out at 7:00 PM. They then moved to another hotel, which she could not name, in the same district after 9:00 PM after a one and half hour drive and that between midnight and 1:00 AM they checked out to another unnamed hotel in the same area. GM said that the following morning, she M and the baby all moved back to the Bath Fountain Hotel. Despite the serious nature of the threats she confirmed that she did not contact the Police, nor did she place the detail in any of her affidavits and she failed to give an adequate explanation for that. Her demeanor when asked about the specifics of what happened that night was awkward, and I do not accept her evidence in this regard. At the very least it shows a propensity to exaggerate to strengthen her case, which is something I cannot disregard when I later go on to consider her credibility when analysing allegations she makes

concerning abuse of the children by F. If she genuinely believed that F was going to kill M, it shows a detachment from reality, which I accept, to a degree, may be explained by the emotional pressure she was under as a consequence of her having to care for a gravely ill daughter. I also note that one of the reasons she gave to Mrs. Mowatt for relocating from her sister's property was that she: .

"was being followed by friends of the Respondent."[14]

Again, on the evidence, this is an unfounded allegation illustrating a propensity to, at best, exaggerate, but more likely create an inaccurate portrayal of F.

73. I am conscious that GM has not asked for specific findings of fact to be made about each allegation relied upon by her. This is not a case where any findings sought have been set out by GM, for example in the form of a Scott Schedule prepared for these proceedings. This may be because it is submitted on behalf of GM, partly due to the nature of the DCFS/MASH investigations, that in relation to any allegations of sexual abuse by F:

> *"In the circumstances, it is virtually impossible for the Court to make any conclusive findings as regards the legitimacy or otherwise of the allegations levelled against F and the paternal grandfather."*

The following guidance concerning the applicable legal principles and approach when determining whether, on the balance of probabilities, certain alleged

[14] Paragraph 14 of Report dated 21 November 2017.

incidents of physical and sexual abuse have taken place against the children was provided by Macdonald J in ***AS v TH (False Allegations of Abuse)*** [2016] EWHC 532 Fam:

"Burden and standard of proof and evidence

*23. The burden of proving a fact is on the party asserting that fact. To prove the fact asserted that fact must be established on the balance of probabilities. The inherent probability or improbability of an event remains a matter to be taken into account when weighing the probabilities and deciding whether, on balance, the event occurred. As has been observed, "Common sense, not law, requires that in deciding this question regard should be had, to whatever extent appropriate, to inherent probabilities" (**Re B [2008] UKHL 35** at [15]).*

*24. The decision on whether the facts in issue have been proved to the requisite standard must be based on all of the available evidence and should have regard to the wide context of social, emotional, ethical and moral factors (**A County Council v A Mother, A Father and X, Y and Z [2005] EWHC 31 (Fam)**). Where the evidence of a child stands only as hearsay, the court weighing up that evidence has to take into account the fact that it was not subject to cross-examination (Re W (Children)(Abuse: Oral Evidence) [2010] 1 FLR 1485).*

25. If a court concludes that a witness has lied about one matter, it does not follow that he or she has lied about everything. A witness may lie for many reasons, for example, out of shame, humiliation, misplaced loyalty, panic, fear, distress, confusion and emotional pressure (R v Lucas [1981] QB 720).

26. The court must not evaluate and assess the available evidence in separate compartments. Rather, regard must be had to the relevance of each piece of evidence to other evidence and to exercise an overview of

the totality of the evidence in order to come to the conclusion whether the case put forward has been made out on the balance of probabilities (Re T [2004] 2 FLR 838 at [33]).

27. There is no room for a finding by the court that something might have happened. The court may decide that it did or that it did not (Re B [2008] UKHL 35 at [2]). However, failure to find a fact proved on the balance of probabilities does not equate without more to a finding that the allegation is false ***(Re M (Children) [2013] EWCA Civ 388)***

28. In principle the approach to fact finding in private family proceedings between parents should be the same as the approach in care proceedings. However, as Baroness Hale cautioned in Re B at [29]:

> *"...there are specific risks to which the court must be alive. Allegations of abuse are not being made by a neutral and expert Local Authority which has nothing to gain by making them, but by a parent who is seeking to gain an advantage in the battle against the other parent. This does not mean that they are false but it does increase the risk of misinterpretation, exaggeration or downright fabrication."*

29. Within this context, it has long been recognised that care must be taken not to focus attention on statements made by the child at the expense of other evidence, particularly where allegations of abuse arise in the context of private law disputes. The Best Practice Guidance of June 1997 Handbook of Best Practice in Children Act Cases Section 4, Annex para (k) cautions that:

> *"Any investigation which focuses attention on the statements of the child runs the risk of producing a false result if what the child says is unreliable or if the child's primary care taker is unreliable, particularly where the allegation emerges in bitterly contested section 8 proceedings."*

74. Therefore, the parent against whom the allegations are made, in this case F, does not have to prove anything. As the result of the Supreme Court's decision in ***Re B***

[2008] UKHL 35, the standard of proof in finding the facts necessary to establish any factual issue in the case is the simple balance of probabilities, nothing more and nothing less. Neither the seriousness of the allegation nor the seriousness of the consequences should make any difference to the standard of proof in determining the facts.

75. The allegations relating to sexual abuse are not made by GM as a result of her witnessing the same, but from reports made to her by the children, from pictures drawn by D and statements made by D to the maternal aunt. It is conceded on behalf of GM in the Written Closing Submissions that she believed the children, but she:

> *"accepted that she could not say whether these things happened as she was not there."*

In addition, although GM highlights that there may be some concerning aspects to the drawings made by D, it is also conceded on her behalf that:

> *"It is very difficult to assess such drawings without expert opinion and unfortunately MASH did not investigate the matter as thoroughly as they should have done."*

Crown Counsel Oko remarked in her report that the picture purportedly drawn by D and depicting F kissing her vagina was never put to D in interview to have her confirm or deny having produced it. Crown Counsel in her assessment felt that the picture did not depict the kissing of another's vagina and she added that it

"appears to be a rather sophisticated picture" for a 5 year old child to have drawn.

76. As I have already mentioned, none of the officers working for any of the protection agencies, including Social Workers attached to the DCFS, Social Workers attached to MASH or Police Officers attached to MASH felt that there was sufficient evidence to substantiate any of the allegations made in relation to the children and none of them felt that there was a need for further enquires to be conducted.

77. There is more evidence about the more recent allegations of abuse raised by GM, which places me in a better position to consider whether there is any substance in them. The five day hearing of the applications was due to commence on 28 May 2018. This followed the s.39 Report of Mrs. Mowatt dated 28 February 2018 in which it was stated that the DCFS did not feel that it should instigate public law care/supervision order proceedings. This hearing commenced after F enjoyed supervised contact with the children at various settings between 5 March and 10 March 2018. Although they had not seen their father for a while, Mrs. Mowatt described a positive and loving interaction between them. The children demanded that F participate in their games, which they enjoyed with laughter. Mrs. Mowatt stated that on 8 March 2018, when F left, G was:

"inconsolable" and "*cried loudly*" for him.

GM states that the tears were only because G did not want to leave the Lil' Monkeys facility, rather than being due to the separation from F. Suzanne Seagraves, an independent Social Worker who was offering support to GM and the children, noted in her report dated 15 May 2018 that D had told her on 8 March 2018 that she had been with F and "*it was fun*" with him at Lil' Monkeys.

78. With this recent background in mind, on the eve of the hearing the Court was informed by an email from the DCFS that GM had taken D to the Police station and made a report to Officer Wolliston alleging sexual abuse by F on D and G. The Officer consulted with a supervisor. The Officer wrote in the Domestic Incident Referral Report that GM told him that when she was preparing the children for their play date when her granddaughter told her that F had touched her private area and her bottom. Interestingly the reviewing supervisor commented in the Police Report that:

"the younger of the child wanted to be with her father."

DC Tamara Jackson, an officer attached to MASH, said that GM had attended at the police station with D and had said that:

"the child had something to say."

She told the Court that Officer Wolliston had told her that D had told him that F:

"took me to the park and he took me to his house. He touched my private parts and my bottom and my sister too."

DC Jackson stated that on the next day she, along with a Social Worker, interviewed D who did not know why she was there and who:

> *"made no disclosure of any type of sexual things happening to her at all despite the various ways"* that questions were asked of her.

D confirmed that she did see F at Lil' Monkeys and that they played and ate there. She said that she then went to God's house, which she said was home. I note that GM is a very religious person. DC Jackson remarked that D is:

> *"talkative sometimes, she is smart. No alarm bells from her demeanor."*

79. Upon further investigation with an employee at Lil' Monkeys, DC Jackson established that F had signed in there at 12:20 PM and signed out at 2:20 PM, which is consistent with the time that the GM said she dropped off and collected the children. The employee also informed her that the person was not allowed to come in and leave the establishment and come back, so that the time they signed in is the time they arrived and the time they signed out is the time when they left. I note that GM does not accept this. She stated that when she arrived the children were sitting down eating a snack. She said that they were acting as if they had not had the Lil' Monkeys experience on that day. GM also alleged, without any foundation, that F did not have the children when he signed out and that the evidence obtained by the officer from the staff member should not be relied upon as they did not speak to the correct member of staff but to one who was off duty at the time. I accept F's evidence that when GM arrived he had just signed out and

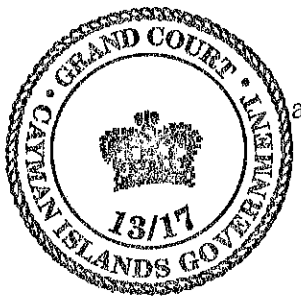
they went outside and were sitting on a bench and that he and the children had had a discussion about a yellow shop across the street from where they were which GM may have heard.

80. DC. Jackson concluded that she:

"saw no reason to pursue this matter"

and that she had found on the information before her that there was:

"nothing to suggest anything for me to do a further investigation...."



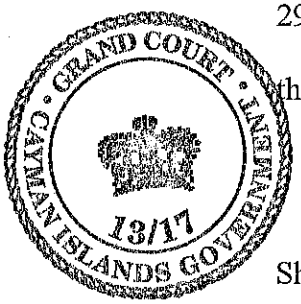
81. On the evidence, I agree with her conclusion. The content of the interview is inconsistent with what was reported that Officer Wolliston had been told on the evening before. There is no mention by D in the interview of her being taken to the park and to the house of F or of any inappropriate sexual conduct by F. In fact, her disclosure in the interview is consistent with them all eating and playing at Lil' Monkeys. During cross-examination GM stated that yet again what MASH were disclosing about the content of child's statement to them was not correct. She stated that the child told the Officer about going to the park, about the yellow house and about:

"Daddy touching me on the vagina."

She said that she told the officer this when she was asked to read over the child's statement.

82. Following the evidence of DC Jackson given on 30 May 2018, the parties agreed with the Court's view that the hearing could and should proceed. Evidence was given and on 1 June 218 the hearing was adjourned to 4 July 2018 for conclusion and to permit a further assessment arising out of the Court granting F leave to temporarily remove the children to Jamaica for a period up to a month.

83. At the restored hearing on 4 July 2018, Mrs. Mowatt told the Court that on Friday 29 June 2018 F had brought the children to her immediately upon their return to the Cayman Islands. She remarked that the children:



"seemed happy and cheerful."

She stated that G was drawing a picture of F and a picture of her paternal grandmother. When Mrs. Mowatt spoke to G, in the absence of F, G said that she had done fun things in Jamaica. When asked, G said that nothing happened to her there that she did not like and that there was not anything there that made her sad. G told her that she missed GM when she was in Jamaica. Mrs. Mowatt said that G when responding to her questions was:

"quite cheerful, quite at ease and did not seem unhappy."

When she spoke to D, D told her that G had hit her in a dispute over a tablet but that it was resolved when F gave her his phone. D told her that she had done fun things in Jamaica with F. When asked, D said that F had not done anything in

Jamaica that made her sad. When asked if she would want to go back to Jamaica she said:

"I want to live in Cayman as I miss my Nanna."

It is evident that despite the children understandably expressing their affection for GM, that before seeing GM they had not stated anything or acted in any way to raise any concern about their time with F in Jamaica.

84. Mrs. Mowatt then told the Court that the children were collected by GM, but between 10 to 15 minutes later she returned with them to the office. In the absence of the children, but with the door open and the possibility that the children heard what she said, GM told Mrs. Mowatt that the children had told her that they had been beaten by F and the paternal grandmother. Mrs. Mowatt then reported what she had been told to others, including MASH, and she informed GM that she felt that it was not appropriate for the children to be interviewed again on that day as they had been travelling for quite some time that day.

85. GM was not happy with Mrs. Mowatt's decision as she wanted someone to speak with the children who she said she believed had been beaten. GM said that she felt frustrated by the situation and was in shock by what the children had told her within five minutes of her collecting them. GM said that she told the Social Worker that she was:

"trying to shove her off"

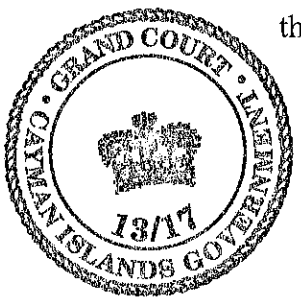
and that after she again demanded that Mrs. Mowatt should speak to the children, she became *"dismissive"* and did not take GM seriously. GM said that she told them that she was refusing to leave and she threatened that she would:

> *"call the Cayman Compass and tell them what happened"* and *"I will let the children speak to the Compass and let them speak to the children."*

86. GM made it abundantly clear to the Court that she had *"lost faith"* in MASH and the police and that she had felt that way about the DCFS *"from day one"*. She said that the:

> *"children were beaten and slapped"* and that she was *"angry to be mistreated by the three individuals"* at the office.

GM in her oral evidence stated that after the Lil' Monkey allegations in March, the DCFS/MASH:



> *"did not come until the following day as they do not care...No one takes me seriously, no one cares. People do not care as they are 2 little black children...I frustrated, upset by the way that I have been treated, lost confidence in the system and what is there for support."*

She added that:

> *"My experience is all of this is misinterpreted in support of (F) by DCFS and MASH."*

Although I accept and have already found that the GM is prone to exaggeration, a number of her remarks especially concerning the handling of the allegation of

abuse that was alleged to have occurred after the commencement of this hearing, lead to a conclusion that she genuinely feels that there is a conspiracy between the protection agencies and F and that the agencies are willing to go so far as to deliberately mislead the Court as to what happened during formal interviews with the children. This goes beyond alleging that they are incompetent or failing to carry out a thorough investigation.

87. GM eventually left the office and, without any consultation with MASH or the DCFS, at around 6:00 PM on the same day, she took the children to the hospital to speak to a doctor as she wanted:

"to see if they had a bruise or a scratch."

I note, when considering the veracity of what she said the children had told her and the possible motivation behind this further report of abuse, that GM said in her oral evidence that her:

"intention was that they be checked out to see if there was any evidence of a beating."

The content in the "*Emergency Physicians Notes*" signed by Obinna Elweanya are concerning, as it is unfortunately an example of how the amassing of medical evidence concerning alleged abuse against a child victim should not be conducted. Firstly GM, apparently in the presence of the children told the doctor that the children had relayed information to her that they:

"were beaten by dad, grandmother and someone else with a leaf."

The doctor reports that GM:

"heard her sister stated that they were beaten by their father and paternal grandmother while in Jamaica".

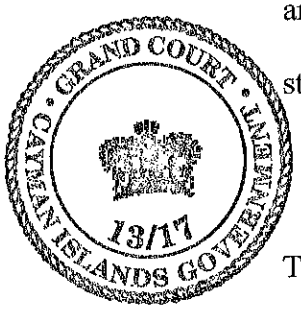
This is inconsistent with GM's evidence, as she told the Court that the children had told her about the abuse very shortly after she collected them from the DCFS Office. The doctor then reports *"on direct examination"* G said:

"that grandmother slapped me" and also *"mentioned another 'sese' grandmother whom also beat her with the leaves".*

The doctor's note records that G went on to say that F beat her *"on her hand"* and all that G said was corroborated by *"an older sister"*, presumably the doctor is referring to D. Apart from the fact that the evidence of what the children said is not consistent with the detail shared by them in the later MASH interview, it is also concerning that it appears that the children were in the room when GM made the *"Chief Complaint"* to the doctor and D was in the room when G was talking to the doctor before D *"corroborated"* G's disclosure. In addition, there is no evidence about how the doctor extracted the detail from the children, although from the phrase *"direct interview"* it does appear that regrettably direct questions about alleged abuse occurred. The doctor reported that there were:

"no bruises, no scars and no evidence of recent physical assault".

88. PC Lisa Parrs, who is an experienced Police Officer when dealing with child protection issues conducted, in the presence of a Social Worker Denise Benjamin, an interview with the children. She asked D if she had had a nice time during the stay with F and how she liked the holiday and the first thing that D said was:



"It was bad, Daddy hit me."

This was not the type of immediate reply PC Parrs expected as a consequence of the question asked by her. When asked whether F had hit her, D said it was on her leg, but she kept on replying that she did not know which leg or where on her leg. When asked, D said that she did not know what happened before she was hit on the leg. D then said that she had been misbehaving, as she was being rude and after she had hit her cousin is when F hit her and that it hurt. D told her that the parental grandmother was there when this happened inside the house. PC Parrs stated that, when asked, D told her that it had happened on another occasion when she had been misbehaving and that she did not enjoy her time at daddy's and that she missed her Nanna. However, when then asked whether other than missing her Nanna if she had enjoyed her time with F, D then answered *"yes."* D said that she had not told anyone else about Daddy hitting her but when asked if anyone had spoken to her about it she said that GM had and that:

"Nanna had told her to tell us that Daddy had hit her when she spoke to us."

PC Parrs stated that D made no mention of a doctor talking to her about the alleged incident or anything about leaves being pushed into her back by F. Importantly when asked:

> *"Did Daddy really hit you or did Nanna or someone else tell you to say this?"*

D got up and walked away into the corner. D was told that she was not in any trouble and was asked the same question again and she replied, whilst looking down and shrugging her shoulders, that she did not know. PC Parrs stated that this change in demeanor made her:

> *"think that there was obviously a problem about what was being said and she did not want to answer for some reason."*

She added that she had:

> *"...seen that reaction before as (is an) uncomfortable topic that they are talking about, get themselves in trouble, I concerned that what she told me was not quite right."*

PC Parrs aptly concluded that:

> *"From the police point of view, the lack of detail and information did not give us any evidence to suggest a crime had been committed other than being told that something wrong and being chastised for doing it. If it had happened, typically a child would be able to tell us about it, especially after the initial spontaneous outburst. At least basic answers about where and how."*

89. PC Parrs then spoke to G. When G was asked if she had had fun she replied:

"No, not fun" and that she did not want to go to Jamaica.

When she was asked why it was not fun she said that:

"Daddy pushed me on my back and slapped me when I was misbehaving."

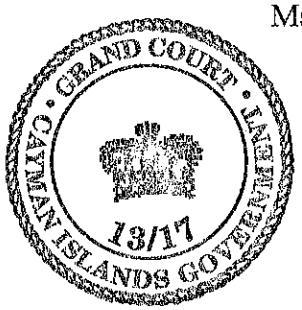
Interestingly, when the children were then asked individually by PC Parrs if everything else in Jamaica was *"okay"* they both said *"yes"*. These comments are consistent with the evidence about the children's contented demeanor and positive replies to Mrs. Mowatt concerning their time in Jamaica with F and the paternal grandmother, when F brought them to her office prior to them being handed over to GM.

90. PC Parrs stated that if what the children were saying was correct, it amounted to chastisement and was not something that would result in a criminal investigation being pursued. Denise Benjamin stated that the evidence given by PC Parrs about what happened during the interview was accurate. PC Parrs highlighted that the first thing that D said to her was that Daddy had hit her. Mrs. Benjamin said that she found this immediate answer given in a *"matter of fact"* way and not with an upset demeanor as to be *"alarming"* and *"concerning"*. PC Parrs had the impression that D felt that she might get into trouble. Ms. Benjamin told the Court that at the beginning of the interview D was willing to *"give information straight off"*. She felt that D's changed demeanor towards the end of the interview, after

she was asked if anyone had told her to say the things about F, when she walked away with her head down, avoiding eye contact and replying:

> *"I don't know"*, gave her the impression that D felt that *"she had told too much and that she would get someone into trouble."*

Ms. Benjamin stated:



> *"My experience in child welfare, I have seen that before and is an indication that she is avoiding, avoidance tactic, when kids not want to respond to a question or information given is incorrect and you ask them for clarity, I don't want to answer."*

91. In relation to G, Mrs. Benjamin also had the impression that the children had been told to tell the interviewers that F had hit them, adding to that by saying that:

> *"I think (it is a) fabrication and huge red flags for me."*

Mrs. Benjamin accepted when put to her in cross-examination that it could be an honest reply for a child to say they had been hit for misbehaving and that D was possibly trying to protect her father by her reticence in answering. However, she concluded:

> *"I felt that the story fabricated. Now I (having) left room and (having) processed information I received that is when I have discussion with myself, it then appeared that the story was fabricated and she was somehow coerced. That formulation I made is made based on (D's) demeanor when she told the story, did not appear distressed or upset. Dad had beat her. When asked about details she said had happened this day...she could not give specific details about the place she did say about*

misbehaving. At the beginning of the interview she said it was bad. Then towards the end of the interview both children say they had good time overall in Jamaica. Both said it was a bad time and the youngest said she did not want to go to Jamaica. I have to say D (was) coerced as she was the one when we probed further did someone tell you to say this, she got up and demeanor change and not want to take further questions. Playing. I also note they say that Nanna told me to say what happen and that Daddy hit me. It further raised my suspicion that child had been coached."

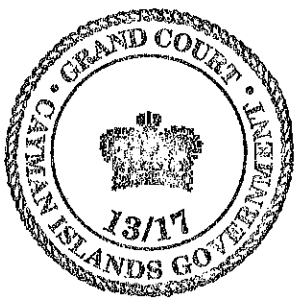
Mrs. Benjamin added that the 10-15 minutes between their departure from the office and their return to the office with GM provided sufficient time for such coercion to take place.

92. GM felt that PC Parrs had "*put pressure*" on the children during the interview. GM told the Court that the children repeatedly shouted out that they had been slapped, but PC Parrs and Ms. Benjamin had *"deliberately misrepresented"* what the children had said by leaving that out in their evidence, and they only put in their evidence *"what they wanted to put in"*. I find there to be no merit in GM's highly critical evidence or her serious allegation that these independent witnesses deliberately gave incomplete evidence to the Court of the events and about what was said during the children interviews. I find that PC Parrs and Mrs. Benjamin, unlike GM who was not in the room, were forthright in their evidence about the content of the interviews.

93. When considering the above allegations against F, I also have regard to the evidence of Adria Brown, the Social Worker in Jamaica who provided written home study reports and gave oral evidence by video-link. She found the children to be *"very friendly"* and that there was no hesitation in their interaction with her. Mrs. Brown stated that the interaction between the paternal grandmother and the children did not appear to be forced and that there was no hesitancy in their interactions and the children's behaviour towards her. She stated that, from her observations, neither child appeared to be fearful, nor did either of them express any unhappiness at being in that home. In fact, she stated that the children appeared comfortable and familiar in the home. Mrs. Brown stated that she was aware of the allegations being made about physical abuse, adding that neither child reported any such incident to her. She said the children responded well to F's directions and that there was "*no cause for concern*" about their interaction with him, the paternal grandmother and others. She added that on the visit on 19 June 2018 there appeared to be:

> *"Great familiarity between the father and children, they were comfortable with each other, they both appeared to love their dad dearly, dad loves the children it appears that way."*

94. As correctly stated by GM's Counsel, the evidence in relation to the dated allegations of domestic violence against M, about the content of the drawings, about alleged physical abuse pre-2018 towards the children and the alleged abuse towards A, is not sufficient to enable the Court to make sufficient findings on the



balance of probabilities. In relation to the reports of abuse made by GM during the course of this drawn out hearing, the evidence is more substantial. I am satisfied that MASH conducted an appropriate review of the evidence and I am satisfied that the allegations are not well founded and that the alleged physical and sexual abuse has not occurred.

95. It is evident that GM loves her grandchildren deeply and cares for their daily needs. However, her deep rooted love for them has led to a troubling and somewhat obsessive manner in which she on occasion interacts with the children. The inability for her to initially recognise the inappropriate nature of her giving her breast to G, albeit GM says at G's insistence to soothe her, is a graphic example of this. Suzanne Seagraves, who is an independent Social Worker, with seventeen years' experience in the field[15], in her evidence in chief, also stated that this conduct was inappropriate and that another method should have been used to comfort the child. In cross-examination Mrs. Seagraves accepted that, in relation to G:

"the breastfeeding could be a cause of the closeness to (GM)."

In her oral evidence Mrs. Forsythe indicated that she thought this had been the norm, and said that GM's initial view was that, as the child needed the comfort of the breast, she did not see anything wrong with it. Although GM denied in her oral evidence that she had been lactating, I am satisfied that Mrs. Mowatt

[15] See paragraph 100 for description of Mrs. Seagraves' role with the family.

accurately recorded in some detail at paragraphs 19-20 in her report of 21 November 2017 what GM shared with her about the breastfeeding. Mrs. Mowatt wrote:

> *"(GM) explained that she breastfed (G) for two years and this was an agreement between her and (M) prior to her death. (GM) explained that (M) was not lactating after the birth of (G)....According to (GM), when (M) was pregnant with (G) she (GM) was lactating and as such began breastfeeding her grandchild as (M) was not able to do so and she was unable to pacify (G) at times. (GM) stated that this would comfort G and she continued this practice, she further mentioned that she stopped breastfeeding after the previous Social Worker visited her in May 2017."*

96. In light of the above, Mrs. Forsythe rightly highlighted the issue in her report of 29 June 2017 when she stated:

> *"This is concerning as it is well known that the act of breastfeeding creates bonding and attachment. This issue needs to be addressed by a psychologist who can provide guidance and recommendations on how (GM) and (G's) emotional needs can be otherwise met."*

GM, to her credit, did desist in this conduct. It is evident that, as GM tries to come to terms with the tragic loss of her daughter, she has an emotional dependency on the children and an inability to genuinely accept F as being an important figure in their lives during the remainder of their minority fearing, how this will impinge on her relationship with the children.

97. Before I turn to the welfare checklist and apply the evidence to the same, I need to comment upon the Welfare Officers' written and oral evidence. When I consider the recommendations set out therein, I do so with a degree of caution as there is some force in some of the criticisms raised by GM. That said, I do not accept the submission made on behalf of GM that the recommendations and evidence given by the Social Workers are *"fundamentally flawed"*. The Welfare Officers have correctly highlighted that GM's living arrangements cannot be characterised as being long-term and stable, relying on accommodation from family members. The Welfare Officers are correct to be concerned about GM's lack of means caused by her being, until recently, out of work[16]. The conclusions in the Welfare Reports were made on the basis that the children may have immigration and schooling issues if they were to live with GM in Cayman. Having heard from Mr. Wong, it is clear that any such concern should no longer exist and I take this into account when I consider their recommendations. I also accept GM's criticism that the reports, in particular the earlier reports, were expressed in such a way that an impression was given that there is a presumption in favour of children living with F, and that he had a right for them to live with him. In light of my finding about the applicable test being that set out by the Supreme Court in ***Re B***, I have this in regard when reviewing all of the Welfare Officers' evidence and the weight to be placed on their recommendations.

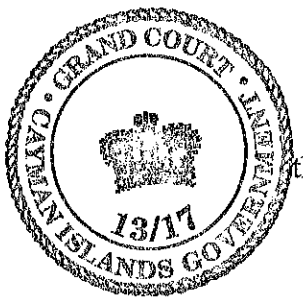
[16] Suzanne Seagraves in her report dated 15 May 2018 commented that GM *"recognises that her financial situation is unstable"*.

98. I am satisfied that the DCFS has regrettably not carried out a comprehensive assessment relating to the children's relationship with their half-sibling, A. This should have formed as part of the balancing exercise when making their recommendations, especially in regard to the effect of any change of circumstances and their emotional needs. This is why, when the hearing was adjourned part-heard on 1 June 2018, the Court had expected there to be not only an assessment on the children's time with F in Jamaica, but also about their relationship with A. Regrettably this could not take place, partly because the DCFS and GM seemed unable to put in place the arrangements for a meeting with A. From the oral and email evidence it does appear that GM was reluctant to allow A to speak to the Social Worker who attended at the school on 20 June 2018, unless she was present or without the consent of A's father. GM was asked to provide his current telephone number and was provided with three possible dates for the meeting with A to take place, but that did not happen as A left the island for a school trip.

99. From the available evidence, I am satisfied that A is a significant figure in the children's lives and that there would be a degree of upset and readjustment if they no longer all lived together. It is important that that relationship is maintained if the children were to move to Jamaica.

100. When I consider the Welfare Officers' evidence I also have regard to the evidence of Suzanne Seagraves. Her role was to offer support to GM and the children as they try to meet the emotional challenges following M's passing, after GM had contacted her following advice given by the DCFS. In her report she mentioned observations from five meetings/play sessions that she had. None of those involved A being with the children. When I review her evidence I have regard to the fact that Mrs. Seagraves had not met F or seen him interact with the children and that she seems not to question the allegations or picture of limited involvement by F, as reported to her by GM. This is not a criticism and is understandable having regard to her therapeutic and emotional support role for GM and the children. In addition, I note that Mrs. Seagraves, at GM's request, assisted GM with the preparation of the content of her affidavit prepared in response evidence. Although the evidence of what happened at the meeting/session is helpful, I have regard to the nature of what her role is and her supportive interaction when balancing opinions expressed. I note Mrs. Seagraves' concluding comments during cross-examination that:

> *"There is always emotional harm when removing a child from a permanent carer. This does not mean that they cannot have attachment with other care givers, always a risk, but I cannot say cannot attach. All I see is 2 young children who love their Nanny and respond to her, affectionate and happy. Not to say if I saw them with (F) or another care giver it would not be the same, but I am not able to say that. They are happy in her care, happy talking, physical contact and comfort."*



I accept her view that the children are:

"happy and comfortable in (GM's) care"

that they are "*attached*" to her and that she is a:

"significant attachment figure for the children."

Mrs. Seagraves rightly highlights that she is:

"not in a position to comment on who the children should reside with."

The 'Welfare Checklist' - s.3(3) of the Law and the Bill of Rights

101. In determining what arrangements should be put in place for the children's future care, their best interests are my paramount consideration. In order for me to determine this I must consider the 'welfare checklist' set out at s.3(3) of the Law. In relation to the **wishes and feelings of the children**, I must have regard to the same in light of their understanding and the fact that they are now only 5 and 3 years old. Mrs. Seagraves rightly stated that when considering their ages:

"...any decision about their future must be made on their behalf; whilst they are not in a position to understand the complexity of their situation, I do believe that their wishes and feeling should be assessed against the background of their age and understanding."

Although, the children are too young and do not have sufficient understanding for their wishes to be given disproportionate weight, I note that G stated upon her return from Jamaica, and before seeing GM, that she missed her when she was in Jamaica and that D said the same and added that she wanted to live with GM. It is

reasonable to expect the children to have expressed such wishes and feelings having regard to the fact that GM has, especially since M's passing, had the primary responsibility for their care and been their one constant in this troubled part of their lives. These comments made by the children have some relevance when considering the effect of any change of circumstances. They did not express any views concerning A, but I am satisfied from the surrounding evidence that it is likely that they would state that they wish to maintain a close relationship with her.

102. I have considered **the children's physical, educational and emotional needs**. Although I do so separately for each child, it is clear that there is little difference between the needs of each child. Only D is of an age where formal **education** is required, and this has been only very recently. There is no evidence before the Court to lead one to conclude that either child has special educational needs. In relation to their **physical needs**, I find that they are the same as those of any other child of their age.

103. In this case the children do have particular **emotional needs**. These arise out of the very sad passing of M and how, in the short and long-term, they are helped to cope with and to understand what has happened. They also arise out of the separation from F. As Mrs. Seagraves highlights, flowing from her therapeutic support for the children, G greatly seeks attention and affection from GM and has:

"some difficulty regulating her emotions (linked to her age and vulnerabilities)"

especially if she does not get what she want. Mrs. Seagraves reported that D is more compliant and does not exhibit challenging behaviours. There is a need for a long-term stable home environment with the opportunity to form meaningful emotional bonds with the significant adult family members of their family. For that to happen, it is vital that their relationship with any significant adult is not obstructed or undermined by another adult figure. Their emotional well-being will be greatly enhanced if the adults in their life can co-operate and, when in the presence of the children, speak positively about and encourage the relationship with other significant family members.

104. When considering the **effect of any change of circumstances**, I remind myself that in ***Re B*** Lord Kerr commented that the status quo:

"will not always command the importance that must be attached to it in the present case."

This means that the weight to be attached to it depends on the circumstances in each case and it is therefore only one of the factors to be borne in mind when ensuring that the child's welfare is the Court's paramount consideration. Mrs. Seagraves in her report importantly stated that:

"...an age related consideration is the potential stress of being separated from the primary attachment figure, and risks for not developing secure

emotional attachment relations. (G) and (D) have experienced the loss of their mother and may experience the loss of another significant attachment figure (GM)."

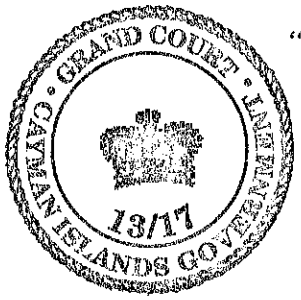
I also note that upon return from Jamaica, before GM collected them, both children expressed to the Social Worker that they missed GM and D said she wanted to live in Cayman with her.

105. When Mrs. Mowatt observed contact on 5 March 2018, despite the fact that the children had not physically been with F since September 2016, she told the Court that they:

> *"ran to (F) as if they knew him, with no hesitation. They recognised him, call him Dad and hug him - they interact like it was someone they saw yesterday. No hesitation, they just start talking and they crave his attention...I thought they would be reserved as they had not seem him physically, but I did not see any reservation. They were literally all over him. One on his head and one on his arm. They both try to get his attention...it was a warm, interaction. - (F) was engaged, caring and attentive."*

106. If the children move to Jamaica, they will likely be upset at the separation from GM, who has been their primary and loving carer. However, when they were in Jamaica in June with F, it is clear from the description given by Mrs. Brown from her home visits that, despite being away from GM, they were quickly settled in that new environment with attachments forming with both F and the paternal

grandmother. Mrs. Brown noted that they referred to the Jamaica property as their *"home in Jamaica"* and that:



> *"they seemed to be settling well into the household and appear to be comfortable in the environment and with the persons with whom they are residing."*

She then added:

> *"They seem especially close to their father and seem to enjoy being around him and are very affectionate with their father and seem to be close to him"* and that they *"related well with their grandmother."*

She said that D mentioned to her that *"she liked it there."* Mrs. Brown concluded in her report of 28 June 2018 that:

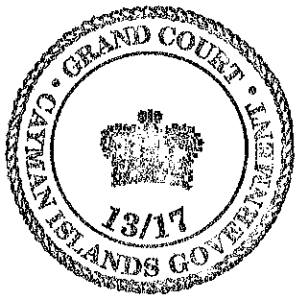
> *"...the ease with which they operated in the house and around their family members suggests that they are quite familiar with their relatives, the home and its environs, and were settling in well."*

Any move to Jamaica would not be a move to an alien setting, but a return to a place which now has some familiarity and where they are comfortable. I am satisfied that both F and the paternal grandmother, after hearing from her, will appropriately reassure the children that their relationship with GM is to be maintained and that they will keep seeing her. This is important when handling the change of circumstance and the separation from GM.

107. As can be deduced from my review of the other factors in the 'welfare checklist', I have considered the children's ages and when doing so remind myself of the observations of Mrs Seagraves in her report and in particular her comments referred in paragraph 103 above. GM and F are both of the Christian faith and, although religion is a fundamental part of GM's life and apparently more significant for her than it may be for F, this is not a factor that influences my determination about what is in the best interest of the children in this matter. I also have regard to the fact that the children are young girls and that, especially as they get older, they will feel the need to talk openly about the changes in their life as they develop physically and mentally. Although arguably GM, as a female carer, may be better placed than F when such a situation arises, it is clear from Mrs. Brown's reports and the DCFS assessments that F has sufficient insight and that the paternal grandmother could play an appropriate role if required in this regard. In addition, there are a number of supportive female member of F's family living close by in Jamaica.

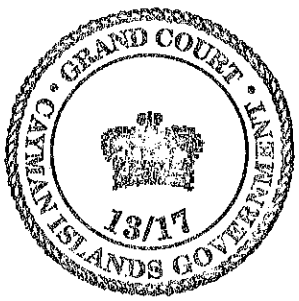
108. I have considered **any harm that the children have suffered or are at risk of suffering.** The evidence does not support GM's contention that the children have suffered risk or are at risk of suffering from F. As I have already stated, and as accepted in the written submissions prepared on behalf of GM, on the evidence presented to the Court, it cannot reasonably be expected to be in a position to make findings that the pre-2018 allegations concerning abuse by the paternal

grandfather against A and sexual and physical abuse by F towards the children occurred as is contended by GM, and to a degree by the maternal aunt. The evidence is clearly insufficient to prove any of those allegations on the balance of probabilities as well as to prove GM's contention that there was domestic violence towards M.



109. In relation to the more recent allegations which were raised by GM shortly before and during this hearing, the evidence is more substantial. The evidence emanating from the involvement of independent protection agencies, such as MASH, has enabled me to better determine the veracity of those allegations. I have had the benefit of seeing and hearing F under thorough cross-examination address the serious allegations and from his demeanour and the content of his evidence I found him to be a forthright and honest witness. His evidence was consistent when dealing with the alleged events, whereas GM's evidence was inconsistent with important parts of the wider evidence including the content of the children's reports to the MASH team and Social Workers. For these reasons and for others earlier set out herein, I do not find that the allegations raised and relied upon by GM are proved. In fact, I do not find GM to be a forthright witness in this regard and am satisfied on the balance of probabilities that her desire to exclude F and have the children reside with her has led to her improperly involving them in the proceedings to the extent that they have been encouraged to make up allegations against F. The children's reported uncomfortable demeanour, as highlighted by

the observations of members of the protection agencies when interviewing the children about the same, and the inconsistencies between the children and GM's evidence support such a conclusion. When I reach this conclusion I exercise some caution, as children may exaggerate or make up things as they think it is what they feel their parent or primary care figure they are with at the time would like to hear them say. From the evidence relating to GM's conduct when in their presence at the DCFS or MASH offices alone, it is clear that the children will be aware of GM's hostility towards F. In addition, when the children have been seen by the professionals in the Cayman Islands they have seemed very comfortable in F's presence and the same can be said about them with F and the paternal grandmother when they were in Jamaica.



110. Unlike F's mainly calm demeanour, GM was mostly hostile to F and had great difficulty in genuinely recognising the important role that he should play in the children's lives. Mrs. Mathews highlighted in her oral evidence that:

> *"In none of her interactions with (GM) has she ever given proposals for ongoing contact"* and that GM *"raised domestic violence at every opportunity."*

This is consistent with the begrudging past compliance with the DCFS and Court ordered contact and begrudging acceptance by GM at only limited parts of her evidence that there should be contact between F and the children if F's application was unsuccessful. The written message communications between F and GM

exhibited at "DT3" of F's affidavit sworn on 12 June 2017 illustrate their difficult relationship and GM's resistance to F. When I consider them I am acutely conscious that this was a very trying time for GM as it was shortly before and after M's passing. The messages show F trying, in vain, to reach out to GM to communicate his concern about M and to try to get information about her health, about his wish to see the children, about his employment status and enquiring about arrangements for him to make child maintenance payments. Despite the lack of response, F writes telling GM on 28 March 2017:

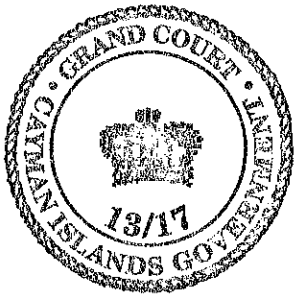
> *"Thank you for everything, Thanks for taking care of (M) and please tell (maternal aunt) thanks too. I appreciate it a lot"* then adding *"I wanted to see the kids when they were here but (M) told me she needed them to lift her spirit and i understand."*

When M passed GM failed to see the importance of notifying F, her husband, of the same and disregarded the benefit the children would have had from the additional emotional support and interaction with their F at such an upsetting time. F heard a rumour that M had passed away and after he messaged GM about it on 4 April 2017, despite the content of his earlier messages, all she replied was:

> *"Thanks for you late interest but we have it under control."*

F then sent numerous messages about the arrangements and eventually on 7 April GM replied:

> *"I asked u several times to return to the children and you refused and never came back yet now that she has passed is when you want to be by*



her side. Why is it you were not by her side while she was in Jamaica during her sickness."

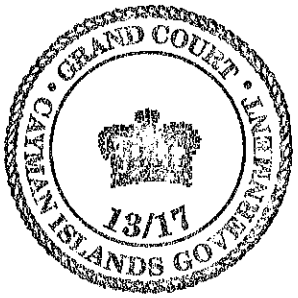
These replies are very telling when one considers the veracity of GM's evidence highlighted earlier herein that, when she was in Jamaica with M when M was being treated there, they were moving from hotel to hotel, in fear for their lives, so that F could not locate them. When F said that he wanted to contact his pension provider to see if money could be released for the funeral costs, GM simply replied:

"No financial help is needed everything is taken care off."

In a message sent on 11 April at 11:22 AM F said that he was coming to Cayman "*to look for*" the children. Although she made no mention of it in a message, GM immediately went to see an attorney as she signed a C1 Application Form seeking residence and financial provision orders for the children on 11 April 2017. In fact two days later, on 13 April 2017 GM stated:

"I will not be handing over two young children that you have not had any care to have physical contact with since the day you left in September you were granted a Cayman visa for quite some time now and yet made no effort to come back to the island to see these children yet you choose to come back after their mother has passed come and remove them from a loving home that has been caring for them financial and emotionally from even before you left."

GM then said:



"I will not discuss this with you any further and since you want to talk about what is the law I will [17] *also be consulting the court in this matter. F then sent a number of further messages to GM and she simply repeated the 13 April 2017 message to him on 14 April 2017."*

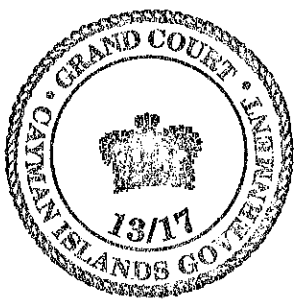
Only after the intervention of the DCFS was F able to see the children.

111. There is force in Mrs. Mathews' concern when she stated that she:

"did not see GM being willing to facilitate ongoing contact or comply or adhere to orders",

to which I add especially when there are no pending court proceedings. I am of the view that contact would initially take place, but GM's real feelings towards F and the lack of importance she really places on the children's relationship with him would come to the fore and contact arrangements would be characterised by resistance from GM. This could cause irreparable emotional damage to the children's well-being as it would likely lead to a total breakdown in contact. Although GM may be entitled to feel that parts of the DCFS investigation could have been more thorough and despite the fact that the Social Workers may not been aware of the principles set out in ***Re B,*** her open hostility from the outset of their involvement, later manifested by unfounded allegations about the Social Workers' and MASH's integrity in their assessment and enquiries, gives some insight and concern as to how GM may operate under a Court order towards F

[17] My emphasis.



and to the DCFS if they took on a supervisory role if the children remain in the Cayman Islands. I accept that GM co-operated, albeit reluctantly, with the Court's ordered 1 month visit for the children to stay with F in Jamaica and that, at the close of re-examination, GM stated that F had "*potential*" and accepted that F should not be "*cut off*" as "*the children love him*", but from the bulk of her written and oral evidence it is patently clear that she holds F in very low regard and genuinely does not see the need for him to be an integral part in their lives. Contact has taken place due to the Court's and the DCFS' intervention. I am satisfied that once the Court's oversight of the chid arrangements, which currently exists as there are pending proceedings, and the receipt of the sage advice she receives from her most able attorney come to an end, the promotion of the children's relationship with F and the paternal family will not be encouraged by GM. This would be emotionally harmful to the children, as have been her actions in 2018 when improperly involving them in the building of her case against F.

112. I am satisfied that F, despite the very serious allegations raised by GM against him in these unnecessarily protracted proceedings, recognises the important role that GM has played and must continue to play in the children's lives. I am satisfied that he will facilitate the contact between GM and A with the children, the level of which should be greater than one might ordinarily expect for a grandmother due to the role GM has played hitherto in their lives and the maintenance of the important link to the maternal family.

113. When considering any concerns about F or the paternal grandmother disciplining the children, in his evidence F also showed insight as to how misbehaviour by the children should be handled. This is consistent with the observations of Adria Brown, noted in her report dated 28 June 2018. Mrs. Brown stated that the children:

> *"had little squabbles from time to time, especially regarding the use of (F's) phone. (F) consistently soothed the girls by hugging them and kept encouraging them to share and be nice to each other. He also pointed out their wrongdoings when they were in error and encouraged them to behave. They responded generally well to his instructions, apologized and hugged each other."*

Interestingly the paternal grandmother, who would have to play an important role in the care of the children if F was at work, showed Adria Brown how capable she was when addressing misbehaviour. Mrs. Brown noted in her report that she witnessed G refusing to co-operate when it came for the end of her bath time. Mrs. Brown said that the paternal grandmother:

> *"allowed her to play in the water for some time. She was then lifted from the tub to much protest, but (the grandmother) tried her best and got her to be calm."*

Mrs. Brown added that the grandmother:

> *"noted that (G) is a bit strong-willed but she is making an effort to work with her; this was apparent during the visit. For example, (the*

grandmother) tried to encourage (G) to share with (D) and reminded her of what (F) had advised about being nice to her sister."

Mrs. Brown concluded that the grandmother:

"has been noted to be gentle with the girls, and addressed whatever issues arose with them as best as possible. She found (G's) strong-willed nature somewhat challenging initially, but as time went by, she became more accustomed to her personality and seemed more confident in dealing with the children.

114. Despite diligent cross-examination of the paternal grandmother via video-link, when it was put to her that she had raised her voice, chastised and hit the children, she politely denied the same. She readily accepted that G was a strong willed child, but then she gave a clear example as to how she handled that appropriately when referring to the 'tablet incident.' She came across as a very loving and supportive individual and I found her evidence compelling.

115. A great amount of emphasis was placed by GM on her assertion that the areas in Jamaica in which F lives would place the children at risk as victims of violent crime. I have reviewed the news articles concerning incidents that have occurred in the wider districts which have been presented to the Court on behalf of GM. This type of evidence is of limited value. I have carefully considered the evidence given by Mrs. Brown in this regard who made clear, with her greater local knowledge, that although crime exists there is not a specific problem in that area.

I accept that there are greater crime problems in large parts of Jamaica when compared to the majority of the districts in the Cayman Islands, but on the evidence before me I am satisfied that the area where F lives and the area in which the children would attend school do not come with a real inherent risk to them as being victims of crime.

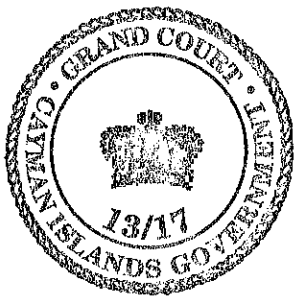
116. **I have considered how capable each party is in meeting the children' needs.** In relation to meeting the **children's educational needs,** I am, satisfied that GM or F can meet their short and long-term educational needs and that suitable schools are available in both the Cayman Islands and Jamaica. The concern about whether they would be permitted to receive an adequate education in the Cayman Islands no longer exists following receipt of the email from the Department of Education dated 29 May 2018, in which it was confirmed that D has been approved to attend government school for this academic year. There have been issues when the children were attending private schools which arose out of GM's inability to meet the fees, resulting in the children leaving and then later returning to the school. This is now more relevant for G, and GM indicated that she has her enrolled at a discount rate and has applied for a Government Education Grant for her. I am also cognisant that GM gave evidence that she would soon be in employment. I am satisfied from F's evidence that the children would be able to attend suitable schools in Jamaica in the short-term and, as they grow older, the longer-term. The fees are in the region of J$2,500-$3,000 and there may be a

discount for two children. As far back as November 2017, F had identified the possible schools to Adria Brown. F has spoken to the principals at the immediate school and also, for when aged 6, at the private Grand Hill Primary School where there are places for them to attend.

117. In relation to meeting the children's physical needs, it is clear that GM, to her credit, has been the person primarily reasonably meeting the **children's physical needs** since M's passing. I am satisfied that GM, if she continues to receive financial and physical support from family members and others in the community, is able to meet their basic day to day physical needs. GM has needed such support as she has prioritised the children's needs by making herself available to care for them. This, coupled with her trying to come to terms with M's passing, may be why GM has had considerable periods of unemployment. GM has also had to take on the responsibility of meeting M's medical bills and has only received sporadic child support from F despite his considerable pay out from his pension plan.

118. I note that, even before this time, GM was facing financial problems. In 2015 F and M were living in Prospect, which was close to where GM was living. F was told by M that GM had been laid off by the law firm where she had been working and that she was struggling to pay her rent. As a consequence, in or around September 2015 they agreed to move into her property and pay $500 per month to her for a room upstairs. F said that, as GM's rent arrears continued, the landlord

forced them to vacate the house and they all moved to the maternal aunt's home. This has meant that GM has not been able to support the children without financial and more hands on support from relations, which has included them kindly sharing their accommodation. GM relocated from her sister's house to her daughter's house in November 2017. The Social Worker rightly highlighted this in her reports. The accommodation arrangements provided by GM since M's passing cannot be characterised as being stable.

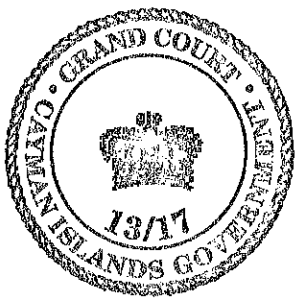


119. On 11 July 2018, GM mentioned for the first time that she was looking to leave the current property. She indicated that she had seen two four bedroom rental properties, one for $2,000 per month furnished and one for $1,500 unfurnished. She made it clear that she needed more space. This of course would be dependent on her income being at an appropriate level. On the income and outgoings that she gave to the Court the monthly shortfall, if she rented the furnished property, would be in the region of $1,700 per month. She stated that:

> *"I know me, I can do it, it will happen. I will continue to depend on (the maternal aunt) and the community here, they have committed to assist me. I rely on them long term."*

120. GM has indicated in examination in chief that she is now back at work and hoping to restart/rebuild the two business for which she holds business licences. When pressed in cross–examination on Wednesday, 11 July 2018, it soon became clear that the businesses had barely 'got off the ground' and did not provide an

adequate or regular income. GM said that A's father gives her $500 per month child support and that she has persons:



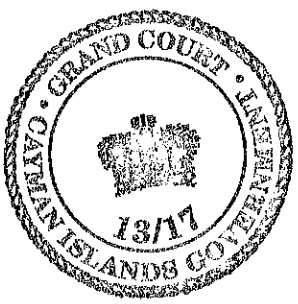
> *"who have committed themselves to financial support for the children, their assistance to me during the course of these proceedings and prior to then."*

However, for the first time, GM on that day also mentioned that she expected to start work at an established medical facility on the following Monday, although she was still to formally accept the job. She believed that the hours of work there would be from 8:00 AM to 4:00 PM and she would not be on the 4:00 PM to 8:00 PM late shift. I still feel a degree of uncertainty about whether GM would be taking on this job as she had still not accepted it. It is clear that, if GM does actually take up meaningful employment, the amount of free time that she has hitherto been able to unselfishly allocate to caring solely for the children will be reduced, particularly during school holidays.

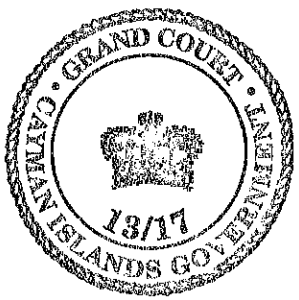
121. I am satisfied that F played an active role in the care of children after their birth and that he gladly treated A as a child of the family until he left in September 2016 to Washington DC before returning to Jamaica. I accept that he did not want to leave the children despite the evidence of GM that, due to her intervention, arrangements could be put in place for him to be able to remain in the Cayman Islands. Although I accept that GM sought to enrol the assistance of her Member of Legislative Assembly ("MLA") to see if arrangements could be made for F to

return to the Cayman Islands I accept F's evidence that, when he attended at the relevant Immigration desk, they told him that no such arrangement had been put in place. It seems that GM genuinely believed that the arrangements had been put in place by the MLA, when in fact they had not.

122. From F's employment in Negril he earns up to the equivalent of around CI$506 per month (J$60-80,000). Once or twice a year he may work at weddings, earning US$400-600 each time, and he receives royalties of around US$600 per annum from songs that he has produced. The cost of living in Jamaica is far less than in the Cayman Islands. He lives with his mother and therefore he has no rent to pay. He has made it clear that he will be remaining at that 3 bedroom, 2 bathroom family owned home. It is proposed that the children will share a bedroom in which there are two double beds. Mrs. Brown opined that the accommodation arrangements *"are suitable"* and that the children *"should be comfortable in the home and the environs."* I accept Ms Brown's conclusion based on her superior local knowledge of Jamaica when she states:



> *"Based on his stated income, he would be able to provide for both of the children's basic needs, as well as their educational needs in the Jamaican context, based on the general cost for food items, lunch and transportation. Although he is not regularly in receipt of the reported supplemental income from music mixes he would still be able to meet their needs on a consistent basis. Additional assistance would be helpful but not necessary. With careful planning and prudent use of resources, the*



children would be adequately provided for. Admittedly, he will have to budget carefully if the children are living with him."

123. Before I move away from F's finances, although he has been criticised by GM in relation to how he has utilised his pension money and the lack of consistent financial provision for the care of the children, I note that in October 2016, following his discussions with M, F wrote to Saxon Insurance to ask them to arrange for CI$5,000 to be removed from his pension fund to be utilised for M's medical expenses. It appears that this payment was not processed and it is not clear on the evidence why that was. GM could not accept that the intention was for him to get the money for the stated purpose but that some was intended for him. When asked if he had signed a letter that he was asking for the money to be released for that purpose, GM reluctantly stated:

"I will have to give him that one, sure."

In the messages sent to GM exhibited to his affidavit of 12 June 2017, he was asking her about the arrangements that should be set up for him to pay maintenance and he did not receive any helpful replies. After receiving his pension pay out, F has had to pay CI$8,000 to the Legal Aid Fund for these proceedings, pay sums to have legal documents processed in Jamaica, pay for a Cayman visa and police record check, and pay sums on his return flights prior to and during this hearing, as well as for the children's flights for their one month stay with him. The large amount of money he has had to pay in legal fees, which

is greater than his annual income, is an indicator that his application for him to take over the care of the children is genuinely motivated.

124. F's working hours seem to ordinarily be between 3:00 PM to 6:00 PM but this may start earlier or around 1:00 PM and/or extend to 7:30 PM. At times he may delay his return due to meeting friends or sorting out his personal affairs. The paternal grandmother, who is aged 56, has made it clear that she would gladly assist with the child care arrangements when F is at work. She outlined that F makes the breakfast and she would help with the washing and hair. She indicated that F would take the children to school, but she may be the one who picks them up when F was still at work. She outlined that F would do bookwork with the children and that she would also read with them to teach them. The paternal grandmother stated during cross-examination that F:

"will have my full support, he not have much time in the evening and they have my support."

When it was then put to her that she would be the adult raising the children she forthrightly replied:

"I will raise the children, the both of us. It will be like a mother and a father. 2 parents. I am the mother role."

I was left with the impression that this was an accurate description of the arrangement that would fall into place if the children were to be living in Jamaica under a residence order to F. In light of the recent evidence from GM about her

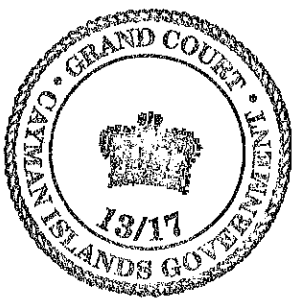
employment, I accept that GM would be better available to undertake a sole parenting role for most of the important time in the early evening after school, and that the paternal grandmother would be the one undertaking a similar role instead of F until his return from work. That said, the proposed dual role in Jamaica would still ensure that the children's physical and educational needs were being met. I do not accept the submission made on behalf of GM that the parenting of the children would be simply handed over by F to the paternal grandmother, although at that time of the working week she would be the main carer.

125. Mrs. Brown reported that from her local enquiries that F and his family are well known in the community and thought to be upstanding and positive members of the same. Mrs. Brown feels that the arrangements for care and supervision are suitable. She stated that:

> *"It appears that the paternal grandmother has years of experience in child care, and she is maintaining good health. As such, it is expected that the children would be safe with her and properly cared for."*

Mrs. Brown later added:

> *"...with the support and guidance of the maternal grandmother and extended family members, the children will be able to develop as well adjusted individuals"* and that a placement of the children with F *"may be considered favourably."*

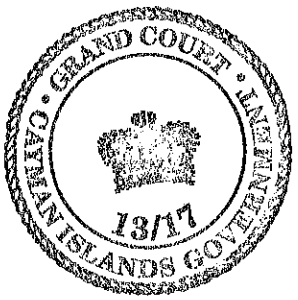


126. In relation to meeting their emotional needs. I am satisfied that the day to day emotional needs of the children can be met by GM and by F and his mother. F and GM are both attentive to the children and able to respond appropriately and affectionately to the children's general emotional needs. GM had commendable insight to recognise that therapeutic help would be beneficial to the children's emotional well-being in the aftermath of their mother passing. It is to a degree understandable that the children have become the all-consuming part of GM's life and, from her conduct, it is evident that the relationship she has had with them is an important emotional support for her as she tries to come to terms with her daughter's passing. Regrettably, due to the issues addressed above, her excessive negativity to F, her obstructive approach to the children forming a meaningful bond with him and her drawing them into her evidence gathering exercise to try to damage F's chances of obtaining a residence order, partly driven by her need to have the children with her, have and will continue to detrimentally affected their emotional well-being. I am conscious that this has been an awful time for GM, but in the past she has failed, unlike all the professionals in the case, to understand how this may have affected the children and recognise the importance of F being in their lives for their emotional well-being. I am satisfied that F recognises the great importance of GM for the children's long-term emotional well-being and their healthy development, and he will not seek to undermine but continue to be supportive of them maintaining a meaningful relationship with her. Accordingly, I

feel that F will better meet the children's wider emotional needs and this is a particularly important factor for these children.

Conclusions

127. Given the background history of this case and having carefully considered the 'welfare checklist' and the guidance in ***Re B***, it is in my judgment that appropriate residence orders in relation to the children are made in favour F. I wish to make it clear that, although I have considered the content of the welfare reports, I recognise the areas in the assessments and in investigations of the protection agencies regarding the earlier allegations of abuse, that could have been better conducted. Although I have noted the recommendation made in the welfare reports, my conclusion reached is based on my thorough and independent assessment of all of the evidence. The conclusion has not been arrived at by there being a simple acceptance of all that has been said in the reports. It has been arrived at recognising that there is no presumption of an order being made in F's favour as he is the father of the children.



128. Subject to GM conducting herself appropriately in relation to the children and F during this transition period, I am satisfied that they should remain with her in the Cayman Islands until a date after Christmas, but no later than a week before the start of the new school term in Jamaica. This will enable the children to have a structured move, a settled Christmas with the maternal family here and to

complete this school term. It may also enable Mrs. Seagraves, if she feels it appropriate, to counsel the children ahead of the change of their circumstances.

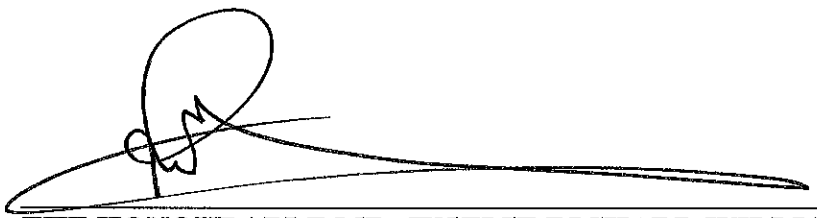
129. I have been asked by Counsel for F to *"spell out that indirect as well as direct contact in an order."* I have not received any meaningful submissions from the parties concerning contact and will therefore restrict myself at this juncture to what I hope will be helpful indications. In relation to indirect contact between GM and the children, this should be frequent, for example on Saturdays and Sunday and at least every second day during the week by some form of video-link (for example Skype) at agreed times. In relation to staying contact, the children should spend at least half of each of the three long school holidays with GM in Grand Cayman. If length of time and finances permit, contact on at least one of the school half terms is also to be encouraged. The dates and times should be agreed by the parties. Special arrangements will need to be put in place for the core Christmas day, which the parties may believe should alternate.

130. In my judgment in KD v PD Fam 110 of 2014 delivered on 30 October 2014 I stated:

> *"In the case law from England and Wales it has been acknowledged that grandparents have an important role to play in the upbringing of children. Their importance and the roles that grandparents take in family life are arguably even greater in the Caribbean due to culture and family dynamics."*

In the present case, GM has an even more important role to play in the continued development of these children. Despite my concerns set out in some of my findings which have led to the conclusion reached by me, it is right that this Court places on the record in this judgment its recognition of the great sacrifices and dedication, borne out of love of these children, GM has made for them. She has been there for them during a most tragic time in their lives and that should not be forgotten or minimised.

131. I would like to thank both Counsel for the professional manner in which they commendably presented their clients' cases, especially having regard to the sensitive nature of this case in light of the tragic passing of the children's mother.



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