

- 1 3. The Petitioner and the Respondent shall have the child on an alternating
2 schedule for Christmas and Easter. The Petitioner shall have the Child for
3 Christmas 2015, the Respondent shall have the child for Christmas 2016,
4 the Petitioner shall have the child for Easter 2016, the Respondent shall
5 have the child for Easter 2017 and so on. The summer holidays shall be
6 split equally between the Petitioner and the Respondent.
- 7 4. Additional visits are to be agreed upon and arranged between the parties
8 as the need for them arises.
- 9 5. The Petitioner agrees to pay for the Child's airfare when she is travelling
10 to spend agreed holidays with him and the Respondent agrees to do the
11 same.
- 12 6. The Petitioner agrees to pay for half of any other airfare for the Child only
13 where such travel and payment is expressly agreed in advance between
14 the parties.
- 15 7. The Petitioner shall pay directly to the Respondent the sum of CI \$500.00
16 per month as child maintenance until such time as either party applies to
17 vary this sum or the Court vacates this order.
- 18 8. All educational and uninsured medical, dental and optical expenses shall
19 be shared equally between the parties.
- 20 9. The cost of any extra-curricular activities shall only be shared if expressly
21 agreed between the two parties."

22 The Petitioner/Applicant is unhappy with the current state of affairs. On the date of
23 the hearing of the application the child was staying with him for a portion of the
24 summer holidays; albeit under contentious circumstances. He brought an
25 application by summons dated 21st July 2016 seeking the following orders:

- 26 "1. That the Consent Order dated August 2015 be varied as follows:-
- (a) That a sole residence order be granted in his favour in respect of the minor child TEEANN JOSEPHINE COWAN (D.O.B. 2nd April, 2007).
 - (b) That the child shall return to live in the Cayman Islands, and shall not return to Nassau to live.



- 1 (c) That during the school term, the Respondent mother shall have
2 liberal contact with the child, and during public and school holidays,
3 the parties shall agree on a schedule of contact between the
4 Respondent and the child.
5 (d) That the minor child shall be enrolled in and shall attend school
6 within the Cayman islands as of September 2016.
7 (e) That the Respondent mother shall pay to the Petitioner father, the
8 sum of CI \$500 per month, being as to maintenance for the minor
9 child, until she is 18 years old, or if pursuing tertiary education, up to
10 the age of 21, whichever is earlier.
11 (f) In the alternative, a joint residence order in favour of both parties,
12 with the minor child residing with the Petitioner father during the
13 school week.

14 2. Any further or other order as this Honourable Court deems just.”

15 In his supporting affidavits, the Petitioner outlined the basis of his application. In
16 essence, he felt excluded from major decisions concerning his child, who lives in
17 the Bahamas with her maternal grandmother. He also complained that the
18 Respondent was not reverting to him about events in the child’s life nor sticking to
19 the agreed terms of the Consent Order in relation to his access to the child.

20 The Petitioner submitted that he now lives in stable accommodation and works a
21 reasonable shift as a police officer, allowing him to spend time with the child. He
22 has already enrolled her in school for the coming school term and has purchased
23 the relevant uniforms and equipment.

24 The application is opposed by the Respondent. The Respondent expressed the
25 view that this Court had no jurisdiction in relation to the child who is a Bahamian
26 national. That assertion is completely inaccurate.

27 The Respondent submitted that it would be disruptive for the child to suddenly
28 change the routine to which she has become accustomed. The child has been
29 enrolled in the Bahamian school system for several years and is scheduled to
30 return to school on August 29, 2016. Additionally, the child swims for the
31 Bahamian national team.

32 The Respondent also challenged the assertion that the Petitioner would be
33 spending a lot of time with the child and submitted that he would leave the child
with family friends. She also argued that as they were both police officers, they
were both aware that their schedules was subject to change at any time.



1 The Petitioner and the Respondent presented their evidence by way of affidavits,
2 however they each gave different versions of events and neither were subject to
3 cross-examination. An example of a discrepancy, involves an apparent domestic
4 dispute which took place between the parties in April 2016 and which involved
5 police investigation.

6 Counsel for the Petitioner submitted that discrepancies concerning some events
7 were not particularly relevant to the big picture. However, this Court considers that
8 discrepancies in minor details can be indicators of the veracity of the affiant.

9 Here the Court has difficulty in making findings of facts on disputed issues.
10 Further, there is no evidence adduced from any disinterested third party who will
11 assist.

12 It is possible however to extract a few salient facts despite the explanations
13 proffered for their existence.

14 The arrangements put in place by the Respondent and/or her mother for the
15 Petitioner to speak to the child by telephone or social media is a period of 15
16 minutes between 7:45 PM to 8:00 PM. While the child speaks to the Petitioner,
17 her grandmother has to be present.

18 The arrangement put in place by the Respondent for the child to see the Petitioner
19 during the summer holidays was for a period of less than three weeks.

20 Both sides are entitled to rely on the terms of the Consent Order. The terms of the
21 order require discussion and consensus between the parties to the former
22 marriage. Clearly this has not taken place.

23 The term "joint custody" means that major decisions in relation to the child must
24 be done by consensus between the parties to the former marriage. Each party
25 was also granted "unrestricted access" to the child. This does not translate to a 15
26 minute conversation supervised by the child's grandmother.

27 The requirement that the summer holidays be "split equally" means that if the
28 holidays last for eight weeks, the child shall spend four of those weeks with one
29 parent and the other four with the remaining parent. Clearly, it was wrong for the
30 Respondent to unilaterally decide to cut down on the time that the Petitioner
31 spends with the child (whatever the seeming good reason).



1 This brings us back to the content of the affidavits filed herein.

2 It is inappropriate for the Respondent or her mother to dictate terms to the
3 Petitioner. At the same time, it is inappropriate for the Petitioner to communicate
4 with the Respondent or her mother in terms which are either dismissive or
5 dictatorial. The affidavits and the exhibits presented to the Court do not display
6 either party at their best.

7 The affidavits of the Petitioner reverberate with anger, sarcasm and the sense that
8 some wrong has been done to him. The Respondent's affidavit tends to be rather
9 defensive and full of explanations. Neither party has impressed the court as
10 having behaved in a mature fashion.

11 In his first affidavit, the only complaints raised by the Petitioner against the
12 Respondent's mother had to do with her usurpation of his parental responsibilities.
13 These are valid complaints. However, it was not until his second affidavit that the
14 Petitioner raised the issue of the child's "fear" and dislike of her grandmother.

15 It was inappropriate for the Petitioner to encourage the child to keep secrets from
16 or disobey her grandmother. Not for the fanciful suggestion raised by the
17 Respondent that this would render her liable to becoming a victim of sexual abuse
18 but rather because it creates a situation whereby a child will distrust an adult who
19 is taking care of her and at the same time it encourages a child to play one adult
20 against the other. Communication between the adults about any perceived
21 problem is the best remedy.

22 The Court is tasked with deciding whether the child of the marriage should return
23 to the Bahamas to live with her maternal grandmother as she has been doing
24 since 2011 or remain in the Cayman Islands living with the Petitioner with access
25 to the Respondent.

26 The Court's paramount consideration is the welfare of the child. Unfortunately, the
27 Court is not aided by any Welfare Reports from a neutral third-party to assist in
28 determining the best interests of the child.

29 I am not satisfied based on the quality of the evidence presented that the child
30 would either suffer harm or be at risk of suffering harm if she continued to live with
31 her grandmother in the Bahamas. Further, I am not satisfied that a reliable picture
32 of the child's wishes and feelings has been presented to the Court.

33 There can be no dispute that a child is better off having access to both parents. If
34 these parents however refuse to speak directly to each other, nothing will ever be
35 resolved in relation to the child. I am not satisfied that at this stage of proceedings
36 the parties herein will immediately act with the requisite maturity.

37



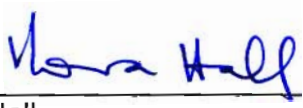
1 Nothing that has been presented convinces me that removing the child at this time
2 from: her place of residence for the last five years; the educational system that
3 she has participated in over that period and her exposure to participation in the
4 Bahamian national swim team will be in her best interests.

5 I have indicated my dissatisfaction with both parties but I am hereby stressing the
6 fact that if the Respondent refuses to act in accordance with the terms of the
7 Consent Order, she will in fact be in contempt of court. I do not expect
8 disobedience of the law from police officers. As Counsel for the Petitioner
9 submitted, both parents must communicate in order to properly meet the needs of
10 the child.

11 While I do not grant the order which was sought by the Petitioner, I do make the
12 following orders:

- 13 1. The child must remain under the care and control of the Petitioner until
14 August 26, 2016 when she is to return to the Bahamas to take up
15 residence with her grandmother and return to school;
- 16 2. The Consent Order of August 26, 2015 is varied to the extent that the
17 Petitioner shall have the child for Christmas 2016. Thereafter as
18 previously ordered, the Respondent shall have the child for Easter 2017
19 and the child shall thereafter alternate holidays as provided for in the said
20 order;
- 21 3. The Respondent is to ensure that the child, while in the Bahamas, when
22 communicating directly with the Petitioner, shall do so for a minimum of 30
23 minutes per day and this communication is not to be supervised by any
24 adult relative;
- 25 4. All of the other conditions of the order dated 26 August 2015 remain in
26 place.

27
28 Dated the 23rd day of August 2016.

29
30
31 
32 _____
33 Nova Hall
34 Judge of the Grand Court (Acting).

