

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

3 **CAUSE NO. FAM 119 OF 2011**

4 **BETWEEN:**



6 **M**

7 **Petitioner**

8 **AND**

9 **M**

10 **Respondent**

11 **Appearances:**

12 **Mrs. Stacy Thompson for the Petitioner**  
13 **Respondent in Person**

14 **Mrs. Karin Thompson, Guardian ad litem**

15 **Mrs. Suzanne Bothwell of the Attorney General's**  
16 **Chambers for the Department of Children & Family**  
17 **Services**

18 **Before:**

19 **Hon. Justice Richard Williams**

20 **Heard:**

21 **24-25 June, 1-4 July, 8-9 July & 11 July 2014**

22 **Written closing submissions received:**

23 **23 July 2014**

24 **Date of Decision:**

25 **9 August 2014**

26 **Final submissions on contact received:**

27 **27 August 2014**

28 **Draft Judgment circulated:**

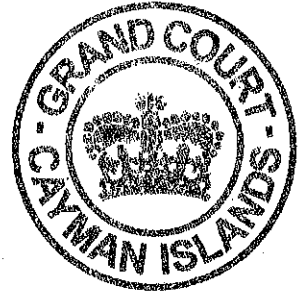
29 **29 September 2014**

30 **Date of Judgment:**

31 **7 October 2014**

32 **HEADNOTE**

33  
34 *Family Law – Children – Cross-residence applications separating the siblings -*  
35 *Application for leave to permanently remove children from jurisdiction - Father wishing*  
36 *to relocate to USA with two of the four children of the marriage - Relevant*  
37 *considerations to be applied to a permanent removal application.*  
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## JUDGMENT

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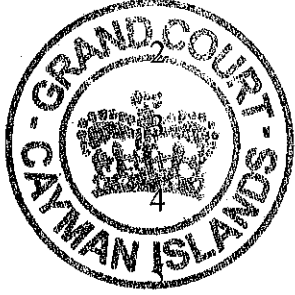
### **The Parties and Applications**

1. This matter concerns four children of the parties' marriage namely:

- (i) C, a 15-year old girl born on 2 January 1999;
- (ii) L, a 13-year old boy, born on 27 February 2001;
- (iii) N, an 8-year old girl born on 29 June 2006; and
- (iv) S, a 4-year old girl born on 19 February 2010.

All of the children have been wards of this Court since 25 April 2012, the reasons for the Court exercising its inherent jurisdiction in such a manner are set out in my Ex Tempore Ruling given at that hearing. This case was allocated to me on 16 April 2012. On 19 April 2012 I appointed Mrs. Karin Thompson to act as the Guardian ad litem for the four children.

2. The Department of Children & Family Services ("the Department") is not a party to these proceedings, but due to the integral role that Ms. Christine Miller, the family's allocated social worker, has played with this family and as a reporting officer within these proceedings, she and the Department attended and were represented by Mrs. Bothwell during the hearing.



1 3. There is an additional child of the family, J, an adult girl born on 4 May 1995,  
aged 19. The Petitioner mother is J's biological mother and LH, her biological  
father, died a few days before J's birth. As a result of an out of Court settlement  
on the part of LH's estate, the mother having commenced litigation in the Probate  
Court of Saipan, a substantial trust fund for J's benefit. The Trust is becoming a  
6 US trust with an approximate value of US\$17,000,000, although it currently  
7 retains a Cayman Islands-based Trustee. The Trust Deed names of all the children  
8 of the marriage as persons entitled to receive benefit of trust funds within the  
9 discretion of the Trustee, having regard to the fact that when doing so there is also  
10 a benefit to J. The mother received her interest of \$1,300,000 from her set aside  
11 trust in May 2013 when J reached 18 years of age.

12  
13 4. The mother stated in her Divorce Petition filed on 27 May 2011 that she sought  
14 sole custody of J. The Respondent, in his Summons filed on 21 November 2011,  
15 sought an order that J, who was then attending HP, a boarding school in Hawaii,  
16 be permitted to choose who she should reside with during her school holidays.

17  
18 5. J filed an affidavit sworn on 29 March 2012 in which she stated that she wished to  
19 live with the Respondent, who she referred to as "*my father*." It is clear from the  
20 content of J's affidavit and from Ms. Miller's summary of her interview with J in  
21 May 2011<sup>1</sup> that J viewed her relationship with her mother as having totally broken

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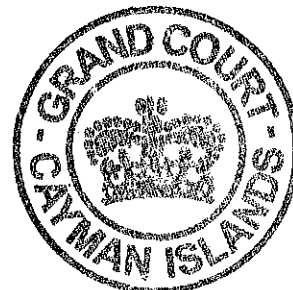
<sup>1</sup> See page 11-14 of Social Enquiry Report dated June 2011.

1 down. No orders have been made in relation to J in these proceedings. J is now an  
2 adult and is in full-time education, attending university in California. J's needs are  
3 being met by the Trust and she lives independently from the parties.  
4

5 6. The parents are in the midst of protracted and highly contentious divorce  
6 proceedings. The Petitioner mother, a national of the Philippine Islands, is aged  
7 39 and the father, a US Citizen, is aged 48. The Petitioner currently has  
8 immigration status in the Cayman Islands by means of a Grant of Residency  
9 Without the Right to Work as a Person of Means. The Respondent father's  
10 immigration status is as a dependent of the Petitioner, such status will terminate  
11 upon the Decree of Dissolution in the ongoing divorce proceedings. The mother is  
12 of the view that the father has chosen not to work, and that his current  
13 applications are his vehicle for receiving funding for the children from the Trust  
14 to support his lifestyle.  
15

16 7. The Petitioner intends to remain living in the Cayman Islands. The Respondent,  
17 partly due to his uncertain immigration status, seeks to relocate to his home town  
18 which is Bend, Oregon, USA in August 2014.  
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20 8. I hope that the parties will not be offended if from now on I refer to them for  
21 convenience as the mother and the father.  
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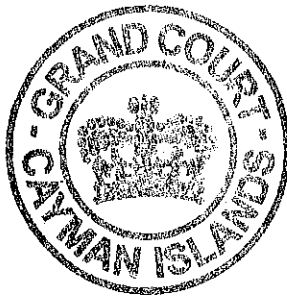
1 9. The mother's application is for residence orders to be made in her favour in  
2 relation to L, N and S. The father does not oppose the mother's application in  
3 relation to N and S. The Guardian and the Department recommend that residence  
4 orders should be made in favour of the mother in relation to only N and S.

5  
6 10. The father seeks confirmation of the residence order in relation to C made in his  
7 favor on 26 June 2012. Rather surprisingly, having regard to the fact that the  
8 mother indicated back at the hearing in May 2013 that she did not oppose the  
9 making of a residence order to the father, the closing submissions filed on her  
10 behalf disclose that the application is now opposed. Unhelpfully, the mother has  
11 failed to offer up a coherent suggestion as to what order she believes the Court  
12 should make in relation to C's care. Both the Guardian and the Department  
13 recommend that a residence order to the father should be made or confirmed. The  
14 father also seeks a residence order in relation to L, as well as orders permitting  
15 him to permanently remove both L and C from the Cayman Islands to relocate  
16 with him to Bend.<sup>2</sup> The mother opposes these applications, contending that L  
17 should reside with her and that a removal of L and C from this jurisdiction would  
18 not be in their best interests. The Guardian and the Department recommend that  
19 the Court grants the orders sought by the father in relation to C and L.

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<sup>2</sup> Father's Summons of 4<sup>th</sup> February 2014.



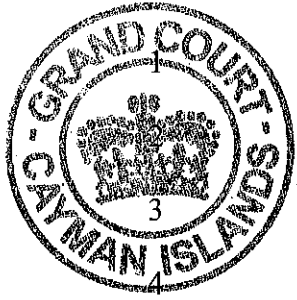
1 11. The hearing was spread over 9 days. Due to the need for an urgent determination  
2 of the primary applications and my absence on leave from the jurisdiction  
3 commencing on 10 August 2014, I gave my decision without reasons on 9 August  
4 2014, having had the opportunity to review the parties' written closing  
5 submissions which were submitted on 23 July 2014. I made a residence order in  
6 relation to C and L to the father and gave him leave to permanently remove them  
7 to Bend. I made a residence order in favour of the mother in relation to N and S. I  
8 ordered that all of the children would cease to be wards of court on 30 September  
9 2014. At the hearing, as the parties had been made aware of my decision  
10 concerning the future living arrangements for the children, I gave leave to them, if  
11 they wished, to submit further written submissions concerning contact by or on 25  
12 August 2014. The Guardian provided her preliminary views in an email to the  
13 social worker dated 14 August 2014. The mother provided the Court with her  
14 submissions on 25 August 2014, the father provided his on 26 August 2014 and  
15 the Department provided their submissions on 27 August 2014.

16  
17 12. This is my reserved judgment containing the reasons for my decision.



18  
19 **Background**

20 13. This case has occupied a disproportional amount of Grand Court and Summary  
21 Court time over the past three years. Astonishingly, there have been 28 hearings  
22 in the Grand Court before four different Judges since 20 May 2011, occupying 37



days if one includes this final hearing. I have little doubt that the legal costs so far incurred on these proceedings could and should have been put to far better use for this hitherto dysfunctional family. I hope that the parties have regard to this before they consider embarking in the future upon any further Children Law applications and when progressing their ongoing financial ancillary relief proceedings.

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14. This sorry state of affairs has arisen due to the parties' inability to properly and sensibly address issues that frequently arise between themselves concerning the immediate and long-term future of their children. The parties, especially the father, have, until fairly recently, failed during the course of the proceedings to coherently set out their future plans and provide the Court and the Guardian with detailed and informed proposals. At times the parties have had difficulty elevating the children's needs above their own, especially when, over the years, they have permitted issues surrounding the generous financial support hitherto given by the Trust to influence how they care for the children. The children have been drawn in to the parties' disputes and have witnessed their clear resentment for each other. Counsel for the mother states in her closing submissions that there is a "*background of acrimonious distrust*" and describes the situation thus "*...there are a few facts which are incontrovertible, foremost of which is certainly the marriage and any good relationship between the parties have long since died a death incapable of resurrection without the assistance of a modern day miracle.*"



1 15. The proceedings have been made more complex and acrimonious due to these  
2 unemployed parents' reliance on income derived from the trust funds and the  
uncertain effect that any orders may have on any financial assistance from the  
Trust. The parties', in particular the mother who as a Protector of the Trust and  
3 hereby in a position to be informed about the position being taken by the Trustee,  
4 inability to give timely and adequate disclosure concerning the Trust and its  
5 operation has been a significant causative factor in the delay in the resolution of  
6 these proceedings. This is vividly illustrated by the mother's inexcusable delay in  
7 disclosing a letter from David Mullen (written on behalf the Trustees) dated 15  
8 August 2013 which was addressed to her attorney. The disclosure of the existence  
9 of this letter was made for the first time on the last day of the nine day hearing,  
10 despite an Order I made on 15 May 2013 requiring the mother to use her best  
11 endeavors to obtain from the Trustee the type of information outlined in the letter.  
12 Prior to the extremely belated production of the letter, the Court had been left  
13 with the wrong impression that the mother had not been able to obtain such  
14 information from the Trust. The mother's attorney was asked by the Court why,  
15 having regard to the Order of May 2013, the parties and the Court had not been  
16 made aware of the existence and content of the letter until this very late stage.  
17 Counsel stated that she *"could not say why it might not have been produced  
18 before."* I note with interest that the letter was only introduced at the hearing to  
19 try to meet criticism of the mother's failure to obtain information from the Trust,  
20 her Counsel informing the Court *"I seek to introduce it (the letter) so that I can  
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22*

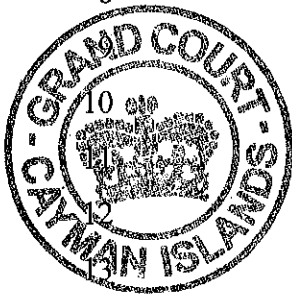
1           ask the guardian ad litem whether she feels my client was doing things to obtain  
2           information about the trust.”

3

4   16.   I remind myself and the parties of my sentiments expressed in *KP v JB* (Fam 245  
5           of 2010) and repeated in my March 2013 Judgment in *B v B* [2013 1 CILR 271]  
6           wherein I stated:

7

8



          “7. This hearing is the first time during these proceedings that the  
          parties have been able to give oral evidence and be tested in cross-  
          examination. As a consequence, both parties seemed intent on  
          trawling through the whole history of their relationship from its  
          inception to the current date. Such a detailed analysis of the  
          history of their relationship is not as helpful to the Court when  
          determining the applications as the parties appear to believe it to  
          be. A great deal of irrelevant and unhelpful evidence has been  
          placed before this Court. Since the parties have been given the  
          opportunity to conduct such an exercise at this hearing, the Court  
          would not now expect them to seek or feel the need to do the same  
          at any future related hearing.”

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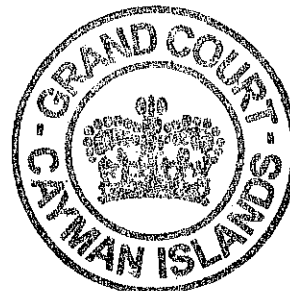
20   17.   Although the narrower issues still for determination in this case and the prevailing  
21           circumstances are now very different to the ones placed before the Court at the  
22           commencement of these children proceedings back in 2011, it is still necessary to  
23           look at some of this family’s history and to review these proceedings to put  
24           matters into context. When conducting such an exercise, in a case of this nature, I

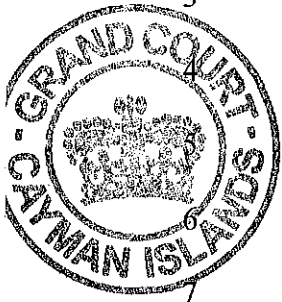
1 am guided by the approach of Thorpe L.J. outlined in *Re F (Shared Residence*  
2 *Order)* [2003] EWCA Civ 592, [2003] 2 FLR 397 when he said:

3 *“One of the functions of the judge is to make findings and that*  
4 *another function is to be selective and to make findings that are*  
5 *relevant and necessary for the disposal of the issue.”*  
6

7 Thorpe L.J. stated that, when considering what orders would be in the best interest  
8 of a child, a Judge was not required to make findings on every area or issue that  
9 has been presented to the Court for determination or which had become apparent  
10 during the hearing. He concluded that the Judge must determine the factual issues  
11 that have implications for the decisions that he has to take in relation to the child.  
12

13 18. The parties met in Saipan in around late 1995/early 1996. J was around six-  
14 months old at the time. They lived in a common-law relationship for about 4 ½  
15 years. They then travelled to the Cayman Islands in December 1999. The  
16 intention was to safeguard J’s assets offshore in the Cayman Islands. When  
17 investigating the possibility of residency in the Cayman Islands, they were  
18 advised by their lawyers that they had to get married in order for them both to be  
19 granted the Certificate of Residency without the Right to Work. Within four days  
20 of receiving this advice, the parties decided to marry. They were married on 26  
21 July 2000 in Grand Cayman. C was approximately 18-months old and the mother  
22 was pregnant with L at that time.  
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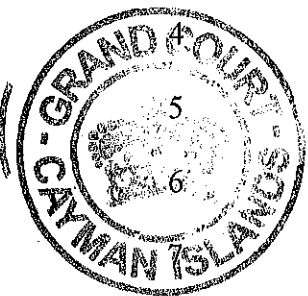




1 19. The mother was granted Residency as a Person of Independent Means in July  
2 2002. One of the conditions of the grant was that the mother must own and  
3 maintain a private dwelling place of the same or greater value than the amount  
required at the date of the grant. The house where the mother resides is owned by  
the Trust and not by her, which on a strict interpretation may mean that she is not  
complying with the ownership condition. Despite this, the Department of  
Immigration appear to be content with the continuation of the mother's residency,  
8 so I approach that matter on the basis that the mother is able reside in Cayman  
9 Island for the foreseeable future. The children, as her dependents, have been  
10 granted Right of Residency until they reach the age of majority, but they are not  
11 permitted to attend a school in the public system here.

12  
13 20. The parties remained in the Cayman Islands until Hurricane Ivan struck in 2004.  
14 They then spent time in the Philippines, in the Northern Mariana Islands and in  
15 Hawaii before their return to the Cayman Islands in 2008 after the cancellation of  
16 mother's United States Visa.

17  
18 21. Sadly, it appears that the transition from a common-law relationship to a marital  
19 relationship was not smooth and the parties' relationship took a serious downturn.  
20 The father, in his affidavit sworn on 23 November 2011, sets out what he terms  
21 the "*history of abuse 1996-2011.*" The majority of these allegations have not  
22 been tested during these proceedings, so their relevance is that the making of



1       allegations of this nature in itself shows the level of dysfunction within this family  
2       unit. In an email dated 28 August 2008 the Department were contacted by the  
3       Department of Human Services, Child Welfare Services (“the DHS”) in Hawaii in  
4       respect to the family. The Department was requested to provide a report  
5       concerning the family which was being monitored by the DHS. The parents had  
6       failed to comply with orders requiring them to maintain contact with the DHS  
7       whilst they were out of the jurisdiction and to return to Hawaii. The parents  
8       required permission from the Court in Hawaii to leave that jurisdiction. The  
9       Hawaii Family Court, by order dated 10 June 2008, had permitted the family to  
10      make a 7-8 week trip to the Cayman Islands, as it had been informed that they  
11      needed to spend at least 30 days here to maintain their residency status.

12  
13    22.    Lisa Smith from the DHS provided the Department with a very brief synopsis of  
14      their involvement with the family back to 2007. Therein the DHS highlighted that  
15      they had received a report alleging threats of harm and allegations of neglect of  
16      the children by the mother. Ms. Miller said that the mother told her in 2011 that  
17      *“she had a matter before the court in Hawaii when she was reported for*  
18      *threatening C with a knife”* and that the children were *“removed from her care*  
19      *for about eight months and placed with”* the father. It emerged that the mother  
20      had been arrested and charged with ‘terroristic threatening’ as a consequence of  
21      her actions. It was alleged that the mother had waved a machete at the children  
22      and threatened to kill them. These charges were dropped when the children

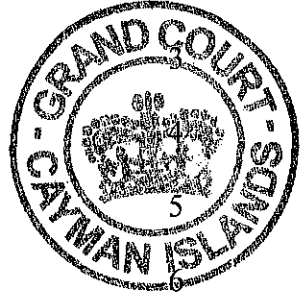


provided new reports about the alleged incident. The children also told the DHS about conflict within the home, involving physical and verbal disputes between their parents.

5 23. On 12 December 2007 J was placed in foster care by the DHS and thereunder  
6 placed in the care of the father. On 16 January 2008 the DHS were awarded  
7 “foster custody” of J and family supervision of C, L and N by the Hawaii Family  
8 Court. The DHS had a concern that the father was manipulating the family  
9 situation and was telling the children what to say prior to their interviews with  
10 them. They felt that the mother did not have a good understanding as to how to  
11 manage the situation when the father was pushing buttons to make her lose  
12 control of the situation to make her look like the instigator of incidents. The DHS  
13 expressed a concern that the father himself was putting the children at risk by  
14 undermining the mother's efforts to provide appropriate boundaries for his own  
15 personal gain.

16  
17 24. On 4 June 2008, J was reunited with her mother, J’s foster custody order was  
18 revoked and the DHS were granted a family supervision order in relation to the  
19 parents and all of the children.

20  
21 25. The DHS acknowledged that the mother had been “*very proactive*” in almost all  
22 of the programs offered to her. She had completed the Title IV-B assessment,



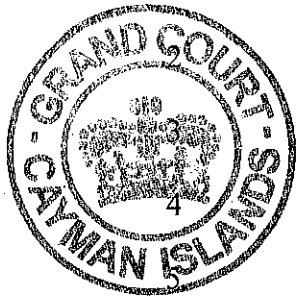
1 substance abuse treatment, drug monitoring and anger management. She also  
2 participated in individual therapy and joint therapy with J. Unfortunately the  
father, who was also recommended to attend programs, only engaged in the  
substance abuse treatment programme, as he felt they were not necessary. He did  
attend parent education therapy, but unlike the mother, he failed to keep all of the  
appointments. The father did not engage in the anger management programme.  
7 Therefore, the unfortunate impression gained, is that the father was unwilling to  
8 properly engage with the assistance that was being offered at the time.  
9

10 26. The DHS asked the Department to:

- 11 (i) provide certain information for the next Hawaii Family Court hearing  
12 scheduled for 1 October 2008;  
13 (ii) to have a social worker visit the family; and  
14 (iii) to confirm whether the Department would be willing to offer ongoing  
15 monitoring and other services to the family.  
16

17 DHS recommended that the father complete substance abuse treatment and an  
18 anger management programme. They also recommended parent education therapy  
19 and couples counselling for both parents.  
20

21 27. Lisa Smith sent a further email to the Department on 10 October 2008 after the  
22 Hawaii Family hearing. Upon the request of the mother's attorney, the Hawaiian



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authorities were ordered to cease sharing "Safe Family Home Reports" with the authorities in the Cayman Islands. The DHS stated that they would recommend closing the case at the December 2008 hearing if positive reports were received from the Department in the Cayman Islands concerning the children's schools and medical reports.

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7 28.

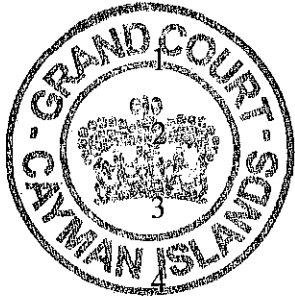
Although I have regard to this now dated background when considering all of the facts of this case, I am careful not to place undue weight upon it. The untested material from the DHS is contained in their very brief summary. The Court has been made aware that there is other material from Hawaii that may support different views to those expressed by the DHS. I note that despite criticisms of the father, at a time when the authorities in Hawaii felt that the mother was unable to care for the children, they still felt it appropriate to place them in the father's care. I also note that the mother, to a greater degree than the father, was willing to make the most of suggested programs designed to assist the family address then existing issues. What this evidence tends to show is that the dynamics within this family have been seriously dysfunctional for a considerable period time, and what has been happening since the family have been living in the Cayman Islands follows a similar pattern to that which the authorities in Hawaii had attempted to address.

20

21 29.

The parents' relationship continued to deteriorate and, as highlighted by Ms. Miller, issues of trust and a power struggle surfaced. Difficulties came to the

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forefront due to the parents' different approaches to disciplining the children. The mother also, partly due to her depression, inappropriately admonished and addressed the children. Ms. Miller noted in her June 2011 report that the mother *"divulged that she has mood swings and that she experiences depression periodically"* and that the mother accepted that this *"affects her ability to function well."* In her affidavit sworn on 26 July 2011 the mother denied saying any of this to the social worker. Ms. Miller was of the view that the mother would benefit from psychological and psychiatric assessments to assist to identify the type of depression and to enable her to be properly treated for it.

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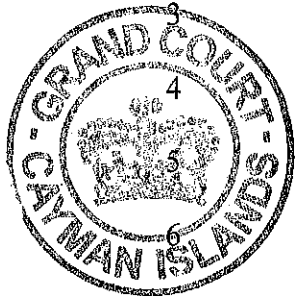
30. The mother contends that the husband is controlling and abusive and that she is forced to defend herself. The parties accused each other of abusing alcohol. The Police Family Support Unit has received numerous reports of domestic violence and issues relating to the disciplining of the children from the parents. One such instance was in October 2010 when the parents were intoxicated, fought with each other and the police had to be called.

31. In April 2011 the Board of Protectors reduced the family living allowance being paid by the Trust because J was no longer living with the family. This increased tensions within the household, the mother being upset by the decision taken by her fellow Protectors. By the end of May 2011 the Department was becoming particularly concerned about C. They felt that she was becoming beyond parental

1 control. They were concerned that the mother had struck C and as a consequence  
2 they filed a report to the Juvenile Court on 26 May 2011. It was reported that on 1  
3 May 2011 the mother and father had gone to the beach and left C at home. Then C  
4 telephoned her mother and asked if she could visit with a friend in the  
5 neighbourhood and was told no. C then swore at her mother. C disobeyed her  
6 mother's instructions and went to her friend's house; returning shortly after her  
7 parents arrived home from the beach. The mother acknowledged that she was  
8 angry with C for disobeying her instructions. Ms. Miller, in her report dated 21  
9 December 2011, stated that the mother "*admitted to throwing various objects that*  
10 *was in reach like shoes, a tricycle and other things at (C)...*"  
11

12 Ms. Miller also noted in her report dated 26 May 2011, prepared for the place of  
13 safety application made before the Juvenile Court, that both C and her father were  
14 saying that the mother threw shoes and a baby stroller/tricycle at her. The mother  
15 now states that, due to her anger, she threw a toy with such force that it made a  
16 hole in the bedroom door. She denies ever throwing any shoes. It appears that C  
17 was too frightened to come out and in the end she climbed through the bedroom  
18 window and went over to her neighbour's property. Ms. Miller said that C told her  
19 that she was afraid of her mother and that she and her siblings had suffered verbal  
20 and physical abuse "*meted out*" by her mother.  
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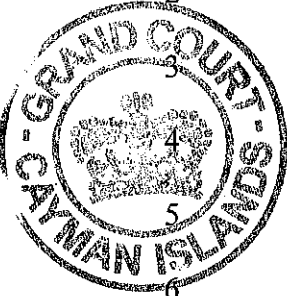
1 32. C and the father made a report arising out of this incident to the Family Support  
2 Unit on 12 May 2011, which resulted in the mother being charged with the  
3 offences of cruelty to a child and assault. The assault charge was not proceeded  
4 with, likely because it overlapped with the assault element in the cruelty charge.  
5 During the hearing I brought the parties' attention to the fact that, rather  
6 alarmingly, the record reflects that this Summary Court criminal matter come  
7 before that Court on 22 different occasions from the first hearing on 1 November  
8 2011 until it was concluded on 20 November 2013. The Guardian understandably  
9 highlighted the serious effect on the C's welfare caused by such a lengthy delay,  
10 especially as C knew she would have to give oral evidence and be cross-examined  
11 at trial as the mother's defence was that C had not told the truth about the  
12 incident.

13  
14 33. The mother was convicted of the offence of cruelty to a child<sup>3</sup> after a trial which  
15 itself came before the Summary Court on 13 different days between 8 October  
16 2012 and 13 November 2013. The Learned Magistrate imposed a 30 day custodial  
17 sentence, suspended for 18 months. A Probation Order was made to run  
18 concurrently with the Order with conditions. The mother filed her Notice of  
19 Appeal against conviction on 21 November 2013. The mother's Counsel informed  
20 this Court that she was aware that the full grounds of appeal had not yet been

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<sup>3</sup> An offence which has six elements which must be proved beyond all reasonable doubt, namely: (i) the accused must be over 16; (ii) the accused must have responsibility for the virtual complaint child; (iii) the virtual complainant must be under 16 years of age; (iv) the accused must act wilfully; (v) the accused must have assaulted, ill-treated, neglected, abandoned or exposed the child; and (vi) she must have done so in manner likely to cause unnecessary suffering or injury to the health of the child.

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filed. The mother's Counsel also told the Court that she had been informed by the attorney who has conduct of the criminal appeal that "*the appeal was one more of a technical nature and not on an evidential basis.*" This seems to be because the Learned Magistrate made a special measures direction permitting C to give her evidence via video link. Although a conviction subsists pending appeal, when sitting in the Criminal Division on 12 December 2013, I granted an unopposed application to stay the Probation Order.

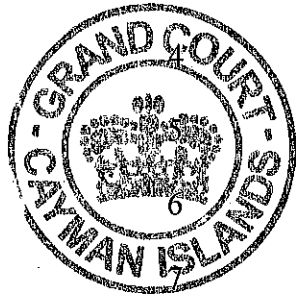
34. I note that the mother applied for and obtained on 20 May 2011 an Ex Parte Interim Care and Control Order in relation to the children when she knew that the father was out of the jurisdiction between 14 May and 28 May 2011 to collect J from the school in Hawaii. At the same time the mother also obtained a Defined Non-Staying Access Order in relation to the father, a Non-Molestation Injunction and an Order that he return C and L to the mother's home. The husband was also restrained from collecting any of the children from their schools.

35. Having regard to the mother's duty to give full and frank disclosure at the ex parte hearing, her affidavit sworn on 17 May 2011 in support of her application was deficient. In the affidavit she gave only selective information about the 1 May 2011 incident. In her affidavit she gave the misleading impression that L and C (who had been with her since 14 May 2011) had been retained by the father and that is why she was seeking an order for their return. It is evident that the Chief

1 Justice's Order was based on the affidavit evidence placed before him. It is simply  
2 not an excuse for the mother, who was legally represented at the time, to simply  
3 say in an affidavit dated the 25 May 2011 that "*in keeping with my duty to make*  
4 *full and frank disclosure to the Court*" to then belatedly disclose the fact the  
5 children had in fact been with her since 14 May and that the husband was out of  
6 the jurisdiction. Although I note that the majority of the Orders were extended at  
7 the return date heard on 7 June 2011, in light of the mother's conduct, it is  
8 questionable whether an ex parte application and Order were appropriate. It  
9 appears that the order was reconsidered by Quin J. on 21 December 2011, at  
10 which time he had the benefit of an affidavit from the father setting out his  
11 version of the events outlined in the mother's May affidavits.

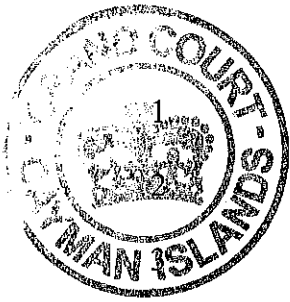
12  
13 36. I note with interest that in her affidavit sworn on the 25 May 2011 the mother also  
14 stated that on 19 May that she was in the living room with L and, when she  
15 commented on a music video which she showed him, he slapped her in the face  
16 with his open hand. She also notes that, when she refused to allow C to visit a  
17 friend's house, C she got angry and abusive and forced her way out of the house.  
18 The mother then telephoned the police and was informed that the mother of C's  
19 friend had also contacted the police. It appears that the police and social services  
20 informed her that C should remain at her friend's mother's property, and that she  
21 had not returned by 25 May.





1 37. The Department became involved after belatedly becoming aware of the 1 May  
2 2011 incident, as well as being informed that the mother was, when the father was  
3 out of the jurisdiction in May, "*constantly*" calling the Family Support Unit  
regarding incidents she was having with C. These incidents culminated with C  
running away from home when under the mother's sole care to stay at a friend's  
home on 19 May 2011. At around the same time the mother was making her  
Private Law Applications, the Department was preparing to apply for a Place of  
8 Safety Order grounded on their concern that C was beyond her mother's control  
9 and "*was being exposed to verbal abuse and at risk of being exposed to moral*  
10 *danger.*" The Department filed a report in the Juvenile Court on 27 May 2011.  
11 However, before the hearing, the Department was made aware of the proceedings  
12 before the Chief Justice and his order for them to provide an expedited welfare  
13 report. As a consequence, the Juvenile Court adjourned the proceedings pending  
14 the conclusion of the Grand Court matter.

15  
16 38. Pursuant to the direction of the Grand Court, the Department provided a Social  
17 Enquiry Report on 8 June 2011. Despite the limited available time, Ms. Miller  
18 was able to prepare a comprehensive report which later developments have shown  
19 to contain great insight. For example, the social worker commented that she had  
20 no doubt that both parents loved all of the children. She then went on to say  
21 "*From the reports received, it appears that (the father) is more involved with the*  
22 *older children and they have expressed feeling safe and supported by him and*



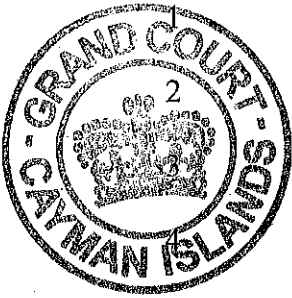
*that he is dependable and the parent who ensures things getting done. Similarly it appears that (the mother) is more connected to her two younger children N and S."*

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5 39. The social worker noted that during the four visits undertaken in preparation of  
6 her June report *"there appeared to be very little interaction"* between the mother  
7 and the children. Ms. Miller noted the mother's view that the father was  
8 undermining her attempts to discipline the children, although the mother did  
9 concede that *"he was good with the kids."* The mother told Ms. Miller that the  
10 children were disrespectful to her and she outlined the highly abusive language  
11 and names that she said C was using towards her. She advised Ms. Miller that she  
12 grounds the children if they disobey her and that *"when she grounds L and C they*  
13 *hit her."* Ms. Miller noted that the mother *"admitted that she sometimes gets*  
14 *frustrated with her children and will use harsh words to them, throw things at*  
15 *them and spank them"*. Ms. Miller stated that the mother informed her that she  
16 *"feels she has no control over"* the older children.

17

18 40. Ms. Miller noted that C told her in June 2011 that she did not like her mother and  
19 did not want to live with her. C felt that what was going on was a repetition of  
20 what had happened in Hawaii. She told Ms. Miller that her mother hits her, taunts  
21 her and laughs at her problems instead of helping her. Ms. Miller recorded that C  
22 stated that her mother *"abuses them and usually grabs them by their hair and*



*pulls them down and sometimes kicks them.*" C told Ms. Miller that when her mother gets angry *"she throws things and shouts and hits us with shoes and hangers."* The fact that C is actually making such allegations and expressing the above sentiments is of concern, because it illustrates how damaged her relationship was and is with the mother.

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7 41.

On the other hand, C told the social worker that she *"feels safe with her dad"* and that he *"helps her with her homework as well as takes her to swimming practice. She said he will talk through the problems with her and he does not make fun of her problems."* Ms. Miller felt that C had a *"close bond"* with the father and that C saw him *"as the glue that holds the family together."*

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13 42.

Ms. Miller stated that C appeared to be *"strong willed,"* and C had a *"poor regard for the mother and her ability to care for the family."* She said that C expressed: *"fear of being alone with her mother"* due to her past experiences with her. C described her mother as being: *"irrational and irresponsible."*

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18 43.

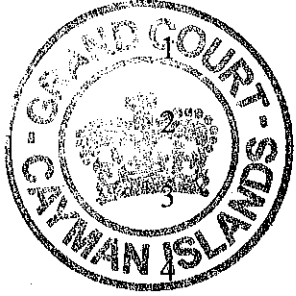
The social worker in her June report noted that it was important for C and her mother to receive support through family therapy to attempt to rebuild their relationship. This is something that, three years on from the report, is now relied upon by the mother as a primary reason for opposing the father's application to remove C from the jurisdiction. Regrettably, the still ongoing criminal

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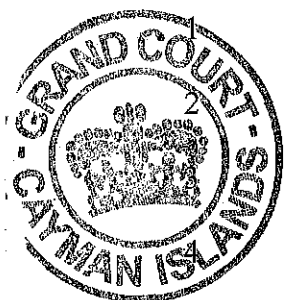
proceedings have greatly hindered the possibility of any constructive family therapy. The ongoing divergent positions taken by C and her mother as to what happened in May 2011, makes the success of any such intervention highly unlikely in the foreseeable future.

5

6 44. In June 2011 L informed Ms. Miller that he was missing his father. He said that  
7 their mother had not told the children why he was not at home and he was afraid  
8 to ask her any questions because she would get upset and shout. L relayed to the  
9 social worker an incident in which he felt his mother for no reason had grounded  
10 him. He said that he got upset and threw a cloth/mat which landed in her food. He  
11 said that his mother chased him and he ran upstairs to his bedroom. L told the  
12 social worker that she opened the door, pulled his hair and kicked him. He told  
13 her that *"This was one of the cruelest things that she did to me. She chased me to  
14 my bedroom and threw me to the floor and kicked me in my stomach."* The  
15 mother, when accepting in her oral evidence that it was not appropriate for an  
16 adult to kick a child, conceded that she had kicked L because she was *"so mad"* at  
17 the time.

18

19 45. Importantly, having regard to how matters in relation to this family have  
20 developed, Ms. Miller in the June report noted that *"L seems to have internalised  
21 his pain of the loss of his father in the house and in his life which could explain  
22 his attention seeking behaviour at school. His rebellious behaviour towards his*



mother when she disciplines him could potentially escalate as he enters adolescence. It is important for L to have liberal contact with his father as he will need him to teach him important lessons about life and about becoming a man.”

She noted that at the time L did not express a preference to reside with either parent, but he said he missed his father

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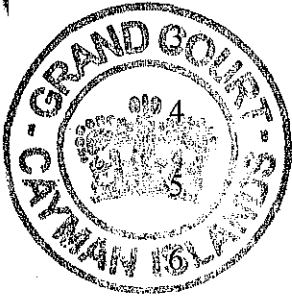
7 46. Ms. Miller noted from N’s interaction that she had a “*fairly close relationship*”  
8 with her mother. Ms. Miller also noted that S appeared to be “*healthy and well*  
9 *cared for.*”

10

11 47. In the conclusions in her June report, Ms. Miller stated that C and L “*appear to*  
12 *have bonded well with their father and it appears that he is an integral part of*  
13 *their lives and daily activities. They have expressed clearly that they love their*  
14 *father and is dependent on him for the family to function. L appears to be drawn*  
15 *to both parents and is unsure of exactly what is happening as he shared that his*  
16 *mother has not told him why his father is not home with them.*’

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18 48. Most insightfully Ms. Miller stated “*The children have experienced quite a lot of*  
19 *instability, change, and lost during the recent past. Their collective lives will once*  
20 *more change and a new definition of family will surface. It is possible but that*  
21 *they will experience yet another change in the next two years when J’s Trust Fund*



1        *matures and (the Mother) returns to the Philippines.<sup>4</sup> it is important to note that*  
2        *as the children get older they will be in a position where they will be able to make*  
      *choices for themselves, presently it appears they are quietly hoping for some*  
      *normalcy in their lives where they can enjoy their childhood and feel safe while*  
      *they develop the important competencies for a successful life.”* The social worker  
      recommended that there be interim joint custody orders made in relation to all of  
7        the children, and the children should be placed with both parents for a period of  
8        assessment.

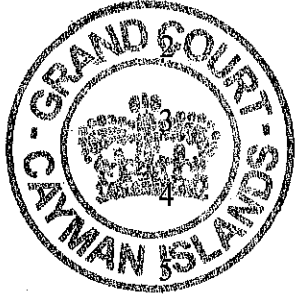
9  
10    49.    Between the period June 2011 to November 2011 the mother attended all  
11        appointments at the Counselling Centre. The presenting issue to be addressed was  
12        conflict within the family between herself and the children. To her credit, the  
13        mother completed the course of treatment successfully and a counsellor believed  
14        that she had achieved the treatment goals.

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16    50.    In November 2011 the father issued a Summons in the Grand Court in which,  
17        amongst a number of orders sought, he applied for custody, care and control of all  
18        of the children. Before his Summons came on before Quin J. on 21 December  
19        2011, the Juvenile Court had made a Supervision Order to the Department on 16  
20        December 2011. The Learned Magistrate made a temporary placement of C with

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<sup>4</sup> I note that although the mother indicated to the social worker in 2011 that she intended to relocate to the Philippines she now intends to remain in the Cayman Islands. The father at the time was saying that he would like to move back to Saipan if granted full custody of the children, where he had been offered a job with Commonwealth Industrial Supply Co. Inc with a starting salary of \$75,000 per annum.

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family friends ("Mr. and Mrs. B") and ordered that jurisdiction of this case should be divested in the Grand Court. At the hearing before Quin J., a Supervision Order was made to the Department in relation to C on the basis that C would continue to reside with the B family. Contact arrangements were set up for both parents with C. The father was granted liberal contact to L and N and more limited access to S. Quin J. made a number of orders for counselling in relation to the parents and psychological assessments for C and L. Quin J. discharged any Restraining Orders made against the father.

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10 51. When reaching his decision Quin J. had before him a report prepared by Ms.  
11 Miller dated 21 December 2011. Ms. Miller recorded in the report that the mother  
12 was still complaining about the father's style of parenting. Importantly, the report  
13 indicated that the relationship between C and the mother had not improved. There  
14 was an incident on 6 November 2011 when they had an argument about the  
15 television. Ms. Miller recorded that the mother had told her that C lifted a hand as  
16 if she was going to hit the mother, and that the mother then kicked C in her  
17 backside. The mother said that C got into rage, broke a chair and turned the baby  
18 crib over.

19

20 52. In her December report Ms. Miller noted the father's concerns about the mother's  
21 care, in particular for C and L. The father told the social worker in



correspondence that he would agree to the mother having the younger children because the proceedings were hurting the children.

4 53. The social worker in her December report considered the issues surrounding C  
5 attending HP, the same school that his sister was at the time attending in Hawaii.  
6 It appears that C's school in Cayman suggested that it probably would be in her  
7 best interests for her to attend that school. The mother objected, stating that there  
8 were insufficient funds to allow this to happen as the Trust money was for J's  
9 benefit, and that both she and the husband would have to equally contribute to the  
10 fees. However, during the mother's cross-examination by the Guardian she was  
11 asked whether she believed the position she had taken in relation to the schooling  
12 had helped her relationship with C. She replied that as C *"is apparently his child.*  
13 *That both parents were supposed to be responsible for the school fees."* She  
14 added: *"When I said that, I thought about teaching both of them a lesson. I have*  
15 *been in pain for this..., Being parents we are supposed to help each other, more*  
16 *likely meant it to be a pain for (the father) rather than C. I accept that it would*  
17 *have an effect on C and it does not mend bridges, needed to make it better. I know*  
18 *she is pissed at me as I blocking it. I understand all the pain. I want him to feel*  
19 *the pain I have, this is not good for C."* This is one of a number of illustrations of  
20 the mother permitting her ill feeling towards the father to dictate her actions in an  
21 irrational way that is not in the best interests of the children. Another example is  
22 when she agreed for the two eldest children to go to Bend with the father for a

1 visit, which of course would have been in their interests if there was a possibility  
2 of them relocating there, whilst at the same time recommending to the Protectors  
3 of the Trust that funding not be made available for the father's plane ticket. She  
4 would have been aware that the father could not afford to pay for a flight from his  
5 limited income and that if the Protectors had refused to release such funding, that  
6 he and the children would not be able to travel.

7  
8 54. On 6 January 2012, Quin J. made a Fit Person Order in relation of C in favour of  
9 Mr. and Mrs. B. The matter was adjourned to a case management hearing on 16  
10 March 2012. It is quite clear that Quin J. had in mind the possibility of C  
11 attending HP school in Hawaii, as he directed both parents to file an affidavit of  
12 means after a response had been received from the Trust concerning funding for  
13 the school.

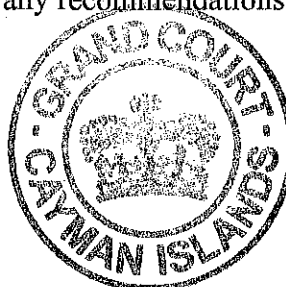
14  
15 55. On 16 March 2012 Quin J. adjourned the hearing until 23 March 2012, but before  
16 doing so he met with Mr. and Mrs. B. He also met with C, with both Ms. Miller  
17 and Mrs. Bothwell in attendance. On 23 March 2012, Quin J. adjourned each  
18 party's applications for custody, care and control to a date to be fixed. On 29  
19 March 2012 Quin J. made a Fit Person Order in relation to C to Mr. and Mrs. B to  
20 run from 31 March 2012 until 14 April 2012. On 14 April to the 28 April 2012 the  
21 Fit Person Order was transferred to a Mrs. T.



1 56. On 16 April 2012 this case was allocated to me. I was concerned that the ever  
2 changing arrangements over the recent months had been very unsettling for C.  
3 She had been moving too frequently, had no emotional or physical base or an  
4 established routine. With this in mind, on 19 April 2012 I appointed Mrs. Karin  
5 Thompson to be the Guardian ad litem for all of the children save for J. I  
6 expressed to the parties my concern that C had a “*revolving door*” existence and  
7 that the time had come for the Court to take on a more *loco parentis* role in the  
8 children’s lives. I made it clear that I was considering making all of the children  
9 of the marriage wards of Court pursuant to the inherent jurisdiction, as I felt it  
10 would be in their best interests to have the Court shouldering ultimate  
11 responsibility for them. I informed the parties that this is an order that I would be  
12 considering making at the next hearing.

13  
14 57. On 25 April 2012, with the consent of the parents and the Guardian, I made all  
15 four children of the marriage wards of Court, giving my reasons for doing so in an  
16 Ex Tempore Ruling. Although I had regard to the delay principal, I felt that I was  
17 not then in a position to make an immediate decision about where to place the  
18 children and I arranged for a hearing on 4 May 2012 when more Court time  
19 would be available. I believed that the short adjournment would afford the  
20 Guardian an opportunity to review the already large amount of written material  
21 and to meet with the children before making any recommendations.

22



1 58. At the April hearing, I was shown reports prepared by Sophia Chandler, Child  
2 Psychologist, in relation to C and L. Having carefully reviewed the reports it is  
3 clear that they were produced after full assessments. In relation to C, the date of  
4 testing was between 7 -18 February 2012 and for L it was between 3-18 February  
5 2012. The evaluation procedure set out in the assessment procedure section of  
6 each report shows that Ms. Chandler was very thorough. C outlined to Ms.  
7 Chandler a number of incidents in which she criticised her mother. Ms. Chandler  
8 said that C made it clear that she did not wish to be placed in the custody of her  
9 mother. Ms. Chandler said that she observed, when her mother attended with C,  
10 that C had little respect for her mother. She stated that *"there was little eye  
11 contact given to (the mother) by her daughter and it was clear C had little desire  
12 to speak to or interact with her mother."*

13  
14 59. Ms. Chandler stated that *"C was found to be an intelligent and articulate young  
15 lady who was able to display good manners. She was able to clearly describe  
16 defining incidents in her life that had contributed to her family breakdown. She  
17 was able to clearly articulate abusive incidents that had occurred in her family  
18 allegedly perpetrated by her mother against all the members of the family except  
19 the very youngest child. C appeared quite jaded and disillusioned for a child her  
20 age and at the same time she seemed quite childlike in her concern for how her  
21 family's current situation will be resolved. She said she wished like her sister (J)  
22 to be enrolled in (the school in Hawaii) so she could get away from the stress and*

1        strain of dealing with her mother and the ongoing family battles<sup>5</sup> for which C felt  
2        mother was to blame. During assessment, C was cooperative and seemed to make  
3        every attempt to complete the tasks as requested. She sought clarifications where  
4        required and seemed committed to completing the assessment in as open and  
5        honest a fashion as possible.”

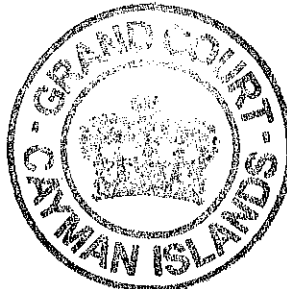
6  
7        60. Ms. Chandler recommended that that C and her mother should attend family  
8        therapy. Ms. Chandler detailed areas of concern that needed to be addressed. She  
9        also indicated that all of C’s “*desires regarding the ultimate custodial placement*  
10       *be appropriately considered.*”

11  
12       61. During her sessions with L, Ms. Chandler found him to be cooperative and  
13       seeming to make every attempt to complete the task as requested. She thought that  
14       he was also careful to seek clarification for any directions or statements he did not  
15       fully understand and he seemed to find the process worthwhile. She found him to  
16       be “*an intelligent but somewhat brooding child.*” She said that his interaction  
17       with his mother “*was tense and seemed to be punctuated with minor attempts at*  
18       *confrontation.*”

19  
20       62. Ms. Chandler noted that L said that his father had been “*father and mother to*  
21       *him*” and that he was “*patient and loving.*” On the other hand, L described his

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<sup>5</sup> The underlining is my emphasis.



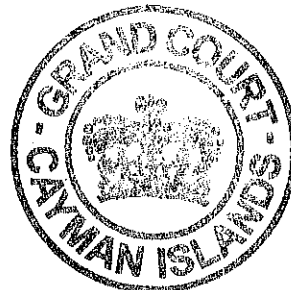
1 mother as *“being impatient, scary, physically aggressive.”* When informing Ms.  
2 Chandler that he wished to reside with his father L *“admitted being afraid of his*  
3 *mother.”* He related to Ms. Chandler the incident in which his mother had kicked  
4 him<sup>6</sup>, in a manner that was generally consistent with what he had also told Ms.  
5 Miller. Ms. Chandler noted that the mother contested L’s version of events,  
6 although the mother accepted that she did accidentally hit him just under his ribs  
7 with a foot.

8  
9 63. Ms. Chandler reported *“In L’s opinion his mother is too frequently angry,*  
10 *aggressive and is unjust in her discipline. L said by way of punishment his mother*  
11 *hits (sometimes punching, slapping and kicking); grounds for unreasonable*  
12 *lengths of time, curses at him, name calls and taunts him by getting into his face*  
13 *teasing and insulting. L said he felt his mother needed help as he didn’t think she*  
14 *was like other mothers. In contrast, L indicated he greatly missed his father. L*  
15 *said his father did not hit them and was non-violent. He said his father does*  
16 *discipline them when they make bad choices by grounding them, giving them*  
17 *consequences and talking about their bad choices with them.”* He *“clearly*  
18 *stated”* to Ms. Chandler that after the divorce he *“wouldn’t wish to stay with his*  
19 *mother and he feared if that happened he would be unable to see his father. ... He*  
20 *was further able to say that he didn’t want to live being afraid all of the time.”*

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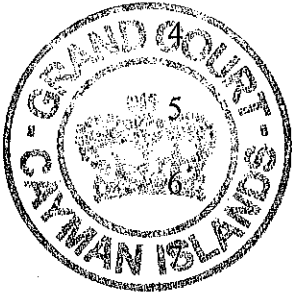
<sup>6</sup> See paragraph 44 above.



1 64. In her conclusions Ms. Chandler found that L was *“presenting with Parent-Child*  
2 *Relational Problem that is specific to the interaction with his mother.”* She  
3 believed L was experiencing *“much apprehension, anger and hopelessness.”* She  
said that *“This combination of feelings has led to him variably assume passive*  
*and hostile roles in his interactions. Much of L’s negative aspect and mood is*  
*connected to his view of his family life as abusive, unstable and unpredictable. L*  
*views his mother as controlling, aggressive and unfair and he does not have much*  
8 *hope that she will change. Since his father’s departure from the family home L’s*  
9 *hope that life will someday improve has been dashed, particularly if his mother*  
10 *obtains custody of him and his siblings. Additionally he feels even more alone*  
11 *since his sister C was temporarily placed in care as the one person who shares*  
12 *his perspective of life is no longer there to commiserate with him.”* I note this  
13 with interest, because one of the decisions I have to make in this case is whether L  
14 should reside with his mother, and if C is allowed to leave the jurisdiction, his  
15 interaction with her would be greatly diminished.

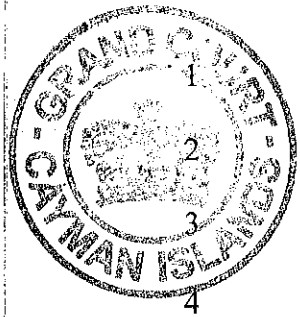
16  
17 65. Ms. Chandler concluded in her report that L *“felt powerless to address the issues*  
18 *which are most salient to him like his perception of his mother’s personality and*  
19 *her relationship with him; the discipline strategies used by his mother; his desire*  
20 *to be in the custody of his father; and his concerns about how he will be cared for*  
21 *financially in the future. In an attempt to cope with these intense feelings L has*  
22 *developed a coping strategy that is not necessarily the most effective manner of*





1            *addressing his issues. This strategy unfortunately seems to have developed out of*  
2            *some of the dysfunction he has seen and modelled.” She felt that “L has intense*  
3            *feelings of insecurity and does display some impulse anger....” Ms. Chandler was*  
              *of the view that the “stress which L is experiencing has resulted in a moderately*  
              *problematic level of physiological anxiety.” She felt that he “presents with*  
              *symptoms which may be masquerading as AD/HD symptoms but may actually be*  
              *a reaction to stress – producing experiences.” She elaborated stating that L*  
8            *“appears to be experiencing symptoms that mimic an attention deficit type of*  
9            *disorder but it is unclear whether this is truly ADD/ADHD or simply his outward*  
10           *response to turning his anger and frustration inwards.”*

11  
12    66.    Ms. Chandler went on to say *“Although L under typical circumstances would be a*  
13           *more quiet and submissive child he has sometimes become disruptive and*  
14           *resentful, challenging authority and adding to inappropriate emotional reaction*  
15           *and irrational behaviour on the part of others. This will likely be very difficult for*  
16           *his mother to cope with as there is a history of inappropriate responses to the*  
17           *children. Under these circumstances, (the mother) is likely to forget everything*  
18           *wise she has learned in restraining from saying and doing things that she may*  
19           *later regret. While it is tempting to respond to a radically disruptive child by*  
20           *becoming angry and punitive, it is only likely to intensify the more resentful side*  
21           *of the child’s behaviour.”* Having reviewed all of the evidence, and having had  
22           the opportunity to see the parties give oral evidence, I share Ms. Chandler’s



concern that the mother finds it difficult to handle such circumstances appropriately, especially in relation to both C and L. I am satisfied that the father has shown that he is much better able to do so.

5 67. When I review Ms. Chandler's evidence I am conscious that she was not available  
6 to be cross-examined and that the mother relies upon the evidence of Dr. Malcolm  
7 who was able to attend the hearing. Despite this, upon considering all the material  
8 before me and having had the benefit of hearing from the parties, I find Ms.  
9 Chandler's evidence to be most insightful and helpful when considering and  
10 ascertaining the nature of C and L's relationships and interaction with each  
11 parent. Also her evidence is important when considering the nature of the wishes  
12 of L and C and determining what weight should be given to them having regard to  
13 their maturity. Ms. Miller is of the view that most of the recommendations made  
14 by Ms. Chandler have been executed, although C refused to attend therapy.

15  
16 68. Dr. L. Malcolm, Educational Psychologist<sup>7</sup>, submitted a Psycho-Educational  
17 Evaluation Report in relation to L following an assessment carried out between 19  
18 February 2013 and 2 April 2013. This report was commissioned following the  
19 concerns of the Guardian and the father for L's well-being following the February  
20 2013 incident which occurred after his scheduled contact visit with his father. At  
21 the mother's request, Dr. Malcolm attended to give oral evidence to this Court. It

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<sup>7</sup> Mrs. S. Thompson on behalf of the Mother refers to Dr. Malcolm in her written submissions as being a Child Psychologist whereas Dr. Malcom refers to herself as being an Educational Psychologist.

1

is important to note that Dr. Malcolm considered her 'brief' to be a "*Psycho-Educational Evaluation to clarify emotional and behavioural concerns, to determine the current level of functioning and to identify appropriate recommendations.*" From this it is evident that the referral was not intended to cover the same ground or be so wide as to cover all the areas addressed by Ms.

6

Chandler.

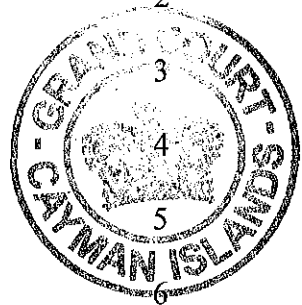
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8 69. Dr. Malcolm made it clear that she had not at the time been provided with any of  
9 the materials or information then filed and was therefore not aware of the full  
10 background. She confirmed that she had not seen any of the materials, including  
11 Dr. Chandler's report or written assessment before giving her oral evidence. Dr.  
12 Chandler stated that her last interaction with the family was 2013. Dr. Malcolm  
13 conceded in her oral evidence that she not seen any of the documents in the case,  
14 was not aware of the historical background and that if she had known about that  
15 and about the allegations set out in Ms. Chandler's report she would have  
16 explored this during her assessment. She would have required this information to  
17 enable her to properly understand the realities in relation to this family, including  
18 but not limited to the feasibility of them all being able to remain in the Cayman  
19 Islands.

20

21 70. Having had the benefit of reviewing all of the written and oral evidence evidence,  
22 although helpful when considering educational issues for L, I found Dr.

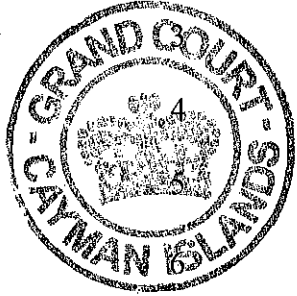




1 Malcolm's evidence to be of less assistance than Ms. Chandler's when  
2 determining L's wider needs. As the expressed purpose of her assessment was  
3 narrower, I am satisfied that, although she rightly highlighted that there were  
4 family problems, she was not in a position to be fully aware of the high level of  
5 the dysfunction and the in-depth reasons for it, whereas Ms. Chandler was better  
6 placed to do so.

7  
8 71. Dr. Malcolm re-emphasised during her oral evidence that her "role" was limited  
9 to being psycho-educational. In her oral evidence, especially in questioning from  
10 the mother's attorney, Dr. Malcolm was asked to express views about matters  
11 which were not contained in her referral and which had not formed part of the  
12 assessment. In fact, a number of the questions Dr. Malcolm was asked would have  
13 been better put to Ms. Chandler who had been tasked, in the referral to her, with  
14 providing a further assessment covering related issues. The impression I gained  
15 was that Dr. Malcolm was doing her best to try to be as helpful as she possibly  
16 could during her oral evidence, even if this meant giving evidence on issues that  
17 went beyond her psychological-education instruction.

18  
19 72. Dr. Malcolm stated in a report that L was a "lovely boy" and a "lovely student".  
20 Dr. Malcolm indicated that *"There are some responses suggesting the need for*  
21 *improvements in the family dynamics, to facilitate improvements in L's emotional*  
22 *and academic well-being. He disclosed that he would like to live with his father,*

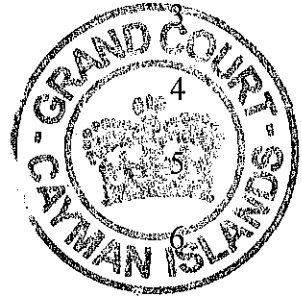


1        *suggesting that this is an unsettling socio-emotional issue in his life. There is need*  
2        *to bring closure on his principal residence and given his age, he should not be the*  
      *one to decide this. He is also dissatisfied with his mother's approach to discipline.*  
      *There is need for intervention to ensure that both parents agree discipline styles,*  
      *practices."*

7    73.    Dr. Malcolm noted that L had told her that *"things would be better if he lived with*  
8        *his father"* and that *"sometimes I get afraid when my mom gets mad."* Although  
9        not contained in her written report, she recalled that L had told that when he was  
10        bigger he would like to go to boarding school in the United States, but at that time  
11        he would like to remain with his sisters. She expressed concerns about C taking  
12        on a role that made it appear that she was acting as L's mother, she viewed it as  
13        being *"unhealthy."*

14  
15    74.    She noted that the *"feedback from parents interviews, suggests that dysfunctional*  
16        *home environment and anxiety are the major contributing factors"* for L not  
17        meeting educational expectations. She felt that he had a diagnosis of anxiety,  
18        generalised anxiety disorder. She felt that this had its origin in the dysfunctional  
19        family setting and that therapy was required.

20  
21    75.    In the report Dr. Malcolm noted that the parents should be assisted by the  
22        professionals to decide on a primary caregiver. She noted that it is not socially

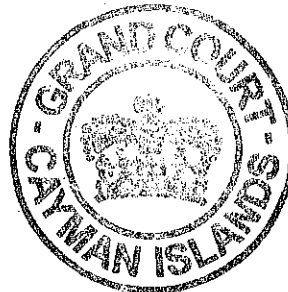


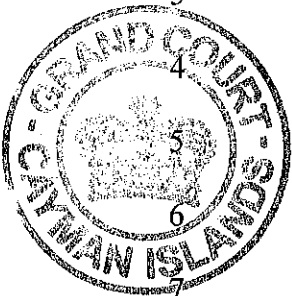
1 and emotionally healthy for the siblings to grow apart. She said that that literature,  
2 which she was unable to adequately identify to the Court, suggested that the  
children should not be separated. Regrettably, no actual literature sources  
supporting such a statement were produced to the Court or properly referenced.  
Despite that, I accept this general contention recognising that the Court should  
carefully consider the benefits that exist if siblings are not separated.  
7 Unfortunately in this case, that is not feasible. It is clear that C and the younger  
8 siblings have not been for some time and will not in the future be residing in the  
9 same property as their primary home. Of course, whichever household the  
10 siblings reside in, it is important that generous inter-sibling contact is promoted.

11  
12 76. In her oral evidence, Dr. Malcolm expressed her view that, if a parent is seeking  
13 to relocate and obtain permission of the Court to remove a child from the  
14 jurisdiction, it is very important for that parent to have first established  
15 themselves in the new location and only then afterwards "*invite*" the child to join  
16 them. She said that the father would need to have already found a house and have  
17 "*settled into*" a job. Showing her lack of knowledge about the background, Dr.  
18 Malcolm said that she was unaware that the father had family members living in  
19 Bend. Dr. Malcolm indicated that she did not oppose the father leaving with L,  
20 provided that the father had already established himself in Oregon. She again said  
21 her views concerning prior settlement were based on unspecified articles/literature  
22 which she had read following a "*Googling exercise*". She said she had found the

1 literature on Google and she could not provide copies of the same to the Court. It  
2 is not appropriate, to rely upon articles/literature without providing the Court with  
3 the material and properly referencing the same in evidence or preferably in the  
4 written report.

5  
6 77. Dr. Malcolm accepted that she was unaware of the legal principles governing  
7 permanent removal cases. It was clear to the Court that, understandably as an  
8 Educational Psychologist, she would not possess great experience in such  
9 applications. Dr. Malcolm would not necessarily be aware that her view that  
10 there should be rigid pre-conditions requiring pre-established arrangements to be  
11 fully in place prior to the Court granting leave for a child to relocate with a parent,  
12 is actually not an approach that Courts have adopted. When considering making  
13 such an order, the Court clearly has to consider what proposed arrangements the  
14 applicant intends, the time frame for putting them into place and whether they are  
15 in the child's best interests. Ordinarily the Court is provided with information of  
16 possible housing, finances/employment for the parent, child care arrangements  
17 and schooling. When making the decision, the Court reviews this. However,  
18 frequently a parent does not have all of the arrangements in place before the child  
19 moves or at the court hearing, as they are unable to commit to them until the  
20 Court makes the order.





1 78. In this case, I have the benefit of not only the father's evidence about the  
2 arrangements, but most importantly I have the detailed evidence from the  
3 Guardian who took the time to travel to Bend as an integral part of her  
4 assessment. I do not accept Dr. Malcolm's view that, in removal from jurisdiction  
5 cases, a parent must have in place all the arrangements before the Court grants  
6 leave. This is simply not feasible or realistic. However, the applicant must satisfy  
7 the Court concerning the reality of the intended arrangements.

8

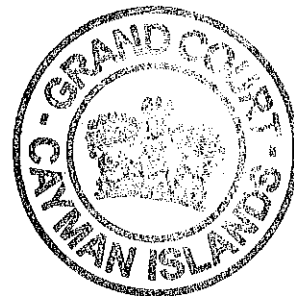
9 79. At the hearing on 4 May 2012, due to the non-availability of her then carers, Mr.  
10 and Mrs. T, and to assess the possibility of C being placed with her father, it was  
11 ordered that C stay with her father for the week of 6 May 2012. Thereafter she  
12 would return, under a Fit Person Order, to Mr. and Mrs. T until the end of June  
13 2012. It was ordered that L, N and S would reside with the mother. It was also  
14 ordered that L and C would spend alternate weekends with the father from 5 PM  
15 on Friday until 4 PM on Sundays and on alternate weekends out would have  
16 access with him for 5 PM Friday to 10 AM on Saturday, as well as having  
17 midweek contact.

18

19 80. At the end of the hearing held on the 22 and 26 June 2012, the Court, opposed by  
20 the mother, ordered that C would reside with the father from 29 June 2012. The  
21 Order coincided with the father relocating to a two-bedroom property. The Court  
22 also ordered that N and L would have contact with the father from Thursday 5 PM

1 to Sunday 5 PM. Provision was also made for contact between the father and S.  
2 The reasons for this decision were contained in my Ex Tempore Ruling. In that  
3 ruling I expressed my concern about the effect of the ongoing criminal  
4 proceedings on C. The mother and her Counsel did not feel able to update the  
5 Court about the status of the criminal proceedings at that hearing.

6  
7 81. On 17 October 2012 the Court reviewed the case with the benefit of an updated  
8 report from the Guardian. The Guardian indicated that she was satisfied that the  
9 arrangement set up with C residing with the father and for her schooling were all  
10 working "*extremely well.*" I made an Order that C reside with the father until  
11 further order. I noted that there may need to be some work with C to try to restore  
12 her relationship with her mother, but recognised that this may not be feasible until  
13 after the conclusion of the criminal proceedings. At that time I, as it turns out  
14 wrongly, expected the criminal proceedings to be effectively case managed to a  
15 timely conclusion. I stated during the hearing that more long-term arrangements  
16 needed to be put in place. I shared my hope that the wardship could be brought to  
17 an end and that the possibly replaced with a Supervision Order in favour of the  
18 Department. With this in mind, I set a final hearing for the children proceedings to  
19 24 January 2013 with a two day time estimate.



1 82. At the October hearing, the Guardian expressed concerns about L, stating her  
2 view that she felt he had regressed. She indicated that L would benefit from  
3 continued counselling. There did not appear to be any concerns about N and S.  
4

5 83. Regrettably, at a hearing on 17 January 2013, the Court was informed that the  
6 parties felt that the final hearing should be vacated due to the uncertainty about  
the parties' financial position caused by a lack of information concerning the  
Trust. The Court was told that the Department and the Guardian would likely be  
recommending that C should reside with the father, with N and S residing with  
the mother. Both had concerns concerning L and they wished to instruct a  
10 psychologist to assist them in making their recommendations. It is following this  
11 hearing that Dr. Malcolm's services were obtained.<sup>8</sup> The final hearing was  
12 vacated and re-fixed with a three day estimate commencing on 15 May 2013 and  
13 the Court gave directions and timetabled to that date.  
14  
15

16 84. In May 2013 the parties informed the Court that they were having difficulty  
17 complying with the Court's directions. In addition, the Court was told that the  
18 Summary Court had failed to ensure that the inexcusably protracted criminal  
19 proceedings were concluded in time for the hearing. The next hearing date of the  
20 criminal proceedings was scheduled for the 27 May 2013. As a consequence, on

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<sup>8</sup> See paragraph 64 above.

1 15 May 2013 the final hearing had to again be vacated, this time to a date to be  
2 fixed.

3

4 85. At the May hearing the father indicated that he was seeking residence orders in

5 relation to C and L, but would not be opposing orders for N and S to reside with

the mother. He indicated that he would like to relocate to Hawaii. Significantly,

especially having regard to the position now being taken by the mother, she

indicated that she would not be opposing the making of a residence order in

relation to C in favour of the father. At the hearing it was clear to the Court that

10 all the parties had then agreed that there should be a residence order to the father

11 in relation to C. The mother indicated that she would be seeking a residence order

12 in favour of L, N and S and undefined contact order in relation to C. The mother

13 was unclear about her plans for the future, but stated that she would likely wish to

14 remain in Cayman if her immigration status permitted it. My notes from the

15 hearing record my observation that *“Now that the issues appear to be narrowing*

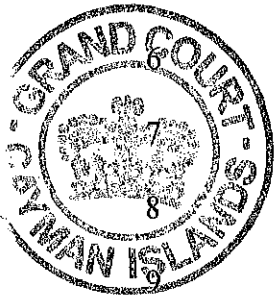
16 *down, the parties agree that the court may be able to hear the final hearing to*

17 *deal with all issues – primary issue now appearing to be (L) - prior to the*

18 *conclusion of the Summary Court criminal proceedings.”* As already mentioned,

19 at the hearing the mother was directed to use best endeavours to obtain details

20 about the Trust and about her immigration status<sup>9</sup>. It was clear that this was an

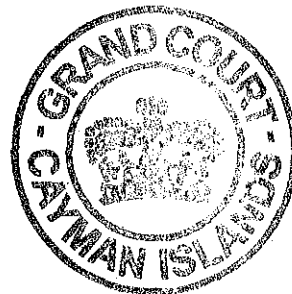


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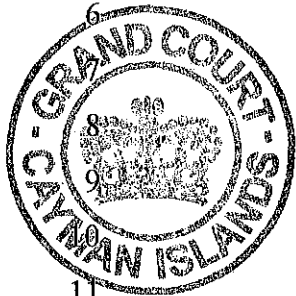
<sup>9</sup> The mother's attorney wrote to the Chief Immigration Officer on the 16 May 2013 to seek clarification.

1 important obligation, as the Court then directed the matter could be set down after  
2 that information had been provided.

3  
4 86. On 27 August 2013 the father filed a Summons seeking an order permitting C to  
5 be removed from the jurisdiction to attend the S School in Bend. In an affidavit  
6 sworn on 28 August 2013 in support of the application, he indicated that the Trust  
7 Fund would likely be moving to the US jurisdiction. He expressed a view that a  
8 move to Bend reflected the reality of the family's future financial and  
9 immigration situation. He commented upon his disappointment that L and C had  
10 been unable to attend the HP school in Hawaii due to a lack of funding from the  
11 Trust as a result of the mother, in her role as a Protector, objecting. His intention  
12 was for C to start at the school very soon and for her to reside with her maternal  
13 aunt in Bend. In his affidavit the father was making it clear that he intended to  
14 relocate to Bend. He provided details about the schools, details about the  
15 proposed doctor for the children, living arrangements for the children and the  
16 financial arrangements that would likely be put in place. The father's application  
17 was brought on with insufficient notice, and it was highly unrealistic of him to  
18 expect the Court to be in a position to make a ruling before the start of the new  
19 school term. Therefore, when the matter came before Panton J. on 5 September  
20 2013, the father's Summons was adjourned *sine die*.



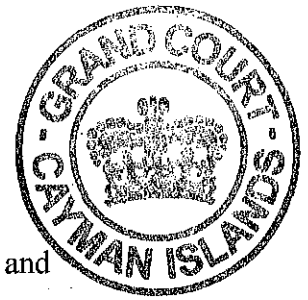
1 87. On 22 October 2013, in my absence, the matter came before Malcolm J. The  
2 Learned Judge gave certain directions, including one that the hearing should be  
3 listed for the first available date after 8 November 2013. Interestingly, the  
4 preamble of the Order provided that:



5 " ... upon the Court having formed the view (in principle) that the  
6 requisite leave should be granted pursuant to section 15(3) of the  
7 Children Law (2012 Revision) to provide for the permanent  
8 removal of the minor child , (C), from the jurisdiction to allow her  
9 to relocate and attend school in the State of Oregon, U.S.A. on the  
10 basis that such leave shall be subject to the court being satisfied  
11 that all necessary and appropriate arrangements have been put in  
12 place for the benefit and best interests of the said child having  
13 particular regard to the mandate laid down in Section 3(2) of the  
14 Children Law (2012 Revision)."

15  
16 Although, the position expressed in the preamble is one which I accept to be  
17 reasonable on the information currently before me, I wish to make it clear that if I  
18 now concluded otherwise than what is stated therein that the exercise of my  
19 discretion at this hearing would not be fettered.

20  
21 88. The matter came before me on 10 January 2014. The father, apparently fortified  
22 by the content of the preamble to the October 2013 Order, wrongly felt that he  
23 would be able to obtain final orders at the hearing which had been set down for  
24 only one hour at his request. However, the hearing turned out to be useful because  
25 it clarified that the father was seeking:



- 1 (i) residence orders in relation to C and L;
- 2 (ii) leave to remove C and L to live with him in Bend;
- 3 (iii) leave for C to start school in Bend in the Summer 2014 term; and
- 4 (iv) leave for L to start school in Bend in September 2014.

5

6 The Court was told by the father that he would not oppose a residence order in

7 relation to N and S being made in favour of the mother. It appeared to the Court

8 that there was scope for a sensible narrowing of the issues. With this in mind, and

9 with the parties' agreement, the final hearing was listed for the first open date

10 after 20 March 2014 with only a two-day time-estimate. My notes prepared at the

11 hearing recorded that:

12 *"At this stage the mother opposes the application for C to attend*

13 *school in Oregon and be permanently removed from the*

14 *jurisdiction. It may be that in the interim, the mother may consent*

15 *to the application for her to attend school in Oregon. To enable*

16 *there to be fruitful discussions the father is to provide the*

17 *Guardian, copying all parties in, with his written proposals for the*

18 *practicalities of C if she is to attend school in Oregon next term.*

19 *Upon receipt of those, the mother is to provide the Guardian with*

20 *a list of her concerns that she would like to have clarified by the*

21 *Guardian by means of direct contact with the authorities or third*

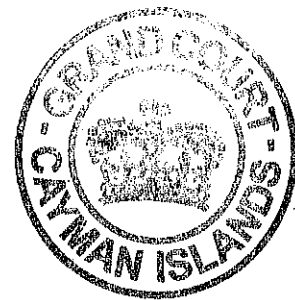
22 *parties in Oregon, including proposed carers. The judge indicates*

23 *that if the parties come to an agreement in relation to C in the*

24 *interim, then the Court would be willing to accommodate a 30*

25 *minute mention hearing at the outset of the day to approve the*

26 *orders."*



1 My notes also recorded that "*The main contentious issues are in relation*  
2 *to L.*" I concluded in my notes that:

3 "*The Court wishes to aim towards the final hearing for making all*  
4 *of the remaining orders to give finality to the children proceedings.*  
5 *The court hopes that at the final hearing it will be able to*  
6 *discharge the wardship and enable the parties to proceed under a*  
7 *normal children law private law arrangement.*"  
8

9 89. On 6 March 2014 the Court accommodated a variation of the directions to assist  
10 the parties in completing their written evidence. The final hearing was to remain  
11 for two days commencing 24 June 2014. The Guardian informed the Court that  
12 the father now agreed that, if leave was given, both C and L would relocate and  
13 start school at the same time in September 2014. The Guardian indicated that,  
14 following her fact finding trip to Bend, she would be recommending that C should  
15 live with the father but was "*preserving her position in relation to (L) until she*  
16 *had had the chance to read the mother's affidavit, out of fairness to the mother.*"  
17

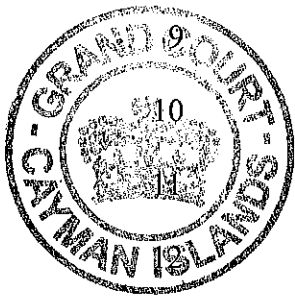
18 90. The matter came before the Court again on 15 May 2014 for the final case  
19 management hearing. Again, from the discussions with the parties at that hearing,  
20 it appeared that the only remaining issue was whether L should reside with the  
21 father and whether leave should be given to remove him from the jurisdiction.  
22 The Court, at the mother's request, ordered Dr. Malcolm to attend, and indicated  
23 that if she wished she could update her one-year old report.

1    **The Position of the Guardian ad Litem**

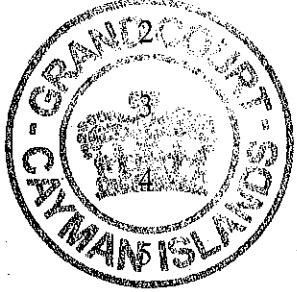
2    91.    The Guardian has submitted two full reports, the first dated 30 October 2013 and  
3           the second dated 27 May 2014. I have also had the benefit of reading a number of  
4           her affidavits, receiving oral evidence from the Guardian and reviewing her  
5           written closing submissions.

6  
7    92.    The Guardian has throughout these proceedings taken a proactive role in order to  
8           best meet the interests of all of the children. The mother’s attorney characterises  
          the Guardian, who I have appointed as an independent person to represent and  
          safeguard the interests of all four children, as being the “*self-styled ‘voice of the*  
          *children.*”” She also submits that the Guardian’s report is biased, especially due to  
          her “*reckless*” role in the Easter 2013 incident. She accepts that the Guardian has  
13           extensive experience with children matters, but goes on to say that her  
14           recommendations “*must not be relied upon.*”

15  
16   93.    Although I accept that the Guardian’s out-of-Court interaction with the family and  
17           the children has been more “hands on” than one might ordinarily expect, I believe  
18           that in this case it has been necessary. Both parents have frequently during these  
19           proceedings failed to make applications in a timely fashion in relation to the  
20           wards, an example being for seeking leave for them to travel overseas for school  
21           visits, and as a consequence the Guardian has had to take on this responsibility. I  
22           am satisfied that credit for a number of C’s advances which have occurred after



1 she was made a ward and following the very unsettled period and arrangements in  
2 place for her at the outset of my involvement in these proceedings, are due to the  
3 strenuous efforts of the Guardian and her drive to ensure that her best interests are  
4 promoted. I am satisfied that the Guardian's efforts have not prevented her ability  
5 to act independently in this case.



6

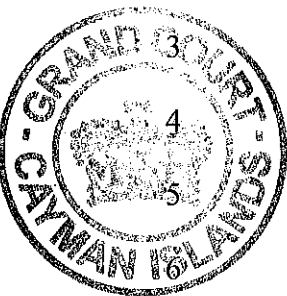
7 94. The Guardian's immediate actions, which resulted in L and N leaving the  
8 mother's home in April, following the reports then made to her about what was  
9 happening on the ground in the home were, when considered in that context,  
10 understandable, especially if one is aware of the full history of this matter and the  
11 earlier concerns surrounding the mother's interaction with L and C. The social  
12 worker was of the view that neither parent could be viewed as being blameless in  
13 relation to this incident.

14

15 95. Ms. Miller interviewed L shortly after the event and this puts the events of that  
16 night into context. Ms. Miller noted that the "*Easter incident had a significant*  
17 *impact on him*" and about which parent he wished to live with. Ms. Miller said  
18 that since that date he has not expressed any other desire about his living  
19 arrangements save a consistent one to live with his father. She says that this may  
20 have arisen due to the way that the mother handled the situation and because L  
21 depended on his father for support and "*literally to protect him from his mother's*  
22 *wrath.*" L very vividly outlined the circumstances surrounding the incident and

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the effect it had on him. It is clear that he recalled there being a dispute between the mother and the father about the father returning him to the house late from a party. The father and L had attempted to contact the mother to seek permission for him to stay with a friend, but had received no reply. The mother got angry, overreacted and L heard her being extremely verbally abusive. L said that he was *"scared to go home. My mom was really mad and I was afraid. When I got home she sent me to my room and said, "how is not having no family there?" She said my dad never acted like a father to his kids.... I could hardly talk. I tried to go to sleep. I heard C tapping on my window and said that Karin Thompson said she was to get me and N to stay with my dad for a while."* Ms. Miller then recorded *"L said that C explained to mom that Karin Thompson told her to get them. She picked up N and the two helpers held on to C along with my mom unlock the door. C held onto N putting arms round her to protect her. She eventually got the door opened and told N to run to the car. No one was screaming in the house. C was getting hit. C and N were screaming. I was really glad I was able to stay with my dad. I am still scared to go back. I feel she would punish me."*



96. As Sir Stephen Brown, then President of the Family Division in England and Wales stated in *R v Cornwall County Council ex parte G* (19992) 1 FLR 270:

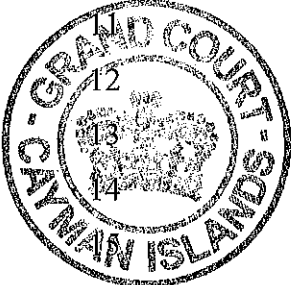
*"It is vital that the independence of the guardian in carrying out his or her duties on behalf of the child in any proceedings should be clearly recognised and understood.... It is vitally important that the position of the guardian should not be compromised by any*

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*restriction placed directly or indirectly upon him or her in the carrying out of the duties.”*

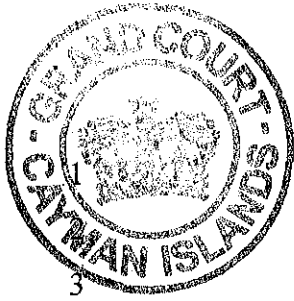
97. At paragraph 2.1.2 of her May 2014 report, the Guardian commendably outlines the Code of Ethics produced and adopted by the National Association of Guardians Ad Litem and Reporting Officers. She also refers to the Welfare Checklist in the Law, outlines the numerous meetings that she has been involved in and the documents which she has read. Importantly, at paragraph 2.1.7 of her report, she notes:

*“In the discharge of the duties conferred upon me, I have sought to give consideration to the impact of each of the two children<sup>10</sup> (on an individual basis) and also the likely impact on the remaining siblings as a result of their removal from this jurisdiction on a temporary opposed to what may be seen as a permanent basis depending on the nature of any proposed order, whether or not the child (or children) wish (as the case may be) to be removed, if they are old enough to give a view; considerations of the long-term implications for the continued relationships and attachments with both parents and the viability of the proposed arrangements for the child’s (or children’s) care outside the Cayman Islands, including the assessment of any potential risk and the need to setup adequate and appropriate supervision and contact arrangements irrespective of whether the child resides abroad with one or both parents or remains in the Cayman Islands having particular need to ensure that in making any such recommendation the court will be satisfied that the welfare of the child can be adequately*



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<sup>10</sup> Referring to C and L.



protected and his or her (as the case may be) welfare assured under the proposed arrangements.”

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4 98. I have throughout this case, following her appointment, been impressed by the  
5 Guardian’s dedication to the children. I am satisfied that she has, despite her  
6 considerable involvement in the case, been able to ensure that she has  
7 appropriately discharged her above duties. Accordingly, although I accept that the  
8 mother may not agree with the Guardian’s recommendations, I do not accept her  
9 contention that the Guardian has been biased and has not been working in the best  
10 interests of the children. I do not accept the submission made on behalf of the  
11 mother that “*Recommendations flowing from the Guardian’s report must not be*  
12 *relied upon.*”

13

14 99. Importantly, both the Guardian and Ms. Miller make the same recommendations.  
15 I see merit in the Guardian’s invitation to the Court to “*give weight to the stated*  
16 *wishes and feelings of the skill, values and knowledge base of the social worker*  
17 *assigned to this case, Ms. Christine Miller, having played an integral role in the*  
18 *lives of the four children forming the subject matter of these proceedings from the*  
19 *very outset, has been placed in a position, as evidenced from the many reports*  
20 *prepared by her for the benefit of this Honourable Court, to interpret welfare*  
21 *decisions making (made) in the light of her own current professional background*  
22 *and training, life experiences and systems of values the objectivity.*”

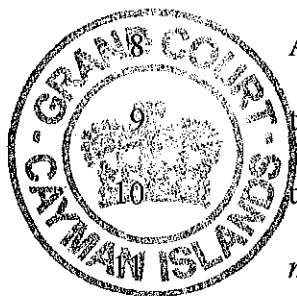
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1 100. The Guardian, like Ms. Miller, has regularly provided significant and necessary  
2 assistance to C. The Guardian recommends that leave should be given to the  
3 father to remove C and L from the jurisdiction and that a residence order should  
4 also be made in his favour in relation to L.

5

6 101. The Guardian indicated that from her first involvement in the case C had  
7 “*expressed a strong desire*” to reside with her father and attend school overseas.

After completing the admission process and being offered a place at HP School  
the latter wish has been thwarted every year since 2011. This caused great upset  
to C at a time which the Guardian characterises as being “*one of the darkest and  
most difficult periods that a child or young adult should ever have to encounter.*”



12

13 102. The Guardian reports that C has visited the school and that she has “*remained*  
14 *firm in her desire*” to attend the school in Bend. The Guardian is of the view that  
15 C is of an age and maturity when her views you should be listened to and that she  
16 would, with guidance and support, manage the transfer to Bend and to S High  
17 School.

18

19 103. It is clear from the Guardian’s evidence after she met the staff at both the S High  
20 and the school which L would attend in Bend, C Middle, that the enrolment  
21 documents were all in order and places were available. She was satisfied about the  
22 academic programme offered by both schools. During the same trip she satisfied

1 herself about the housing position and met with the father's sister and her husband  
2 who she viewed as being supportive.

3  
4 104. The Guardian, states that she stands by her written view held in May 2014 which  
5 she had expressed after her visit to Bend in February 2014 that she has "...no  
6 *hesitation in recommending that (C) should be afforded every reasonable*  
7 *opportunity to pursue her education at the school that has been identified as*  
8 *being one that offers her the level of education and the ability to pursue her*  
9 *outstanding skills as an athlete of a nature and to the extent that she not only*  
10 *needs but also, very much deserves."*

11  
12 105. The Guardian has also concluded that L has sufficient maturity for his views to be  
13 taken into account and that leave should be given for his father to remove him to  
14 Bend. She says that L has expressed a wish to live with his father in Bend and that  
15 he is excited about attending the C Middle School, spending time with his cousins  
16 and family members who live there, as well as occupying himself with local  
17 extracurricular activities. The Guardian stated that both C and L expressed to her  
18 their unconditional desire to reside with the father and attend the schools of their  
19 respective choice in Bend, Oregon. The Guardian has informed the Court that L  
20 and his father are "*very much attached*", have a "*healthy father/son relationship*"  
21 and she shares Ms. Miller's view that as he approaches puberty L is identifying  
22 more with his father. The Guardian is of the view that L depends very heavily on

1 C. The Guardian is satisfied from her assessment as well as from the evidence  
2 provided by the father and the Trust that L and C's education and physical needs  
3 will be met if under the father's care in Bend.  
4

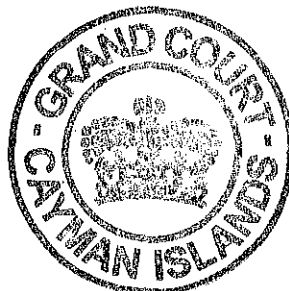
5 106. When reaching her decision she has regard to the social worker's concern that, if  
6 he was unable to live with C and his father if they were both to leave Cayman  
7 leaving L to reside with his mother here, L would suffer emotional harm.  
8

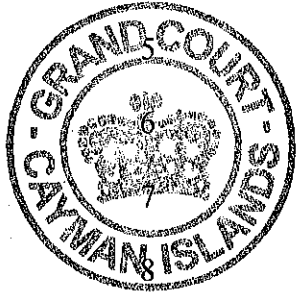
9 **The Position of Ms. Miller, the Social Worker**

10 107. As I have already mentioned,<sup>11</sup> the social worker and the Guardian have  
11 expressed similar views about what the children's wishes are and they both make  
12 the same recommendations concerning the orders that may be made. They are  
13 both of the view that the Court should pay great regard to the wishes of C and L.  
14 The social worker has gained great insight into this family, as she has been  
15 involved with them for a considerable period of time over three years. She rightly  
16 notes that the breakdown in the parent's relationship has greatly affected the  
17 children, albeit in different ways, due to their ages and understanding. She notes  
18 that with the passage of time things have become quite clear, especially when  
19 ascertaining the wishes of the children and the nature of their relationship with  
20 each parent.  
21

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<sup>11</sup> See paragraph 98 above.





1 108. Ms. Miller indicates that C is *“an intelligent and well-read adolescent”* who has  
2 been consistent and *“emphatic”* in her expressed wish to reside with her father.  
3 Ms. Miller stated that C, who has been involved in the discussion about her  
4 education for the past two years, has made it clear to her that she wishes to attend  
Summit High School. Ms. Miller indicates that C *“has a fair idea of what  
experiences/opportunities she would like to pursue academically, in the sports  
arena and the deepening relationships with elder sister and paternal relatives.”*  
She reports that C has expressed her disappointment and past frustration at not  
9 being able to attend the Hawaiian school in previous years. C also expressed to  
10 her a wish to develop her relationship with her extended family in Oregon.

11

12 109. Ms. Miller feels that it would be *“very traumatic”* for C if she were not able to  
13 move with the father to Bend and attend school there. Ms. Miller felt that any  
14 such disappointment would cause C emotional harm and that there is likelihood  
15 that she would become depressed and angry.

16

17 110. Both C and L have explained to her that their father listens to them, talks through  
18 issues and helps them with their schoolwork. They told her that they view him as  
19 the *“glue”* of the family, him being the person that gets things done for the  
20 family. She says that C and L *“are yearning for a normal healthy family life. At  
21 home will all be together and talk about their relationship with the paternal  
22 family. They talk about their cousins, aunts and uncles, but mainly things they will*



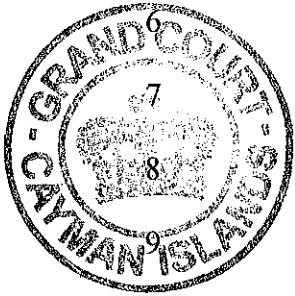
do with their cousins. I do not recall them saying much about interaction with the maternal family." Ms. Miller feels that C's placement with her father has worked well and it is assisted her development in and out of the classroom.

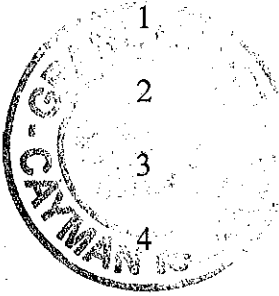
5 111. Ms. Miller informed the Court that L has consistently stated that he wishes to live  
6 with his father and C, but maintain contact with his mother. L told her that,  
7 although he loves his mother, he feels more relaxed with and prefers being with  
8 his father because when he is with his mother he says that he has to be careful not  
9 to upset her. Ms. Miller states that L is concerned that if he remains in the  
10 Cayman Islands with his mother and his father is not here, that there will be no  
11 family in close proximity to reach to when the mother is angry and shouting at  
12 him. The social worker noted in her report that when L was asked by her what he  
13 would like to communicate to the Court he replied: "*I would really, really like to*  
14 *go to Oregon with my dad. I can't imagine a month passing and not seeing my*  
15 *dad.*" In oral evidence when dealing with this Ms. Miller said: "*I recall when I*  
16 *asked L what he wanted me to say to the Court. He said he really, really would*  
17 *like to go to Oregon. He stopped for a while and think and he said I cannot*  
18 *imagine a month passing and not see my dad. When he said that, it was coming*  
19 *from his core and it is him saying that it is so very important to me.*" L also told  
20 the social worker that his mother had said to him that she would respect his choice  
21 if it is one that makes him happy. Ms. Miller noted that the mother's support of

1 his choice would be very important to L, as he does not like to upset her, or does  
2 not want her to be angry with him or displeased.

3  
4 112. L informed the social worker that he wished to attend the C Middle School and  
5 was excited about the prospect of living close to his extended family in Bend. L  
6 said that he loved his mother and would be able to visit his family and friends in  
7 the Cayman Islands during his school holidays. Ms. Miller describes L as being  
8 the "most emotionally fragile" of the children and stated that if L were unable to  
9 go to Bend he "would become very withdrawn and depressed and also trigger his  
10 anxieties." She said that L would be "devastated" and his not going "could not  
11 be substituted by therapy."  
12

13 113. The mother informed the social worker that she wished L to stay living with her  
14 and to complete his education in Cayman. The mother informed Ms. Miller that  
15 she was concerned that she would lose contact with C and L if they moved to  
16 Bend. I accept that the mother loves L very much and this is illustrated when the  
17 social worker reported the mother saying that "It would kill her if (L) her only son  
18 goes to live with his father." Ms. Miller when making recommendations noted  
19 that some of the mother's concerns are legitimate. She said she had in mind that L  
20 loves his mother. She noted the mother's concerns that she felt L was not ready to  
21 leave and that the schooling in the Cayman Islands is sufficient and just as good  
22 as the schooling in Bend. She noted the mother's wishes to repair the damage in





1 her relationship with C and L and the effect that any move would have on the  
2 younger children. Ms. Miller also said that in reaching a conclusion she had  
3 looked at each child as a “*unique self*” and what they require at this stage of their  
4 lives.  
5

6 114. From her observations, Ms. Miller indicates that L is now at “*the stage of*  
7 *development where he would benefit greatly having a positive male influence in*  
8 *his life to teach him how to be a man.*” She states that L has made it clear to her  
9 that he feels safe with his father and that he “*gravitates*” towards his father’s  
10 personality and parenting style.  
11

12 115. Ms. Miller informed the Court that she had observed the mother over a sustained  
13 period of time making incremental improvements in her parenting of N and S. She  
14 is of the view that they are well cared for by her and they are well-adjusted  
15 children. She says that they are attached to their mother and that their day-to-day  
16 needs are met.  
17

18 116. Ms. Miller stated that she very carefully considered Dr. Malcolm’s  
19 recommendation to keep the children together as they provide support for each  
20 other. I accept that ordinarily it will be in the children’s best interests to keep  
21 siblings together, and the Court should think long and hard before separating  
22 them. However, from Ms. Miller’s lengthy assessment of this family, she has

1 formed the view that C and L were closer with each other than they were with S  
2 and N. She noted back in May 2014 that the children had settled into their new  
3 routine and the new norm of their family life, being aware that the dynamics of  
4 the family had changed. Ms. Miller recognised the importance of the children as a  
5 family unit, but also recognised that each child has individual needs. She rightly  
6 forms a view that the two youngest children are more attached to the mother, and  
7 the two eldest children to the father. With this in mind, she feels that the  
8 recommended change in their circumstances would not be detrimental to the four  
9 children, but it would be damaging for the elder two children if they were not able  
10 to relocate with their father.

11

12 117. Ms. Miller stated that although N and S would miss regular contact with the  
13 father, that their mother with support would provide them with the required  
14 comfort and reassurance. She is of the view that regular indirect contact between  
15 N and L and direct contact during the holidays would be sufficient to maintain the  
16 children's bond and identity as a family.

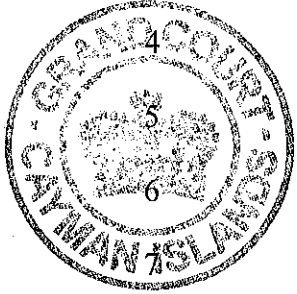
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18 **The Mother's Position**

19 118. In her affidavit sworn on 15 April 2014, the mother accepted that it was likely that  
20 C's permanent residence would remain with the father. In her oral evidence she  
21 accepted that her relationship with C is now "*very difficult*" and that C "*would not*  
22 *come and live with me tomorrow, as she refers to me as a mean mum.*" Rather



1 surprisingly, and illustrating a lack of child centric insight, she stated in her  
2 evidence that she did not think that C had any bad feelings towards her arising out  
3 of the incident which led to her criminal conviction, and that any bad feelings C  
4 held were caused by someone else. She stated that she had to be satisfied about  
5 the adequacy of arrangements that would be in place for C if she were to live in  
6 Bend. At the hearing she was not satisfied about the arrangements and therefore  
7 did not consent to the relocation, despite C's clear wish to do so. The mother was  
8 correct to highlight the need to consider the father's proposed practical  
9 arrangements for C and I will address those later herein.



10  
11 119. During her oral evidence she accepted that if a parent was unable to make long-  
12 term plans in the Cayman Islands due to immigration restrictions it may be  
13 sensible for that parent to relocate to their country of origin where they have  
14 rights to work and remain. The mother was then asked if the Court found this was  
15 the father's position and she accepted that C could not live with her, where did  
16 she think that C could live in Cayman if the father had to leave. The mother  
17 indicated that she could not give an answer, save that she would always offer her  
18 home to C. She then emphasised that if C were to leave the jurisdiction it would  
19 be difficult for her ever to rebuild their relationship.

20  
21 120. In relation to L, the mother regards herself as being his primary carer. In her  
22 affidavit she indicated that they both have a very good relationship and

1 communicate well. However during cross-examination she stated "*He does not*  
2 *talk to me about things he wants to do in his life. I want to rebuild that, so he can*  
3 *talk to me openly.*" She said she was surprised to hear the social worker indicating  
4 that L was afraid of her, highlighting that he will often sleep in the same bed as  
5 her. Regrettably, this shows a lack of insight by the mother in relation to the effect  
6 of her excessive disciplining of L and past frequent shouting and abusive  
7 language in the presence of the children. The mother is of the view that L is an  
8 important figure in N and S's lives and it would not be in their and his best  
9 interest for them to be separated.

10  
11 121. In her April 2014 affidavit the mother commented that although L had told her he  
12 would like to live with his father he had only done so as a consequence of  
13 pressure being exerted upon him by the father or C. However, during cross-  
14 examination from Mrs. Bothwell she said that she viewed L as being intelligent  
15 and that "*I know (L) will be disappointed if he has to live with me, as he wishes to*  
16 *live with his father. If he was harmed I would ask the professionals to help me.*"  
17 She went on to say that "*he loves his father, he wants to have more relationship*  
18 *with him. I want to have more relationship with him (L) to.*" She stated that L "*is*  
19 *close to his father*" and "*he always wants his daddy to do this and that with him.*  
20 *To him, it is always daddy, daddy, daddy.*"



1 122. It is regrettable that despite her indication that she would respect L's choices, she  
2 has not been able to handle his expressed views sensitively with him. It is right  
3 that at one time, for a short period, L was saying that he was happy with how  
4 things were and that he wanted to remain on Island for a year or two until he  
5 finished high school. He informed the social worker when asked why only a week  
6 later he had changed that view and was saying that he wanted to relocate with his  
7 father, that he had only said he wanted to remain because "*he was afraid to say*  
8 *otherwise and he did not want his mother to be angry with him. He said he*  
9 *wanted to live with his dad forever.*" The mother accepted in her evidence in  
10 chief that she had spoken to L about this. She accepted that she told L that it hurt  
11 her to hear him say that he was choosing to live with his father. She said that she  
12 told L "*I do not want to be mean, but whatever you choose, although it hurts me to*  
13 *hear what you choose, I just want you to be happy.*" She said "*I told him it was so*  
14 *hurtful to me that you choose your father. I accept your decision, I said I not want*  
15 *to be in a position to stop your wishes.*" The mother told Mrs. Bothwell in cross-  
16 examination that by saying this she had not intended to make L feel guilty.  
17 However, this again shows she had little insight into what effect such a statement,  
18 elevating her feeling over the child's, would have had on L. It is clear that she  
19 does not feel that L's wishes should be given significant weight, stating that "*Kids*  
20 *can wish and say what they want to say, it is not their decision to make.*" She felt  
21 that despite L's expressed wish that, as there is no structure at the father's





property, it would be better for him to live with her. She also stated that as L is her only son that she did not want him to leave.

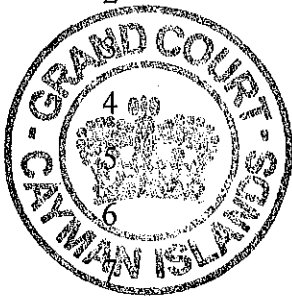
4 123. The mother accepted that L had been to Bend and had taken the opportunity to see  
5 for himself and form a more informed view about what it would be like to live  
6 there. She conceded to Mrs. Bothwell that L told her that he would like to live  
7 there, but she went on to say that having regard to his age she was not sure he had  
8 the capability to express that.

9  
10 124. The mother conceded that it is important for a teenager to be closely connected to  
11 a male figure in his life, but added that this could be maintained by Skype and  
12 long holidays.

#### 13 14 **The Law – Permanent Relocation Cases**

15 125. In *B v B* at page 297, para 72 I reiterated the following helpful guidance provided  
16 by Thorpe L.J. *Payne v Payne* [2001] EWCA Civ 370 para 41 and 42:

17 *"[40] To guard against the risk of too perfunctory an*  
18 *investigation resulting from too ready an assumption that the*  
19 *mother's proposals are necessary compatible with the child's*  
20 *welfare I would suggest the following discipline as a prelude to*  
21 *conclusion. (a) Pose the question: is the mother's application*  
22 *genuine in the sense that it is not motivated by some selfish desire*  
23 *to exclude the father from the child's life. Then ask is the mother's*  
24 *application realistic, by which I mean, founded on practical*

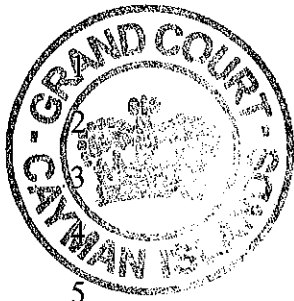


1 proposals both well researched and investigated? If the  
2 application fails either of these tests refusal will inevitably follow.  
3 (b) If however the application passes these tests then there must be  
4 a careful appraisal of the father's opposition: is it motivated by  
5 genuine concern for the future of the child's welfare or is it driven  
6 by some ulterior motive? What would be the extent of the detriment  
7 to him and his future relationship with the child were the  
8 application granted? To what extent would that be offset by  
9 extension of the child's relationship with the maternal family and  
10 homeland? (c) What would be the impact on the mother, either as  
11 a single parent or as a new wife, of refusal of her realistic  
12 proposal? (d) The outcome of the second and third appraisals must  
13 then be brought into an overriding review of the child welfare as  
14 the paramount consideration, directed by the statutory checklist in  
15 so far as appropriate.

16 [41] In suggesting such a discipline I would not wish to be thought  
17 to have diminished the importance that this court has consistently  
18 attached to the emotional and psychological well-being of the  
19 primary carer. In any evaluation of the welfare of the child is the  
20 paramount consideration great weight must be given to this  
21 factor.”  
22

23 126. Wall L.J. in *Re D (Children)* [2010] EWCA accepted that the impact on a parent  
24 if his realistic proposals are rejected is not the only issue to be considered, but it is  
25 a fact and a significant feature to be recognised by a Judge in his deliberations. At  
26 paragraph 33 Wall L.J. stated:

27 “There has been considerable criticism of *Payne v Payne* in  
28 certain quarters, and there is a perfectly respectable argument for



*the proposition that it places too great an emphasis on the wishes and feelings of the relocating parent, and ignores or relegates the harm done of children by a permanent breach of the relationship which children have with the left behind parent.”*

5

6 127. Munby L.J. in *Re F (Child: International Relocation)* [2012] EWCA 1364  
7 advocated a departure from the rigid approach in *Payne*. Munby L.J. commended  
8 the approach taken by Black L.J. in the afore-mentioned shared care case of *K v K*  
9 *(Relocation: Shared Care Arrangement)* [2011] EWCA Civ 793. I set these out  
10 in some detail at paragraph 79-84 in my judgment in *B v B*. All the parties in this  
11 matter are aware of that ruling and I do not intend to regurgitate those paragraphs  
12 herein.

13

14 128. Having set out these paragraphs from the judgment, I concluded that Munby  
15 L.J.’s approach was the right way forward. At paragraph 85 in *B v B* I stated:

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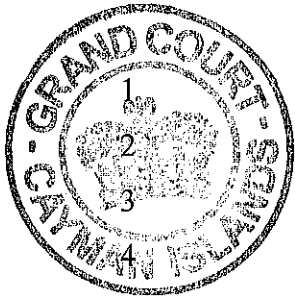
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*“The clear message being sent out by Munby LJ is that the child’s welfare is the paramount principle to be applied in applications to permanently relocate. To do this the Court should consider all the factors, whether they were or were not contained in the guidance in *Payne v Payne*, in reaching a decision as to what is in the child’s best interests. The decision appears to be advocating a single approach to all relocation cases, in which the *Payne* factors may apply to all cases, albeit with varying weight. Due to the very recent nature of this decision it may be too early, in the absence of what would be a most welcome ruling from the Supreme Court, to conclusively state that there exists in England and Wales an*



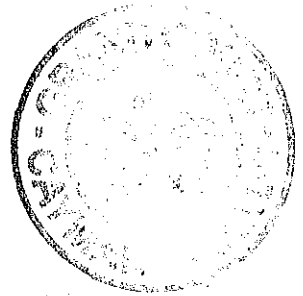
*unquestionable single analytical framework for all relocation disputes. Munby LJ was rightly stressing that each case is different.”*

5 129. I then stated in *B v B* that following a careful consideration of the guidance given  
6 in *Payne, K v K* and *Re F*, one can derive a number of principles which should be  
7 applied by a court in considering whether to make an order granting leave to  
8 permanently relocate. I then went on to list the principles, which I again adopt in  
9 the matter now before me, as being:

10 *“88. The first, and overarching principle, must be that the child*  
11 *welfare is paramount. It takes precedent over any other*  
12 *consideration.*

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

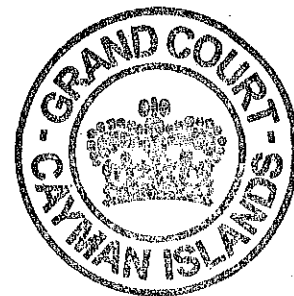
26 *90. When the Court considers the guidance the following*  
27 *questions..... should ordinarily be raised and addressed:*



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- (i) *Is the mother's application genuine in the sense that it is not motivated by some selfish desire to exclude the father from the child's life?*
- (ii) *Is the father's opposition motivated by genuine concern for the future of the child's welfare or is it driven by some ulterior motive?*
- (iii) *What would be the extent of the detriment to the father and his future relationship with the child were the application granted?*
- (iv) *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?*
- (v) *Is the mother's application realistic and founded on practical proposals both well researched and investigated?*
- (vi) *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.*

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



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

130. There is no presumption in favour of the father who is applying to remove the children to Bend. I will have to consider and weigh up all of the factors contained in the evidence before me and when doing so have regard to the above principles. The over-reaching matter for determination is what is in the best interests of C and L and their siblings. When doing this I must have regard to the factors in the welfare checklist set out at section 3(3) Children Law (2012 Revision).

**The Father’s Immigration Status and Financial Position**

131. The mother has Permanent Residency as a Person of Independent Means. The father’s immigration status is as a dependent of the mother. Upon the parties’ divorce the father’s right of residency will cease. He will have to leave the Islands unless he is able to obtain employment and a work permit. The husband has not worked for a number of years. I do not accept the mother’s submissions that he should be expected to find fairly menial labour in the Cayman Islands. I am satisfied that as a US National he would be better placed to find employment there. I am also satisfied that his long-term future in the Cayman Islands is too uncertain. If he is found to be the best person to care for C and/or L then it is better that a decision is made at this stage of their education rather than having the uncertainty ‘hanging over their heads’.

1 **The Impact on the Father if the Application to Relocate is Refused**

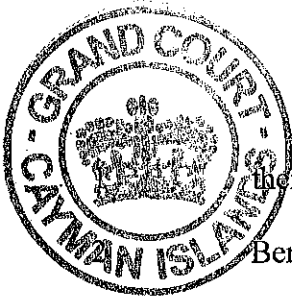
2 132. The father has not contended that the refusal to relocate would have any  
3 significant detrimental effect on his well-being and mental health. He is not  
4 submitting that remaining in Cayman would cause him any unhappiness. He has  
5 friends here. Therefore, this is not a case in which the emotional impact on the  
6 father if unsuccessful in his application to relocate should be viewed as a  
7 significant factor when considering what may be in the best interests of the  
8 children.



9  
10 **The Father's Motivation for the Application**

11 133. I am satisfied that the father's application is genuine and is not motivated by some  
12 selfish desire to exclude the mother from the C and L's lives. I am satisfied that  
13 he would facilitate court ordered contact if he were given leave to relocate with  
14 the two children.

15  
16 134. I accept, from the evidence placed before me, that he will receive financial  
17 assistance from the Trust to enable him to be housed and care for the children for  
18 the foreseeable future. I do not accept the mother's submission that his reason for  
19 relocation is for personal financial gain or from a desire to remove her from the  
20 children's lives. His motivation is not his personal well-being, but is driven by  
21 the uncertainty caused by his immigration status, his view that he will be better  
22 able to provide long-term security for C and L in Bend and that at this stage in



their lives they would benefit educationally and socially from all that is on offer in  
Bend.

3

#### 4 **The Mother's Motivation for Opposing the Application**

5 135. I am satisfied that the mother's opposition to the removal application is partly  
6 motivated by concerns she has about the welfare of the children. She  
7 understandably feels that the separation would affect the opportunity to repair her  
8 clearly damaged relationship with C, affect the ability to maintain her close bond  
9 with L and in turn affect C and L's important relationship with S and N. It is  
10 evident also that the mother loves the children, and she would be upset by them  
11 leaving. It is understandable that, in particular in relation to L, the emotional  
12 effect on her is one of the motivating factors for objecting to the move. However,  
13 it is clear that she is unable to separate her own feelings from what is in the best  
14 interests of L and C and, despite indicating at times that she would accede to the  
15 children's wishes, elevates her needs above those of the children and their wishes.

16

17 136. The mother also has concerns how the father would be able meet the children's  
18 needs if leave to relocate is granted. She, although she is a Protector and in a  
19 position to be informed about the working of the Trust, does not accept the other  
20 Protectors' clear written confirmation that the Trust will be in a position to  
21 provide for J's half-siblings if the Court permits the father to have "*custody*" and  
22 "*bring them to the United States.*" The mother does not accept that a relocation

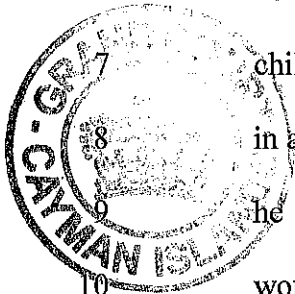
1 budget has been approved. It is evident from the position taken by the mother  
2 when she unrealistically insisted that the father pay half of any school fees for the  
3 proposed schooling in Hawaii before she would consent to C or L attending there  
4 and her view that if the children were to travel with the father to Bend on a fact-  
5 finding trip that he would have to fund his own flight, that she is resistant to the  
6 Trust paying for things which the father has advocated to be in the children's best  
7 interests. It appears that she is unhappy with the idea of the Trust paying sums to  
8 the father in Bend, even if such payments would be in the best interests of the  
9 children. Although the mother contends this is because she seeks to protect the  
10 asset for J, it is clear that it is partly motivated by a wish that no funds be paid to  
11 the father. That said, she rightly expresses concerns about the father's  
12 disappointing attempts to find realistic employment in the United States, which  
13 are based on rather vague evidence presented to the Court from prospective  
14 employers. The Court and the Trust has made it clear that they would expect him  
15 to find employment, at least by the end of his first year living in Bend.

16  
17 **The Father's Views About the Benefits for C and L of Relocation to Bend and His**  
18 **Plans if He Relocates**

19 137. The father rightly contends that C and L have experienced great disruption due to  
20 the difficulties within the family. He rightly expresses the view that the criminal  
21 proceedings have caused great instability and divided the family and have  
22 hindered any counselling with the family. He said over a long number of years the



1 fact that the family came to live in Cayman in itself led to long-term uncertainty  
2 about the children's future. He is of the view that if the family had remained in  
3 Hawaii in 2008 and continued with the counselling that was available there, some  
4 of the current difficulties within the family could have been avoided. With this  
5 background he feels that all the children will benefit from him establishing a  
6 home in Bend. He hopes that this will reduce dependency upon the Trust, give the  
7 children a firm base which cannot be faulted for immigration reasons and put him  
8 in a better position to gain employment to support the family. The father says that  
9 he hopes that the physical distance between where the parties would be living  
10 would hopefully reduce the turmoil between them and remove the children from  
11 continual conflict.

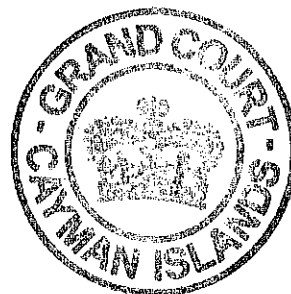


12  
13 138. The father has indicated that he intends to find at least a three-bedroom rental  
14 accommodation in Bend and that such properties are readily available and within  
15 his budget. He understandably says that he has not been able to obtain a rental  
16 property yet, because it would be unwise to make that commitment until the Court  
17 has made its decision. I accept that, with a proposed move of this nature, a  
18 number of arrangements will have to be transitional and it is impracticable for all  
19 details to be firmed up.

20  
21 139. The father has confirmed that the places are available at appropriate schools, the S  
22 High School and C Middle School. The Guardian, who has visited the schools and

1 spoken to staff members, is of the view that they offer a sound education, as well  
2 as a number of extracurricular activities and life experiences which C and L could  
3 not enjoy in the Cayman Islands. She actually regards the move as being  
4 beneficial to the children rather than having any negative impact on their  
5 education or from a social perspective. I see no merit in the mother's submission  
6 that these two schools are inadequate because they are public schools rather than  
7 private schools. However, it would be improper for me to give the wrong  
8 impression that the children would not receive a good solid education at their  
9 current private school in Cayman if they were to remain.

10  
11 140. I am satisfied that the father has made adequate physical arrangements for the  
12 day-to-day arrangements for C and L if they were to move with him to Bend. As  
13 already noted, the Guardian has visited Bend and has been able to satisfy herself  
14 about the suitability of the area and the provision of services including health care  
15 for the children. I share Ms. Miller's view that the Guardian's conclusions may be  
16 relied upon and the Court has been greatly benefited, when considering the  
17 father's plans, by her having had the opportunity to visit and report on Bend. I am  
18 satisfied that Bend would be a suitable area for C and L to live and grow in, as it  
19 appears to be a safe family environment with supportive paternal family members  
20 living in relatively close proximity.

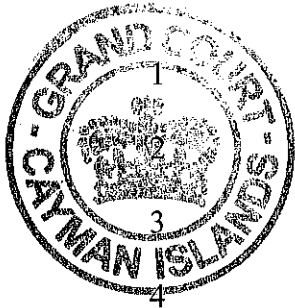




1 141. I have had to consider the father's evidence concerning his financial position if he  
2 were to relocate. One area in which the father's evidence was not impressive was  
3 that dealing with his efforts to find employment. The documentation provided  
4 from Lunar Malvida Tequila and the Scott Countryman did not satisfy me that he  
had made exhaustive attempts to find realistic and stable employment. The letters  
do not reflect firm offers of work, but appeared to be negotiation documents for  
work which on the face of it does not appear to be overly stable.

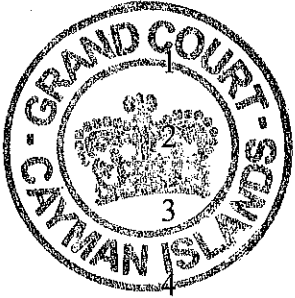
9 142. If there had been no evidence from the Protectors or the Trustee in relation to a  
10 relocation budget package, my concerns in the short-term would have been  
11 heightened. I am satisfied that the father understands that at the end of a 12-  
12 month period the Trust may well reduce the current transitional financial package  
13 that has been made available to him and that this Court would expect him to have  
14 found employment by the year's end.

15  
16 143. In an email to the Court Ms. McGrath at Scotiabank & Trust (Cayman) Ltd., who  
17 is the Trustee of the Cayman Trust, dated 2 July 2014 indicated that as long as it  
18 remained the Trustee it *"will be content to act in any unanimous recommendation*  
19 *of the protectors (or any properly arrived at majority recommendation thereof) as*  
20 *regards the supportive family members of which it is given proper and adequate*  
21 *notice and will, naturally, give great weight to any expression of views on the part*  
22 *of (J) where it is a matter of exercising any power that requires to be exercised in*



1 *her best interests.*” In a later email sent on the same day Ms. McGrath indicated  
2 that the Trustee “*generally speaking*” adopts majority recommendations of the  
3 Protectors and stated that “*historically, it has approved either a unanimous or a*  
4 *majority decision of the protectors as regards family provision.*” When I consider  
5 this, I find that there is irrefutable evidence that J supports the father’s application  
6 to relocate with C and L and the provision of reasonable funding to enable that to  
7 happen. It is evident that J places great importance on being able to visit and play  
8 a greater role in C and L’s lives.

9  
10 144. A letter dated 3 July 2014 from three of the Protectors (a majority of the  
11 Protectors) provides confirmation of a budget being approved unanimously for C  
12 and L if they are permitted to relocate and do relocate to Bend. They reiterate in  
13 the letter that this is in line with J’s wishes and is one of her “*principal goals*”  
14 which “*would be frustrated by structure that compels them to live in the Cayman*  
15 *Islands.*” The Protectors go on to say that if the children were remaining in the  
16 Cayman Islands that it would not be in J’s best interests for financial provision to  
17 be made to the family as the mother could provide for them from her \$1,300,000  
18 set-aside trust, and therefore the Protectors would not recommend such payments.  
19 Despite this statement, I am not satisfied that this latter statement is a firm one  
20 and that it is not one that is subject to further and ongoing review. Therefore, I do  
21 not find that the mother would definitely not receive financial support from the  
22 Trust if all or some of the children were to remain with her in Cayman. However,



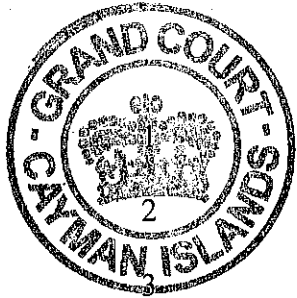
I do understand that the protectors and the trustee are still seeking a proper budgeting from the mother for payments that she has already received and that the only payments being made are for education, health insurance and free housing through the C P Condominium which are being met by the Trust.

5

6 145. In an earlier letter dated 30 June 2014 the same Protectors indicated that J's half-  
7 siblings are each family members under the JC Trust (Cayman) and the recently  
8 set up JC Trust (US) Deeds. They indicate that the Trustee of the JC Trust  
9 (Cayman) (Scotiabank) and prospective trustee of the JC Trust (US) have  
10 discretion to provide support to the siblings. There are restrictions on the amount  
11 and sourcing of sibling support and such support can only be provided if it is in  
12 the best interests of J and only after consideration of the resources available to the  
13 family member from other sources, especially their parents who each own an  
14 obligation of support.

15

16 146. I am satisfied that financial provision will be made to enable the father to relocate  
17 with C and L to Bend. I am satisfied that this will be for at least 12 months, but  
18 there is a possibility that it may be for longer. I am satisfied that if the father is  
19 living back in the United States, where he has no work permit issues and despite  
20 his long absence from the workplace, he will be able to find suitable employment  
21 within that period. Although there is currently some uncertainty caused by  
22 litigation in United States concerning the setting up of the US Trust, I am satisfied



that promoting C and L's welfare will still be considered to be in J's best interest, and the new trustees will recognise this.

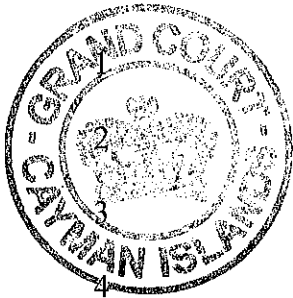
4 **Conclusion**

5 147. The overarching principle guiding me when reaching my decision is that C and  
6 L's welfare is paramount. I must therefore have regard to the relevant parts of the  
7 'Welfare Checklist' which is found at section 3(3) Children Law (2012 Revision).

8 (a) The ascertainable wishes and feelings of the children: I have dealt with  
9 these herein and I am satisfied that both C and L wish to reside with their  
10 father, relocate to the United States and attend the schools which have  
11 been identified for them in Bend.

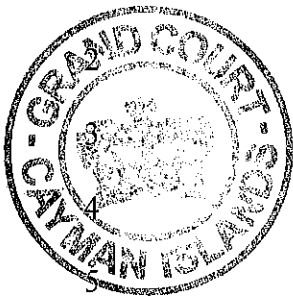
12 I accept that L is closer to his mother than C, that he loves her and that he  
13 has acknowledged that things have improved with his mother in recent  
14 months, but despite this he has been consistent for well over a year about  
15 his above-stated wishes.

16 The Guardian and Ms. Miller are satisfied that both children's level of  
17 maturity and understanding about their situation requires the Court to pay  
18 close regard to their wishes. I have considered the contents of the reports  
19 of Dr. Malcolm and Ms. Chandler, and find that there is nothing therein  
20 that dissuades me from adopting the observations made by the Guardian  
21 and Ms. Miller about C and L's wishes.



When I consider the position of N and S I am satisfied that they are close to their mother, and despite their more tender years, I am satisfied that they wish to reside with their mother.

5           (b)   Physical, emotional and educational needs: I am satisfied that C's  
6           physical, emotional and educational needs are being met at this time whilst  
7           in the care of the father, who has been her primary carer for quite some  
8           time. The only area of concern is her relationship with the mother, which  
9           despite some limited improvements, is still highly dysfunctional. I  
10          recognise that if she does leave to Bend that this will make any therapeutic  
11          work involving her and her mother more difficult. However, this work has  
12          not been able to take place constructively over recent years because of the  
13          still ongoing criminal proceedings. However, if she is made to remain in  
14          Cayman and she feels that this is due to the mother's opposition to the  
15          move, the resultant damage to their relationship would likely be  
16          irreparable. Regrettably, when carrying out a balancing exercise, it would  
17          be emotionally damaging for C to frustrate her long and well-reasoned  
18          desired move to the US due to a hope that at some stage in the future  
19          therapeutic work might be undertaken. I am not satisfied that the mother  
20          has been or is able to meet C's physical, emotional and educational needs.  
21          There are instances of over chastisement, emotional harm and a failure to  
22          make decisions for the betterment of her education.



1

As time has progressed, a shared care arrangement for L has developed between the parents. I am satisfied that L's physical and emotional and educational needs are met when in the father's care. I am satisfied that on the whole his physical and educational needs are being met when he is with the mother. However, there are, despite recent improvements, ongoing concerns about the mother's ability to meet his emotional needs, especially arising out of the approach she takes to discipline.

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(c) The likely effect of any change in circumstances: If leave were granted there would be a change of country for C and L, but to a town which is familiar to them. They have expressed a strong and genuine wish to move to Bend as well as see more of their elder half-sister, J. Their wishes are well informed as they have visited Bend in the past to visit paternal family members and more recently to ascertain what a move would mean, for example by visiting the schools. C and L would embrace the change of circumstances which would likely be very positive for them, whereas an enforced maintaining of the status quo would be most upsetting and damaging. However, it is important that they maintain contact with N and S, and that L in particular has sufficient contact with his mother.

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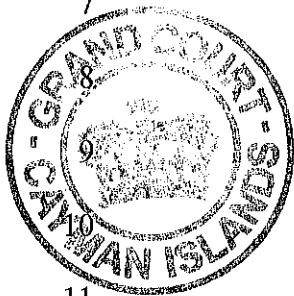
All the parties agree that it would not be in N and S's best interests for the status quo concerning their living arrangements to be changed. I accept that the change of circumstances in relation to C and in particular L's

1 residence will have an effect on them. In this, as in all cases where siblings  
2 are split up, I reiterate it is important that arrangements are put in place for  
3 them to have regular contact.  
4

5 (d) Age, sex, background and any characteristics the Court considers relevant:

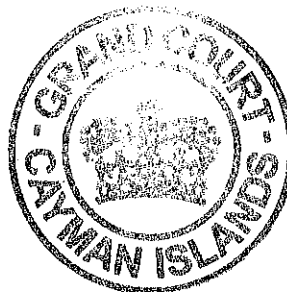
6 Although C is a mature teenage female, I am satisfied that due to the  
7 negative relationship she has with her mother that it would be in her best  
8 interests to reside with her father. The Guardian and Ms Miller have re-  
9 emphasised that L is of an age where he needs a positive paternal figure in  
10 his life. There is evidence to show that as time has progressed during the  
11 assessment of this family he has grown closer to his father, and that the  
12 relationship has come significantly more important for him. All parties  
13 agree that, having regard to N and S's age and the nature of their  
14 relationship with the mother, they should reside with the mother.  
15

16 (e) Any harm which the children have suffered or at risk of suffering: In this  
17 judgment, I have outlined the background which has required Social  
18 Services intervention in two jurisdictions in relation to this family.  
19 Regrettably, this has been caused by the nature of the parents' relationship  
20 with each other. In addition, there is clear evidence that the mother has, at  
21 the very least of over chastised C and L. The mother admits that she on  
22 occasions has difficulty recognising how to appropriately discipline the



1 children, and may have used excessive force, and inappropriate and overly  
2 loud language. I accept that the mother does not accept a number of the  
3 historic allegations. However, even the conduct the mother admits to  
4 amount to inappropriate behaviour which would result in both physical  
5 and emotional harm to in particular C and to a lesser degree to L. It is  
6 clear that this, along with the parents' defective relationship, has  
7 negatively impacted the children. The fact that the children are saying that  
8 the mother has done certain inappropriate things to them is in itself  
9 disconcerting and illustrates that they have suffered harm. The emotional  
10 effect on the children is clearly illustrated in the reports of Ms. Miller, The  
11 Guardian, Ms. Chandler and Dr. Malcolm.

12 I accept that the mother has tried her best to learn appropriate parenting  
13 methods through counselling. It is clear that the blame for the state of the  
14 parties relationship can be placed at both of their doors. It may well be  
15 that, if the parents are living in different jurisdictions and not in such close  
16 proximity, they will be able to communicate in a more positive fashion.  
17 The uncertainty caused by these long-running proceedings, in which the  
18 parties have been unable to agree very little concerning C and L has  
19 caused emotional harm in particular to C. The parties must sensitively  
20 handle the outcome of the decision I make, shielding the children from  
21 their resultant emotions.



1 I note the father's words at paragraph 5 of his skeleton argument dated 19  
2 June 2014 in which he rightly acknowledges that the mother "*has*  
3 *obviously worked hard to improve the parenting skills and has become*  
4 *increasingly active in the lives of the younger children. These efforts*  
5 *should be recognised and commended.*" I do hope that similar sentiments  
6 can be shared between the parents in the future which may assist them to  
7 move forward in a more positive manner.

8  
9 (f) How capable are each of the parents in meeting the children's needs: I  
10 have addressed this in paragraph (b) dealing with children's physical,  
11 emotional and educational needs.

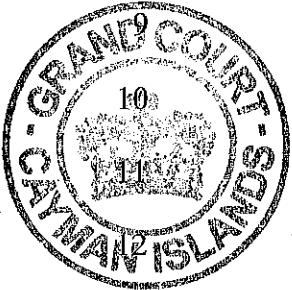
12  
13 148. Having carefully considered all of the evidence, the guidance from the case  
14 authorities and the Welfare Checklist I have come to the conclusion that the  
15 welfare of C and L is best met by granting a Residence Order to the father  
16 coupled with leave for him to permanently remove them from the jurisdiction.  
17 Carrying out the same exercise, I find that a Residence Order should be made in  
18 relation to S and N and the mother's favour. I have considered the possibility of  
19 shared residence orders, but I am not satisfied that this would be in the children's  
20 best interests at this time.



1     **Contact**

2     149.   When making the above decisions I was satisfied that the father would facilitate  
3           inter-sibling contact and contact between L and his mother. I was satisfied that if  
4           C wishes to have meaningful contact with the mother that he would also facilitate  
5           that.

6  
7     150.   After I informed the parties of my decision in August, I invited them to make any  
8           submissions that they may have on contact. They have since submitted written  
9           submissions which I have carefully considered. I do not accept the mother's  
10          submission that S should not travel to Bend for 12 months to stay with her father  
11          and siblings. I am satisfied that S is bonded to her father and that it would be not  
12          be in her best interests for her to be excluded in the manner suggested by the  
13          mother.



14  
15   151.   It is difficult to set precise dates. In relation to C she should be encouraged to  
16          have contact. The order should reflect C should have reasonable contact with the  
17          mother, if and when she is ready for that to happen. Unless the parties can agree,  
18          the following schedule for all four children is ordered:

19          (i)   The Christmas school holidays are to be divided equally into two parts.  
20                The parents will alternate the first and second parts of the holiday and this  
21                should enable them to alternate Christmas day. The mother may travel to  
22                the Philippines with the consent of the father with the children during her

1 half of the holiday, but not impinge on the siblings' time together at the  
2 father's property. Regrettably the mother seeks to prioritise the children  
3 seeing their maternal grandmother over their father and half siblings and  
4 this is not in the children's best interest, especially at this transitional time.  
5

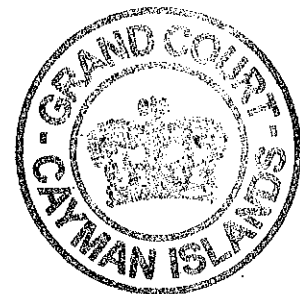
6 (ii) The summer school holidays should be divided equally. The parents  
7 should decide how to divide that time, but if no agreement about the mode  
8 of division is reached then it should be split into two alternating halves.  
9 The mother may travel to the Philippines with the consent of the father  
10 with the children during her half of the holiday, but not impinge on the  
11 siblings' time together at the father's property.

12 (iii) Due to S and N's young age they are able for the next two years to leave  
13 school for 5 days during Thanksgiving. The parties should either alternate  
14 Thanksgiving or if the holiday is of sufficient length divide it equally.  
15

16 (iv) During spring break, L (and hopefully C) should spend two weeks in  
17 Cayman.  
18

19 (v) During the Easter school holidays, S and N should spend 2 weeks in Bend.  
20

21 (vi) The parents will have to make the necessary practical arrangements for the  
22 flights and who will be accompanying the children.  
23  
24



1 (vii) There should be regular Skype contact between the siblings, and the other  
2 parent.

3

4 152. Both parties should be aware that if a party obstructs contact an application may  
5 be made to Court. Then all options would then be open to the Court, including  
6 reviewing the residence orders, to ensure that contact takes place.

7

8 153. When I make the order I repeat from the concluding paragraph of *B v B* the words  
9 of Theis L.J. from the concluding paragraph of her decision in *C v C*  
10 (*International Relocation: Shared Care Arrangement*) [2011] 2 FLR 701 at  
11 723:

12 *“There are no winners and losers in this situation, all the court has*  
13 *endeavoured to do is reach conclusions on the evidence that are in*  
14 *the best interests of the children. Both these parents have to take*  
15 *responsibility to protect the children from their ongoing*  
16 *communication difficulties and take steps to improve their method*  
17 *of communicating with each other, which can only benefit the*  
18 *children.”*

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20 Dated this 7<sup>th</sup> day of October 2014

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

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

