

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

3

4

CAUSE NO: FAM0064 of 2017

5

6 **BETWEEN:**



7

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APPLICANT

9 **AND:**

10

JF

11

RESPONDENT

12 ***Appearances:***

13 The Applicant represented by Mr Thomas Bishop Q.C. and Ms Sulekha
14 Tummala, instructed by Hampson & Company

15

16 The Respondent represented by Ms Cherry Bridges, instructed by
17 Ritch & Conolly

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20 Before: Hon Justice Nova Hall (Actg)

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

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26 **Reasons for Decision**

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28 1. This is an application brought by the Applicant/Mother to
29 relocate permanently to the United Kingdom with the parties'
30 child. The Respondent/Father opposed the application.

1 2. For ease of reference and with no lack of respect to the parties,
2 the Applicant/Mother will hereinafter be referred to as "the
3 Mother", the Respondent/Father as "the Father" and the child
4 as "C". Items which have been quoted have been similarly
5 modified. On September 29, 2017 I made an Order granting
6 the Mother permission to relocate to the United Kingdom
7 permanently with C and granting her a Sole Residence Order.
8 What follows are my reasons for making this Order and I
9 apologise to Counsel for the delay in issuing same.



10

11 3. It must be stated from the outset that a great deal of evidence
12 was adduced in this case on behalf of both parties. This included
13 live testimony from the Mother, each of her parents and the
14 Father. Additionally, very detailed submissions were made by
15 Counsel. All of this material was considered prior to making the
16 decision which was handed down on September 29, 2017. It
17 was not possible to reproduce all of the material for the
18 purposes of these "Reasons" but an attempt has been made to
19 highlight and summarise some of the main matters.

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1 **Issues**

2 4. Counsel for both parties helpfully prepared an agreed
3 Statement of Issues. They are as appears below, as modified.

4 “

5 i. Will C’s welfare and best interests be promoted by
6 permitting the mother to relocate him permanently to the
7 UK? If so what contact arrangements with the father
8 should be made?

9

10 ii. Will C’s welfare and best interests be promoted by an
11 order prohibiting one or both parents to make comments
12 to him, which could, as a matter of reasonable
13 foreseeability, have an upsetting effect on C or have an
14 adverse effect on his relationship with the other parent?”

15



1 **Prohibited Steps Order**

2 5. Some comment will be made on the Mother's application for a
3 Prohibited Steps Order. However in the end, no evidence was
4 adduced on this matter by agreement between Counsel, and I
5 was not required to make such an Order.

6

7 **Previous Arrangements**

8 6. On 30th September 2015, following an application brought in
9 the Summary Court by the Father; the parties arrived at a
10 detailed Final Consent Order. This is set out below.

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12 **"Parental Responsibility**

13 1. It is declared that both the Mother and the Father shall
14 have parental responsibility for (C) in accordance with
15 section 4 of the Children Law (2012 Revision).

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Residency

2. Subject to the contact arrangements detailed at clause 4 herein, there will be a Shared Residence Order with (C) to reside primarily with his Mother at [REDACTED] [REDACTED] ("Mother's Residence") and otherwise at the times mentioned in clause 4 with his father at [REDACTED] [REDACTED] ("Father's Residence").



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Conditions Precedent to Contact with Father

3. The Father shall enjoy contact with (C) at the times specified in clause 4 herein. However, before such new contact regime is deemed fully effective, the Father agrees to: -

- (a) Invite the Mother into his aforesaid residence at Apartment J, [REDACTED] [REDACTED] so as to reassure the Mother that the premises represent a reasonably safe environment for (C). In the (hopefully) unlikely event that the Mother has any resultant concerns, the parties agree that an independent professional, (the identity of whom is to be mutually agreed between the parties, if necessary, and in the absence of agreement by the Court) may inspect the premises at the shared cost of the parties:



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AND further both parties agree to:

(b) Hereinafter keep their respective residences safe and ensure that (C) is not exposed to danger and they will each respect any safety concerns that the other party may express.

Contact with Father

- 4. The Father shall enjoy contact with (C) at the following times each week:
 - a. Wednesday after school until Thursday morning
 - b. Saturday from 5:00pm until Sunday at 5:00pm
 - c. Monday after school until 6:30pm



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General Overriding Conditions Relating to Contact

- 5. (a) On Wednesdays the Father will pick up (C) from day-care as early as he would like and will take (C) to school the next morning;

- (b) On Saturdays the Father will pick up (C) from the Mother’s Residence at 5:00pm, and return (C) to his Mother’s Residence on the following Sunday evening at 5:00pm.

- (c) On Mondays the Father will pick up (C) from day-care as early as he would like and will return (C) to the Mother’s Residence at 6:30pm, having bathed and fed him;

- (d) Both Mother and Father undertake with the Court and with each other to abide with the contact schedule in a timely and prompt fashion and if there are any unexpected delays experienced by either of them in the performance of the contact schedule then they will immediately inform the other.

- (e) If either party is consistently late in their performance of their obligations under this order then the other party is at liberty to bring such tardiness to the Court’s attention;

- (f) In the event (for instance due to changed work schedule, vacation or other reasonable justification) either party wishes to change the contact schedule then they each undertake with the Court and with each other to give the other party reasonable notice of their wish to change the schedule. The parties agree to exercise reasonableness with regard to such changes;



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(g) If either party experiences undue difficulties with the other party's performance in relation to contact they shall first try and resolve the problem with the assistance of a mutually agreed professional (again at the shared cost of the parties). If the problem persists then there is liberty to apply to the Court.

Holidays

6. It is agreed that the mother may take (C) away on vacation provided that she provides the dates in advance (a minimum of 28 days) to the father.

7. It is agreed that the father may take (C) away on vacation provided that he provides the dates in advance (a minimum of 28 days) to the Mother.



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Christmas/New Year

8. Subject to Clause 9 and any written agreement made by the parties to the contrary, it is agreed that (C) will spend time with both his parents on Christmas Day when both parents spend Christmas in the Cayman Islands. (C) will spend Christmas eve and Christmas morning with his mother and from 3pm onwards with his Father to include spending Christmas night and until 4pm on Boxing Day. Subject to clause 9 herein, the parties will alternate New Year's Day with (C). In respect of Christmases that (C) shall spend in the Cayman Islands, these Christmases/New Year contact arrangements set out in this clause and the time division mentioned shall alternate between parents.



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9. It is specifically agreed that at a maximum of every alternate year the Mother will take (C) to the UK for an extended Christmas/New Year vacation to spend time with (C)'s UK family. It is agreed that this arrangement will commence in December 2015.

Birthdays

10. Subject to any written agreement made by the parties to the contrary, it is agreed that (C) will spend time with both his parents on his birthday. If either parent plans a birthday party for (C) they will consult with and invite the other.

11. (C) will spend each of his parent's birthdays with that particular parent if they so choose.

Mother's Day and Father's Day

12. (C) will spend the day with his mother on Mother's Day (on the date it is celebrated in the UK). (C) will spend the day with his father on Father's Day (on the date it is celebrated in the USA).



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Public Holidays

13. The parties agree that they will alternate contact with (C) on public holidays celebrated in the Cayman Islands (excluding Christmas and New Year as provided for in Clauses 8 and 9).

Maintenance

14. On the first day of each month the Father will pay the sum of CI\$1,150.00 to the Mother by way of online transfer for the benefit and welfare of (C). Such payments shall continue until further Order. Education costs will be paid in addition to maintenance as noted below. For the avoidance of doubt the said sum of CI\$1,150.00 is made up of the sum of CI\$800.00 for maintenance and \$350.00 for school fees.



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Educational and Related Expenses

15. (a) It is agreed by the parties that (C) shall receive private education.

(b) Each party shall pay 50% of (C) pre-school fees (currently father's contribution will be \$350.00 per month) and 50% of (C)'s (when applicable) school fees. School fees shall include the cost of reasonably agreed after school activities such as clubs etc. Education costs shall be paid via the same method as maintenance. (For the avoidance of all doubt the educational expenses are in addition to the maintenance payments referred to in clause 14 herein).

(c) The parties agree that when (C) attends school the parties shall share the costs of reasonable after school care for (C) between the time he usually finishes school and the time that the relevant parent finishes work.



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Health Insurance

16. (a) The Mother shall maintain (C) on her work insurance scheme with British Caymanian insurance.

(b) All uncovered medical and dental expenses (including the deduction) will be shared equally between the parties.

Emergencies

17. Should a medical emergency arise while (C) is in the care of the other party, each party agree that they will take care of the emergency immediately and then communicate with the other party as soon as possible.

Care for C in the event of illness

18. Should C be unable to attend school due to illness, the parties agree that they will share child care responsibilities (and cost if any) equally.



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Removal of (C) from the Cayman Islands

19. (a) Other than for vacations as set out herein, it is hereby agreed that neither party will remove (C) from the Cayman Islands.

(b) In the best interests of (C) and ensuring that he will enjoy a long and happy relationship with two parents present in the same jurisdiction, the Father will provide any necessary documentation and support necessary to assist the Mother’s application for Permanent Residence in the Cayman Islands. The Father will also lend all such support that he can to ensure that the Mother is not forced to leave the Cayman Islands.



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Introduction to New Relationships

20. Both parties agree they individually shall introduce (C) to new relationships in such a way as to minimize any potential anxiety, negative impact and so as to not undermine the other’s role in (C)’s life. Both parties agree that introduction to new partners will only take place if the relationship is deemed serious and stable.

Liberty to Apply

21. Either party shall be at liberty to apply to the Court concerning the terms and working of this Order. ”



1 **AGREED FACTS**

2 7. Counsel for both parties helpfully prepared an Agreed Case
3 Summary which is set out below. Modifications have been made.

4

5 **"The Hearing"**

6 1. This is a final hearing in respect of the children issues with
7 a time estimate of four days. The Applicant Mother
8 ("Mother") has brought an application for relocation
9 pursuant to form C1 filed on 12th March 2017.

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11 2. The agreed Statement of Issues sets out matters to be
12 determined. In essence, the Court is required to settle
13 the child issues and, in particular, the Mother's application
14 to relocate the child to England.

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Background

3. There is one child of the relationship, namely (C) (d.o.b. 22 October 2012) who is now 4 years of age. The child is Caymanian and has British Citizenship.

4. The child was attending Tiny Tots Academy and he has just started school in the reception class at Cayman Preparatory School in Grand Cayman.

5. The Mother is an accountant by profession. She is a British citizen from Liverpool, England who has lived in the Cayman Islands since September 2007. Her permission to reside in the Cayman Islands was dependent on her work permit.

6. The Father works for DART and is a transportation engineer. He is Caymanian with British citizenship who was born and brought up in the Cayman Islands. He was educated in the Cayman Islands and attended college in the United States.



- 1 7. The Mother was made redundant from her role at Aon in
2 2015. She had worked in this role from arrival on island
3 in 2007. The Mother found a temporary role in March
4 2015 and then a permanent role in April 2015. Her
5 employment was brought to an end at the end of
6 December 2016. In January 2017 the Mother was able to
7 secure another job as an account manager but the rate of
8 pay was only 2/3rd her previous salary.
9
- 10 8. The Mother submitted her application for Permanent
11 Residency ("PR) in November 2015. She is awaiting the
12 outcome of the PR application.
13



1 9. There were previous Summary Court proceedings in 2015
2 in which the parties agreed the terms of a Consent Order
3 dated 30 September 2015 (HB1Tab 15 pages 95-100) for
4 contact and maintenance. The Father presently pays
5 maintenance of CI\$800 per month in addition to half of
6 school fees of CI\$547.00 per month and half of his
7 medical expenses. (C) stays with his father on two nights
8 per week pursuant to clause 4 of the Consent Order. (C)'s
9 primary home was recorded in the Consent Order to be
10 with his mother.

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12 Paragraph 1 of the Consent Order declared that the
13 Mother and the Father shall have parental responsibility
14 for C in accordance with section 4 of the Children Law
15 (2012 Revision).

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1 Paragraph 19 of the Consent Order provided that
2 *neither party will remove (C) from the Cayman Islands*
3 *..... in the best interest of (C) and ensuring that he will*
4 *enjoy a long and happy relationship with two parents in*
5 *the same jurisdiction, the Father will provide any*
6 *necessary documentation and support necessary to assist*
7 *the Mother's application for Permanent Residence in the*
8 *Cayman Islands."*

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11 **The Proceedings**

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10. The Mother applied for an order seeking permission to remove the child from the jurisdiction in addition to a Prohibited Steps Order on 9th March 2017.

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11. The Father filed an Acknowledgment of Service on 4th May 2017.

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12. The parties attended a First Appointment Hearing on 5th May 2017 before Williams J. The Court gave directions to the parties in relation to the agreement of an independent expert.

1 13. No agreement could be reached and so the parties
2 attended a further for mention hearing on 16th June 2017
3 to resolve the issue of a welfare report.

4
5 14. That issue was resolved by the Ex Tempore Ruling of
6 Williams J, dated 16 June 2017.

7
8 15. Both the Mother and the Father have filed various
9 affidavits as listed in the index to the Hearing Bundles 1
10 and 2.

11
12 16. The Welfare Report and Affidavit of Juliet Garricks is at
13 Volume 2 of the Hearing Bundle at Tab 32. "



1 **Major Change**

2 8. On the final day of the scheduled hearing, the Court was
3 informed of a major change in the factual circumstances of the
4 Mother. She had been verbally advised that her application for
5 permanent residence had been granted. At the start of
6 proceedings, the uncertainty of the status of her application was
7 one of the reasons for her application to relocate.

8
9 9. It was however, the Mother's position that the grant of
10 permanent residency did not affect her application, and she still
11 wished to proceed based on the other reasons for the
12 application which involved having the appropriate job that
13 would allow her to care properly for C.

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1 **The Mother's Position**

2 10. The evidence established that the Mother was first employed in
3 2007 at Aon but was made redundant in January 2015. After
4 obtaining a temporary job in March 2015, she secured a
5 permanent job with USA Risk Insurance in April 2015. Due to
6 the demands of the job, she left. In June 2016 she moved on
7 to a new post at Atlas but was made redundant in December
8 2016. Thereafter she secured her current job at A La Kebab.

9
10 11. According to the Mother, twice when she had been out of work,
11 she had been advised by the Immigration Department that she
12 would be required to leave the Cayman Islands within weeks.
13 On each occasion, it was suggested, that she would have to
14 leave behind her Caymanian child and this created anxiety and
15 tension within her. She wanted to return to the United Kingdom
16 because she could not be forced to leave there and she would
17 be entitled to keep her child with her, with the added bonus
18 being that he had dual citizenship.



1 12. I found as a fact that the mother did receive this information
2 about her Immigration status.

3

4 13. However, it was the Mother's position that the grant of
5 permanent residency would not solve her problems in the
6 Cayman Islands. According to her, she had been able to stave
7 off being forced to leave the Cayman Islands when she obtained
8 a job through friends. This job however, did not pay her as
9 much as her previous jobs.

10

11 14. This made it difficult for her to maintain the standard of living
12 that she desired for herself and C. It was submitted that the
13 standard of living was not frivolous and it was in keeping with
14 the minimum standard that the child had become accustomed
15 to.

16



1 15. The Mother created and exhibited a Table which showed her
2 income and expenditure. Her expenses include maintaining a
3 mortgage on a three-bedroom house where she lives with C and
4 where her parents stay when they visit the Cayman Islands
5 from the United Kingdom. This house has a garden which the
6 Mother maintains is integral to C's enjoyment, because C loves
7 gardening. She also contributes towards C's school fees at
8 private school as well as his after-school care and personal
9 needs. According to her, she has made her own cutbacks in her
10 expenses as much as she possibly can,

11
12 16. Her current job, employed by friends, allowed her to have
13 flexibility in her working hours. This had not been the case when
14 she was employed at USA Risk Insurance. She had left that job
15 because it had affected the number of hours that she wished to
16 devote to her child and as such, the overall care that she gave
17 to C. It was her evidence that on occasion she had had to take
18 C to the office with her. Further, she stated that he was affected
19 by receiving less attention from her. There were occasions when
20 he became sad and his sadness distressed her.



21

1 17. It was the Mother's position that the hours required by that job,
2 was typical of the hours of employment required in the
3 accounting field. Jobs such as those provided her with enough
4 money to provide for herself and her child however they deeply
5 affected the amount of time that she could spend with her child.
6 She stated that she regarded the care of her child, at this stage
7 of his development, to be her most important responsibility.

8
9 18. According to the Mother, she already operated at a deficit prior
10 to the grant of permanent residency. With the grant, she would
11 be required to pay annual fees of almost \$12,000.00 in order to
12 keep the grant. This would put her in even greater debt on a
13 monthly basis. Additionally, she anticipated an increase in C's
14 school fees which would increase her required contribution. All
15 of this she indicated, she would not be able to afford on her
16 current salary.



17
18 19. The Mother's evidence was supported by that of Jayne Lawless
19 who provided information about the practices of the captive
20 insurance industry.

21

1 20. To summarize her position, the Mother believed that while she
2 may be able to obtain a higher paying job in the Cayman
3 Islands, that job would interfere with the quality of time that
4 she could spend with her child. This would inordinately affect
5 the child, who the Mother described as having a tendency to be
6 "clingy". The child she stated, would express reluctance to leave
7 her and stay with the Father at times. She in no way saw this
8 as a reflection of the care that the child received while with the
9 Father, but rather, was due to the subjective nature of the child.
10 These moments never led to a cancellation of time with the
11 Father.

12
13 21. The Mother testified that she had tried for 2 ½ years to find the
14 right job in the Cayman islands which would afford her the
15 correct balance between required income and flexibility of
16 hours. She stated that she could not find one.

17
18 22. The answer for her lay in the position which she had been
19 offered at Jupiter Marketing in Newport, Shropshire, England.
20 She believed that it was in the best interests of herself and the
21 child for her to avail herself of this employment opportunity.



22

1 23. In response, the Father challenged the Mother's assertion that
2 she had tried her best to get a better paying job. It was also
3 submitted that in seeking a high paying job in the accounting
4 field with flexible hours, the Mother was not being realistic. He
5 put forward suggestions, such as the Mother downsizing to a two-
6 bedroom home; a suggestion which was rejected because the
7 Mother believed that a house of that size would lack a garden and
8 the space that C had become accustomed to.

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10 24. The Father also suggested that if the Mother found a higher
11 paying job with unworkable hours, C could spend more time with
12 him, thus varying the terms of the Consent Order. The Father
13 was criticized for this suggestion. It was submitted that he was
14 seeking to capitalize on the Mother's difficulties by seeking to
15 vary the agreed terms of contact.

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1 **The Relocation Plan**

2 25. A great deal of evidence was adduced by the Mother as she set
3 out her plan to relocate to England with C.

4

5 26. The Table that Mother created indicated her anticipated salary
6 at the new job in England and her anticipated expenses. She
7 also included some benefits which would be available to her and
8 C as British residents.

9



1 27. She proposed to live with C in Newport, Shropshire, England
2 which is where her new job would be. She researched the cost
3 of appropriate housing in that area and came up with an
4 estimate of mortgage costs and expenses. A home in this area
5 would not be far from Telford which is where her parents live.
6 She anticipated great support from her parents, who each
7 promised such support in both affidavits and verbal testimony
8 before the Court. It was asserted on behalf of the mother that
9 the area in which she proposed to live was not a remote region
10 as suggested by the Father, but rather a town of 10,000
11 inhabitants. The Father's suggestion that the area was unsafe
12 and had depressed areas within it was rejected on behalf of the
13 Mother. It was submitted that it was no more unsafe than the
14 Cayman Islands which also contained areas of poverty. There
15 was no basis to assume that C would be in any way adversely
16 affected.

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1 28. The Mother also researched the location and quality of a school
2 which C could attend immediately. She secured a position for
3 him at a prep school called Castle House. Further research was
4 done by her about other schools in the area that she proposed
5 to live. This included possible secondary schools which would
6 become relevant when C was at an age to attend the same. The
7 Mother had stated that it was her desire to keep C in private
8 school in the United Kingdom just as he was in the Cayman
9 Islands.

10
11 29. It was stressed, that the educational life that C could have in
12 the Cayman Islands, was in no way being viewed as being
13 inferior to the education offered in the United Kingdom. It was
14 stressed, that there are good schools in the Cayman Islands and
15 the United Kingdom.



16
17 30. The Table exhibited by the Mother compared and contrasted her
18 income and expenditure in the Cayman Islands and her
19 anticipated income and expenditure while living in the United
20 Kingdom. Expenditure included C's expenses.

21

1 31. The Mother was extensively cross-examined about how realistic
2 her plan was, and in particular whether she had accurately
3 predicted her income, benefits and expenses for the United
4 Kingdom. She did not resile from her position.

5
6 32. In short, the Mother submitted that it was only in the United
7 Kingdom that she would earn enough at a job which would
8 provide her with the flexible hours that she required in order to
9 look after C, with a surplus of income over expenditure and the
10 support of C's maternal grandparents and other family
11 members. It was submitted that this would provide C with a
12 settled home and life, all of which were in his best interests.

13
14 33. Evidence was adduced that C's maternal grandparents were
15 very close to him and extremely supportive of the Mother. It
16 was accepted as a fact that they have spent long periods of time
17 in the Cayman Islands visiting both parties and that on several
18 occasions, C had travelled to the United Kingdom with the
19 Mother and visited with them. It was also accepted as factual
20 that C had enjoyed his visits to England, had also developed a
21 close relationship with the Mother's brother, sister-in-law and
22 child; who all reside in the United Kingdom.



1 34. It was the Mother's position that she was the primary carer of
2 C. It was submitted that this was the case because it was so
3 stated in the Consent Order and because factually, C spent five
4 nights per week with her as opposed to two nights with the
5 Father.

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7 35. It was submitted on behalf of the Mother, that she recognized
8 the importance and necessity of the Father continuing to have
9 a role in C's life. It was her position that even after relocation,
10 she planned to do everything that she could to maintain contact
11 between the Father and C.

12
13 36. The Mother put forward a detailed plan in which she made
14 suggestions about the way that actual contact could take place.
15 The suggestion was that she would use all of her vacation time
16 from her new job and travel with C to Grand Cayman at least
17 four times per year so that he could spend time with the Father.
18 It was her suggestion that the Father use his vacation time to
19 travel to the United Kingdom to visit C.



1 37. Further details of the plan suggested that vacation time be
2 incorporated with weekends and public holidays, making it more
3 likely that C would not be in school and the Father would not be
4 required at work. It was submitted on behalf of the Mother that
5 her plan would allow the Father to spend 74 nights of contact
6 with C per annum, as opposed to the 104 nights per annum that
7 the Consent Order allowed him. The major difference being that
8 currently the Father had direct contact with C on a weekly basis
9 and the Mother's plan would involve the arrangement of contact
10 in several blocks of time per year.

11



1 38. The evidence adduced in support of the plan for contact
2 involved the likelihood of the maternal parents being the ones
3 to travel on occasion to the Cayman Islands with C to allow the
4 Father to spend time with him. The Mother also submitted that
5 as C got a little older and was more comfortable with the
6 arrangement, there was a possibility that he could be brought
7 to the Cayman Islands by her and left with his Father while she
8 returned to the United Kingdom. Thereafter she would return to
9 collect him and travel back to the United Kingdom. She
10 suggested that in the interim, she could stay with friends while
11 in the Cayman Islands, allowing the father to have
12 uninterrupted contact with C.

13
14 39. The Mother stated that she would be willing to vacate her home
15 in the United Kingdom to allow the Father and C to use it for
16 contact. The Mother's parents stated that they would be willing
17 to allow the Father to have the use of their home in Portugal to
18 facilitate visits between the Father and C.

19



1 40. The Mother testified that she was so committed to the plan for
2 contact between C and his Father that she was willing to forego
3 the monthly sum of maintenance that the Father currently paid
4 to her for C. The saving of \$800 by the Father could be put
5 towards his cost of travel to the United Kingdom to visit with C.

6

7 41. The Mother also proposed that every night C could visit with the
8 Father via Skype. Given the time difference between the
9 Cayman Islands and England, it was suggested that these visits
10 and conversations take place at C's bedtime.

11

12 42. It was submitted on behalf of the Mother, that her plans for
13 contact, apart from showing how detail oriented she was,
14 demonstrated her commitment to doing that which was in the
15 best interests of C.

16

17 43. It was further submitted that the good relationship that C had
18 with his Father demonstrated the fact that the Mother had
encouraged contact between the two.

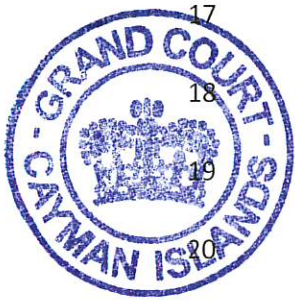


1 44. It was submitted that despite her acrimonious relationship with
2 the Father and despite her assertion that there were times when
3 C would cling to her and state that he did not wish to visit with
4 his Father, she always ensured that these visits took place. It
5 was submitted that this factor demonstrated her past
6 commitment to the details of contact put in place by the
7 Consent Order and could be used to conclude that she would
8 ensure that contact continued after relocation.

9
10 45. This position was not accepted by the Father. It was submitted
11 that the failure on his part to acknowledge that the Mother had
12 facilitated contact between himself and C as indicative of his
13 unwillingness to give any credit to the Mother.

14
15 46. The plans put forward by the Mother were rejected by the
16 Father. He submitted that Skype visits cannot replace personal
17 contact between Father and son. It was also submitted that the
18 distances involved and the length of time which would be
19 required to travel by air and/or vehicle to visit C in the United
20 Kingdom, would cut down on the amount of actual time that
21 father and son spend together during such visits.

22



1 47. The Father also pointed out that it was unreasonable to expect
2 him to use his entire allotted vacation time to visit C in the
3 United Kingdom or spend time with him in the Cayman Islands.
4 The Father desired to use some of his vacation time to do other
5 things. This position was criticized by Counsel for the Mother. It
6 was submitted that one would have assumed that the Father
7 would be willing to do everything that he could to spend time
8 with C.

9
10 48. The Father was criticized for alternatively describing his
11 employers as family-friendly and persons that he could
12 approach and request unpaid leave so that he could have
13 contact with C; and suggesting that this would not be something
14 that he could make a practice of doing. He was further criticized
15 because he acknowledged having done this in the past so that
16 he could travel to and watch the Olympics.



18 49. It was submitted that the detailed plans for contact, which
19 included actual future dates, was still essentially a suggestion
20 made by the Mother. She stated that the Father could suggest
21 his own alternate dates along the lines of a schedule.

22

1 50. The Father also raised the spectre of race relations in the United
2 Kingdom. This is a serious issue.

3
4 51. C is a biracial child. According to the Father, C would be racially
5 isolated in Newport. Further he would be living in a society that
6 lacked racial diversity and racial tolerance. He referred to
7 studies which he claimed supported his arguments. In essence,
8 the Father argued that C's mixed race background would be a
9 disadvantage to him in the United Kingdom. This would not be
10 the case in the Cayman Islands.

11
12 52. On behalf of the Mother, several affidavits were submitted by
13 several persons who argued that the West Midlands area was
14 an ethnically diverse area and close to other ethnically diverse
15 areas. The suggestion that C would not be exposed to other
16 persons of mixed race was challenged in the affidavits of several
17 persons who pointed to their own experience as persons of
18 mixed race or that of a spouse or family member who was of
mixed race.



1 53. C's female cousin is of mixed race, having a British Asian
2 mother. The headmistress of C's proposed school Castle House
3 is of mixed race as is her daughter who attends the same
4 school. Research was done and presented about an appropriate
5 place that C could have his hair styled.

6
7 54. One of the most major areas concerning ethnic diversity
8 involved C's school. It was argued that there were children of
9 mixed race who attended Castle Hall School. Further, it was
10 argued that the private school that C attended, Cayman Prep
11 was a school that contained a large percentage of Caucasian
12 children. It is also a school that has a significant number of
13 children who along with their family, were from other countries.
14 It was submitted that C would not experience any culture shock
15 in attending a new school in England.

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The Father's Position

55. As stated previously, the Father opposed the plan for relocation with the child.

56. It was submitted on his behalf that it was in the best interests of C that he remains in the Cayman Islands, the country of his birth and the only home he has ever known, with both parents. He firmly believes that it is not in C's best interests to be uprooted to a distant country which is thousands of miles away and which will deprive C of having a proper and meaningful relationship with his father.

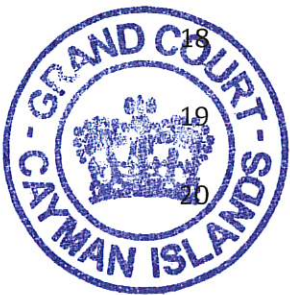
57. The Father denied the assertion made by the Mother that he was suggesting that she leave C behind in the Cayman Islands with him. He stated that where he put forward suggestions that seemed to imply this, it was against the background that he could not force the mother to remain in the Cayman Islands and if she insisted on moving to England, it was in C's best interests to remain in the Cayman Islands and for a schedule to be put in place which allowed for contact with his mother.



1 58. It was submitted that he believed that both parents should
2 remain in the Cayman Islands so that C could have regular
3 access to both of his parents. The requirement to commute back
4 and forth between the Cayman Islands and England three or
5 four times a year, in his view, was not in C's best interests.

6
7 59. The Father stressed the importance of C's relationship with him.
8 He submitted that the Mother had not recognized the
9 importance of his connection with the child. He also argued
10 against her assertion that C does not have much of a
11 relationship with his father's relatives.

12
13 60. The Father pointed out that although initially ambivalent about
14 the birth of C, he went to parenting classes. His relationship
15 with his son blossomed thereafter. He pointed to the affidavits
16 from: his sister; his brother; his friend CWW; his colleague NB
17 and his neighbour AM who each attest to the excellent role that
18 he played as a father and also their relationship to and
19 connection with C.
20



1 61. The Father stressed that these connections to family and friends
2 were extremely important to C's development.

3

4 62. It is noted that the Mother stated that she also attended
5 parenting classes but not with the Father. He had stated that
6 he had invited her to those classes and that she had refused to
7 attend.

8

9 63. Below is a direct quote from the submissions of Counsel for the
10 Father of the pertinent aspects of the Father's position.

11 i. "The Father is Caymanian as is the Child. He was born
12 and raised in the Cayman Islands.

13 ii. He works at a family friendly company and has flexible
14 working hours. He attends school events, and organized
15 birthday parties with the Child's school friends.

16 iii. He lives close to where the Child's current pre-school is
17 located and walks him to school on his contact days.

18



- 1 iv. He cooks with the Child, watches movies, reads stories,
2 picks flowers and enjoys many outdoor activities with the
3 Child such as swimming, walking, going to the beach,
4 flying a kite, cycling etc.
- 5 v. The Child is also integrated into his network of Caymanian
6 family members.
- 7 vi. The Father has made careful and thoughtful provision for
8 the Child by making a Will which makes the Child the sole
9 beneficiary under the Will, and by taking out a life
10 insurance policy in the sum of US\$1.2 million naming the
11 Child as a beneficiary in the event of the Father's demise."
12
13



1 **The Relationship between the Parents**

2 64. The relationship between C's parents is acrimonious. They are
3 able to agree on few things. There are certain allegations which
4 they made against each other for which findings of facts are not
5 required. The disagreements however, are indicative of their
6 relationship and attitudes.

7
8 65. The Mother alleged that she suffered elements of abuse at the
9 hands of the Father. He in turn, accused her of being the
10 abusive partner. The Mother alleged and the Father denied, that
11 he had "threatened her" with references to his connections at
12 the Immigration Department.

13
14 66. There was disagreement between the parties about the
15 interpretation to be placed on exhibited emails which were sent
16 out in December 2015 during the Mother's trip to the United
17 Kingdom with C. Each asserted that the other was being
18 unreasonable as it related to the Father's requests to speak to
19 C and each asserted different circumstances as existing behind
20 the emails.



21
22

1 **Contact**

2 67. It had been asserted on behalf of the Father that although he
3 had agreed to the terms of the Consent Order, he had always
4 maintained that he wanted more contact with C. The Mother
5 was criticized for not allowing a liberal contact arrangement.
6 However, the terms of the Order had been in place for two years
7 and no variation to same had ever been sought by the Father.
8 The Father was also criticized for failing to make use of the
9 provision of the Consent Order that allowed him to vacation on
10 his own with C, except once.

11
12 68. Although no findings of fact were made on the competing claims
13 of abuse, it was clear that the parties have a tense relationship.
14 As such, it was all the more commendable that C had been
15 properly parented by both and that the Consent Order had been
16 obeyed without any variation being sought for two years.

17



1 69. The Mother was criticized because during cross-examination,
2 she would not state that she agreed that the Father should have
3 more contact with C. I do not find that she was bound to take
4 such a position during a relocation application; when there was
5 no competing application for the variation of contact put
6 forward by the Father.

7
8 **Prohibited Steps Order**

9 70. Initially there had been an application by the Mother for a
10 Prohibited Steps Order to be made against the Father. This was
11 against the background of allegations that the Father had made
12 some remarks to C which adversely affected him. There was a
13 similar complaint made against the Mother.

14



1 71. Both Counsel in this matter agreed that no evidence should be
2 adduced on this issue. Counsel for the Mother was desirous that
3 the Court issue a prohibition to both parents, without there
4 being any findings of fact. When this suggestion was put to the
5 Father he was adamantly against it. He would not accept that
6 such an Order was in the best interests of C. He was adamant
7 that he had done nothing wrong. He was adamant that he
8 wanted his name to be cleared of the allegation. He was not
9 satisfied with the assertion that the allegation against him
10 would not proceed.

11

12 72. All of the foregoing is demonstrative of the relationship between
13 C's parents. As stated previously, they can agree on little.

14

15



1 **Finances**

2 73. The issue of the money available to the Mother is relevant. It
3 is the foundation of her case that she is not financially stable
4 having spent most of her savings and earning funds from a job
5 that did not cover all her expenses. This is a part of the reason
6 that she suggests that she needs the job offered to her in
7 England as her "bird in the hand".

8
9 74. During cross-examination she referred to property that she had
10 had in England that she subsequently sold. A great deal of
11 weight was placed in submissions about the Mother's failure to
12 reveal the existence of the land in England that she sold for
13 £120,000 netting £70,000. It was suggested that the Mother
14 did not mention these funds so as to paint her financial picture
15 as being bleaker than it actually is.



1 75. The Mother testified that the property had been for her
2 retirement. She had considered selling it to upgrade her
3 position but subsequently decided to apply the funds to her
4 legal fees. She stated that she did not know what her final bill
5 would be. The questioning in this area began when the Mother
6 was asked about the financial contributions which her parents
7 had made and were willing to make in the future, to her.

8

9 76. Counsel for the Father suggested that it was strange that the
10 Mother sought to apply these funds to legal fees rather than her
11 annual Permanent Residency fees. Additionally, it was
12 submitted as being strange that the Mother claimed that she
13 did not know how much funds were in her sterling account. On
14 this latter point, I found that the Mother was less than wholly
15 credible.



16

17 77. Counsel also submitted that the payment of fees to Hampson
18 and Company as shown in the Mother's bank statements was
19 less than £70,000. However the paperwork did not reveal that
20 it came from a sterling account. It was being suggested that
21 the mother had sufficient funds to enable her to supplement her
22 salary.

23

1 78. If it was found that the Mother has access to funds sufficient to
2 fund the lifestyle that she claims for herself and C, then clearly
3 she is in no way impeded by continuing to work at a job that
4 does not pay much but allows her the flexible hours that she
5 requires to care for C.

6
7 79. I had the opportunity to assess the Mother's demeanour as she
8 testified. I did not find her to be a dishonest witness. She was
9 generally quite credible and forthright.

10



1 80. My assessment was that while not initially forthcoming, by
2 referring to property that she owned outside of the Cayman
3 Islands, the Mother did voluntarily and honestly admit to her
4 retirement investment which was the land in England. She was
5 frank about using the money for her legal fees and she was
6 frank in stating that she did not know how much the total bill
7 would be. She also admitted that her parents were willing to
8 help out with her legal fees if she did not have enough money.
9

10 81. Counsel for the Mother pointed out that even if the £70,000
11 could cover her monthly shortfall in expenses, she still had to
12 pay the balance of her legal fees and over time, this would leave
13 precious little to cover her annual Permanent Residence fees.
14

15 82. It was submitted that it was not feasible for the Mother to turn
16 to her parents for financial assistance over and above that
17 which they had offered previously. She could not expect them
18 to pay her annual PR fees.



1 83. I accepted these submissions. I did not consider it reasonable
2 to expect the Mother to utilise any and all of funds left over after
3 expenses, if any, to supplement her income in the Cayman
4 Islands. If there are any additional funds after legal expenses,
5 it is reasonable to apply these to any plans for retirement. Her
6 unwillingness to admit to the extent of her sterling savings did
7 not negate her credibility in my eyes.

8
9 84. I found as a fact that the Mother's funds in the Cayman Islands
10 were depleted.

11
12 85. I also found as a fact that she has a genuine realistic fear of not
13 earning enough funds to meet her expenses, even when she
14 cuts back her expenses.

15
16 86. I accepted as accurate, the evidence from the Mother, as
17 corroborated by Jayne Lawless about the extreme work hours
that are required from persons employed in the accounting field
in the Cayman Islands. I further found that these hours do not
allow for the flexibility required for childcare.



1 87. I accepted the foregoing as being true and reasonable.

2

3 88. I found as a fact that C is a happy, well cared for child:

4

5 89. I also found that the job that the Mother has been offered in
6 England will allow her the flexible hours she requires. I also
7 found that she will earn enough to pursue her preferred lifestyle
8 in England. This lifestyle will inure to C's benefit as will a more
9 relaxed mother.

10

11 90. I found as fact that C sometimes clings to his mother when he
12 is to be turned over to his father. I also found that he is close
13 to father but that he is closer to this mother and would suffer
14 more greatly if he was separated from her, than if he was
15 separated from his father.

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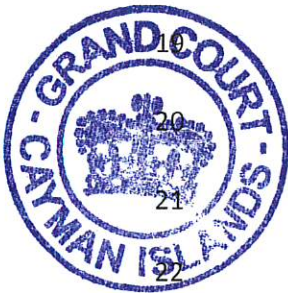
17 91. Based on the details placed before me, I found as a fact that
18 while C knows and has a good relationship with some of his
19 father's relatives, the relationship is not as close or as well
20 developed as his relationship with his mother's relatives.

19

20

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1 **The Welfare Report**

2 92. Although the Order of Mr. Justice Williams was extremely
3 precise in indicating what the Welfare Report should cover,
4 unfortunately the report from the Department of Children and
5 Family Services (DCFS) did not make any recommendations or
6 come to any clear conclusions about relocation. Both sides
7 criticized it for that reason. However, each side did find some
8 aspect of the report useful.

9

10 93. Counsel for the Father particularly recommended that the Court
11 consider the conclusion in the report that the "ideal scenario"
12 would be for the Mother to remain in the Cayman Islands with
13 C, secure employment allowing her the lifestyle that she desires
14 and for things to otherwise remain as they are in terms of
15 shared custody. The conclusions of the social worker concerning
16 the welfare checklist were also recommended for favourable
17 review.

18



1 94. Counsel for the Mother heavily criticized the manner in which
2 the report was put together. Also up for criticism was the social
3 worker's commentary about the "ideal scenario". Counsel
4 however, happily took onboard the comment of the social
5 worker that; if the Mother's position was not viable so that she
6 needed to return to the United Kingdom, the better option was
7 for C to go with her rather than stay with the Father in the
8 Cayman Islands and be parted from his mother. The Father was
9 described as "an adequate parent" but it was opined that if the
10 child lost his day-to-day contact with his mother "he would
11 likely be devastated".

12
13 95. The social worker did note that the father took issue with this
14 opinion.

15



1 **The Law**

2 96. The paramount consideration in determining these applications
3 is the welfare of the child. *Section 3 of the Children Law (2012*
4 *Revision)* sets out the welfare checklist. Summarized, this
5 states that the Court must consider:

6

7 (a) the ascertainable wishes and feelings of the child
8 concerned (considered in the light of his age and
9 understanding);

10 (b) his physical, emotional and educational needs;

11 (c) the likely effect on him of any change in his
12 circumstances;

13 (d) his age, sex, background and any characteristics of his
14 which the court considers relevant;

15 (e) any harm which he has suffered or is at risk of suffering;

16 (f) how capable each of his parents, and any other person in
relation to whom the court considers the question to be
relevant, is of meeting his needs; and

(g) the range of powers available to the court under this Law
in the proceedings in question.



21

22

1 97. I was grateful to Counsel for their submissions on the law. The
2 cases referred to were extremely helpful and showed the
3 development in the law over the past few years. I took the view
4 that the outcome of each case depended rather heavily on the
5 factual situation peculiar to each of them. Of importance were
6 the principles that were applied.

7
8 98. The leading permanent removal authority in this jurisdiction is
9 the decision of **B v. B [2013] (1) CILR 271.** This is the
10 decision of Mr. Justice Richard Williams, who summarizes the
11 English authorities on the subject. The Court of Appeal
12 approved this decision in **B v. B [2014] (2) CILR 234.** In a
13 subsequent Grand Court decision from Mr. Justice Williams, **IB**
14 **v JE dated 17 September 2017,** the principles propounded
15 and approved by the Court of Appeal were considered and
16 applied.

17
18 99. Following the example of Counsel in their submissions I have
19 set out both the Welfare checklist and the ***B v B*** principles and
20 indicated my responses thereto.

21

22



1 100. Applying the principles in **B v B**:

2

3 1. *Is the mother's application genuine, in the sense that it is*
4 *not motivated by some selfish desire to exclude the father*
5 *from the child's life?*

6

7 Based on all the evidence before me, my answer to this
8 question is in the affirmative. I am satisfied that the
9 mother can better make ends meet with the income from
10 her job in the United Kingdom and that this job will afford
11 her the flexible hours that she needs to properly care for
12 C. I was also satisfied that the mother would take steps
13 to maintain contact between C and the father as she has
14 done in the past.

15



1 2. *Is the father's opposition motivated by a genuine concern*
2 *for the future of the child's welfare or is it driven by some*
3 *ulterior motive?*

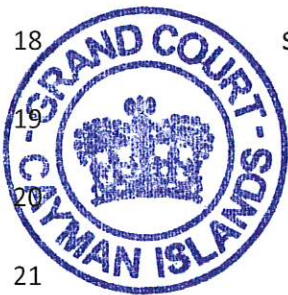
4
5 I accepted that the father genuinely loves C and wants
6 the best for him. I did not think that he had properly
7 considered the relationship between C and his mother and
8 how separation would affect C. I was not satisfied with his
9 research about the area that C was going to live in and I
10 was not convinced that C would encounter racial
11 difficulties. It was telling that the evidence established
12 that the father had not taken the opportunity to visit the
13 area in England and do his own research in person. I
14 agreed with the submission made by counsel for the
15 mother that the father's stated reasons for objection were
16 exaggerated.

17



1 3. *What would be the extent of the detriment to the father*
2 *and his future relationship with the child were the*
3 *application granted?*

4
5 The terms of contact would change and the Father would
6 be disappointed. This however does not necessarily have
7 to result in a detrimental effect to the relationship
8 between the Father and C. The proposals for travel
9 between the Cayman Islands and the United Kingdom are
10 helpful and would work if the Father participated. It would
11 be especially useful if he could arrange to be on leave
12 when C visits the Cayman Islands. The assistance of the
13 maternal grandparents as offered would also go a long
14 way. It is perhaps feared that the Mother would not keep
15 her word. However, her history of fostering contact
16 between the Father and C as set out in the Consent Order,
17 despite the relationship between the parents, strongly
18 suggests that she would continue to do so in the future.



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It is accepted that contact via Skype is not a substitute for in-person contact. However such daily contact as proposed by the Mother would have the beneficial effect of keeping the Father in the mind of C and an entirely new form of relationship could result between the two. This is especially the case, when taken together with in-person visits.

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4. *To what extent would the detriment to the father, if the application were granted, be offset by extension of the child's relationship with the maternal family and, if applicable, homeland?*

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I found that C already has a close relationship with his grandparents and his cousin and her parents. He would benefit from an enhanced relationship. A closer bond with them would develop if he spent more time with them and this would be in his best interests.



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1 It is not suggested that either the grandparents or the
2 other family members could replace the Father. However,
3 the relationship with these would definitely offset any
4 detriment.

5

6

7 5. *Is the mother's application realistic and founded on*
8 *practical proposals well researched and investigated?*

9

10 Having been granted PR, the Mother has more stability
11 but she still cannot afford to live here. Her expenses in
12 the Cayman Islands have increased and she is still unable
13 to find a job in her field that will afford her the flexibility
14 that she needs to give to C as his primary carer. The
15 Mother is entitled to a job that allows her to pay her bills
16 and have flexibility to give C the nurturing that he
17 requires.

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I considered her plan for relocation to the United Kingdom to have been well researched in all areas. I found her evidence on the various areas to be credible. A little more research could have been done in relation to the secondary schools that C could attend in the future, but that issue is somewhat far-off.

I found that there was little more that the Mother could have done to put forward a viable plan for relocation and contact between the Father and C, upon relocation.

6. *What would be the impact on the mother of a refusal of her realistic proposal? The weight placed on this will increase if the child resides with the mother.*

A refusal would be disappointing to the Mother. It has been established that she is C's primary carer and while this does not create any presumption in her favour, this factor does carry weight. Her evidence was accepted about the effect that working at USA Risk Insurance had had on C. He was saddened at receiving less of her attention and she was distraught by the effect on him.



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Next up for consideration is the Welfare Checklist.

A. *The ascertainable wishes and feelings of the child concerned (considered in the light of his age and understanding);*

The social worker found it difficult to assess whether C's views were really his own. She thought that he may not have fully comprehended what it meant to either relocate to the United Kingdom or remain in the Cayman Islands.

I concurred with Counsel for the Mother that C's views will not carry much weight because of his age.

B. *The child's physical, emotional and educational needs;*

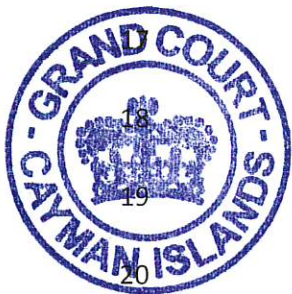
I accepted the comment of the social worker that C "appears to be physically well, emotionally secure and a child who has a loving bond with both parents".



1 I concluded that C's educational needs could be equally
2 well served in either the Cayman Islands or the United
3 Kingdom. Based on the evidence adduced, I concluded
4 that while not discounting the father's contribution to his
5 needs, C especially required the emotional support of the
6 Mother. I agreed with Counsel for the Mother if she is not
7 put in a position of severe disappointment and ongoing
8 financial pressure, but rather allowed to go to the United
9 Kingdom where she would be in a secure and financially
10 viable situation, it would inure to C's benefit. In the
11 meantime, his need for contact with the Father will be
12 met if the Mother's proposals are utilized.

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C. *The likely effect on him of any change in his
circumstances;*



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Change will have substantial effect on C when he will no longer be in the territory that he has lived in all of his life and seeing persons that he has become accustomed to seeing.

1 However, C will not be moving to an entirely alien
2 environment. I have accepted that he has visited the
3 United Kingdom before and enjoyed those visits. He will
4 be with his Mother and associating with his maternal
5 grandparents and other relatives with whom he has
6 already formed relationships.

7
8 C has only just started attendance at his present school
9 and cannot be said to have formed a permanent
10 attachment.

11
12 One of the greatest factor that favours change for C is his
13 extremely young age. He should be able adapt rapidly and
14 settle into a new environment as long as his introduction
15 to these changes is done gently and with sensitivity.



1 D. *His age, sex, background and any characteristics of his*
2 *which the court considers relevant;*

3
4 Again, C's age suggests that the present would be an ideal
5 occasion for any change to be made. His mixed race
6 heritage is a factor to be considered as he moves to a
7 society wherein the majority is Caucasian. However I
8 have accepted that he will be in a diverse community and
9 exposed to other persons of mixed race. The United
10 Kingdom also has a long history of racial tolerance and
11 multiculturalism. C can encounter racism anywhere, even
12 in the Cayman Islands. I did not accept that all factors
13 considered, C was at a greater disadvantage in moving to
14 the United Kingdom as a bi-racial child. I also did not
15 accept that his new school would cause him any "culture
16 shock".

17
18



1 E. *Any harm which he has suffered or is at risk of suffering;*

2

3 I accepted the submission that it would be harmful for C
4 to be in a position of financial instability with his Mother
5 in the Cayman Islands. It is accepted that his quality of
6 life would be impaired.

7

8 There is already a record of C being adversely affected
9 when the Mother had a job which made her less available
10 to attend to his needs. If she as his primary care becomes
11 stressed because she cannot meet their financial needs
12 from her salary in the Cayman Islands, C will be adversely
13 affected.

14

15

16



1 F. *How capable each of his parents, and any other person in*
2 *relation to whom the court considers the question to be*
3 *relevant, is of meeting his needs;*

4
5 I considered both parents to be capable of providing for
6 C's physical needs. However I was convinced that the
7 Mother played a greater role in meeting C's emotional
8 needs. I accept that this is essential to his best interests
9 and that for this reason he should relocate with her. The
10 stress of financial insecurity as opposed to the lack of
11 flexible hours to care for C has and would continue to put
12 pressure on the Mother. This would adversely affect C.
13 The Mother should therefore be allowed to relocate so as
14 to address her needs, as well as C's needs.



17 G. *The range of powers available to the court under this Law*
18 *in the proceedings in question.*

19
20 At the urging of both sides I made no further Order in this
21 matter.

22

1 **Conclusion.**

2 101. Based on all the foregoing I concluded that it was in the best
3 interest of C that I grant the Mother a Sole Residence Order and
4 permission to permanently relocate from the jurisdiction.

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6 102. I consider it important to state that I accepted as truthful, the
7 Mother's promises to put in place contact arrangements.

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Nova Hall

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Nova Hall
Judge of the Grand Court (Acting)



6th October 2017