

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

3 **CAUSE NO. FAM 177 OF 2013**

4
5 **BETWEEN:**

6 **CMS**

7 **Petitioner**

8 **AND**

9 **RGS**

10 **Respondent**

11
12 **Appearances:**

Ms. Vanessa Allard of Brooks & Brooks for the Petitioner
Respondent appears in person

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14
15 **Before:**

Hon. Justice Richard Williams

16
17 **Heard:**

17 November 2014, 16 January 2015, 8 & 9 June 2015

18
19 **Wife's written submissions:**

2 July 2015

20
21 **Husband's written submissions:**

7 July 2015

22
23 **Circulation of draft judgment:**

4 August 2015

24
25 **Date of judgment:**

10 August 2015



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27
28 **HEADNOTE**

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30 *Matrimonial Cause Law (2005 Edition) – contested divorce petition by the Wife alleging*
31 *unreasonable behaviour by the Husband (Section 10(1) (b)) – legal principles to be*
32 *applied – civil standard of proof – allegation of unreasonable behaviour upheld.*
33

34
35 **JUDGMENT**

36 **Application and Background**

37 1. This contested petition hearing concerns the Petitioner wife, CMS, and the
38 Respondent husband, RGS. I hope that the parties do not feel me discourteous, but
39 for convenience I will refer to them as the wife and the husband in this judgment.

1 2. Although the background has already been set out in some detail in my judgments
2 of 9 September 2014 and 15 April 2015, I feel it necessary to repeat the same
3 herein to enable the contested petition issues to be put into context.

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5 3. Unlike the wife, who is represented by Ms. Allard, the husband appears in person.
6 I am acutely conscious of this fact when reviewing his approach to the procedure
7 in this matter and when ensuring he has a fair hearing. I am satisfied that the
8 husband has taken the ample opportunity afforded to him to present his evidence,
9 to make full submissions and to cross-examine the wife, as evidenced by his
10 voluminous affidavits, his written submissions and the nature and degree of his
11 cross-examination in this overly drawn out hearing.

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13 4. Both parties are nationals of the United States of America. The husband also
14 holds nationality in Canada. There is one child of the marriage, P, a boy born on
15 16 March 2012. I shall refer to the child as P in this judgment.

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17 5. The wife has been in secure employment with the Cayman Islands Government
18 for quite some time. The husband was made unemployed for a while, it being
19 agreed that he would stay at home to care for P. The wife, unlike the husband,
20 contends that this arrangement was to be a temporary one as the husband would
21 be actively seeking employment. The husband now works for a media services
22 company.



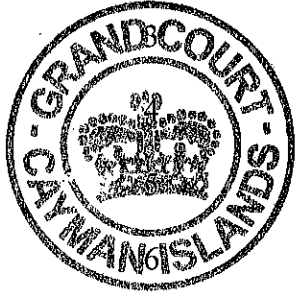
1 6. The parties met in the Cayman Islands, where by July 2013 they had both been
2 residing for approximately seven years. They were married in the Cayman Islands
3 on 26 March 2010 and until around July 2013 they lived together in the
4 matrimonial home in George Town, Grand Cayman.

5
6 7. On 26 August 2013 the wife filed her Petition for Dissolution of the Marriage on
7 the ground of husband's unreasonable behavior under section 10(1)(b) of the
8 Matrimonial Causes Law (2005 Revision) ("the Law"). In her Petition details are
9 set out, but not the evidence by which the grounds are to be proved. Quite rightly,
10 trivialities with regard to unreasonable behaviour have not been alleged.¹

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12 8. On 25 September 2013 Samson & McGrath came on the record as the attorneys
13 for the husband. On the same date, the husband filed his Acknowledgement of
14 Service, indicating that the Petition was defended. On 30 September 2013 the
15 husband's attorneys filed his Answer to the Petition by which he denies that the
16 marriage has broken down irretrievably and that he has behaved in the manner
17 alleged by the wife in her Petition. At paragraph 5 of his Answer he contends that
18 there was a prospect of reconciliation between the parties if the wife sought
19 treatment for "*the psychiatric disorders*" and if there was a resumption of family
20 counselling. In his oral evidence the husband states that the wife is "*lying every*
21 *time she says to a notary that she no longer loves me and that she wants me out of*
22 *the marriage. When she gives oral evidence on oath that she wants to be out of*
23 *the marriage and wants nothing to do with me, then she is lying.*"

¹ Denning L.J. Thompson v Thompson [1957] P 19.





1 9. On the second day of this contested petition hearing, the husband restated his
2 view that the marriage had not irretrievably broken down when, at the outset of
his examination in chief, he said that the marriage could be “*saved.*” At paragraph
26 of his affidavit filed on 10 April 2015 the husband again stated that, if both
parties made a commitment, the marriage was “*salvageable.*” These are all views
reiterated by him on the third page of his written submissions dated 7 July 2015
7 wherein he states that “*I love my wife and I believe deep down my wife still loves*
8 *me. We were described by most people from neighbors to friends to family*
9 *members, as the perfect couple. We never argued, we rarely had disagreements,*
10 *and we enjoyed a very happy marriage. We had issues that arose like any*
11 *marriage would, however our issues were compounded by the effects of post-natal*
12 *depression and the mismanagement of medication. These problems subsequently*
13 *made worse by an unethical counsellor and the introduction of Brooks and*
14 *Brooks...”*

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16 10. The parties have been unable to agree a sensible way forward in relation to the
17 Petition. In his closing submissions, despite his above comments and his oft
18 expressed view that he wished to remain married, the husband indicated that he
19 had been willing for the Court to grant a divorce, subject to some amendments in
20 the Petition. The wife’s position is that amendments were proposed and that
21 unreasonably these were deemed not acceptable by the husband. This judgment
22 contains my decision and reasons following the four day contested petition

1 hearing. Upon the husband's application, the parties have been provided with the
2 typed extract of the Judge's notebook from each day of the hearing.

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4 11. Proceedings relating to the marital breakdown and P have been before the Court
on a number of occasions following the issuing of the Petition. The wife by an ex-
parte application filed on 26 August 2013 sought orders as a consequence of the
wrongful retention of P by the husband in the United States from 28 July 2013. As
the wife relies upon this course of conduct of the husband as an important
9 particular of his behavior in her Petition, although detailed in my earlier
10 judgment, I feel it necessary to again set out the relevant events herein.

11

12 12. The parties had agreed that the husband could temporarily remove P from the
13 jurisdiction between 15 and 28 July 2013. That agreement is irrefutably evidenced
14 by a written travel authorisation signed and witnessed before a notary public on
15 12 July 2013.

16

17 13. The wife contends that the events leading up to the agreement followed an alleged
18 assault on her by the husband in June 2013. This was reported to the police who
19 referred the husband for a psychiatric evaluation. I have not seen a copy of that
20 evaluation. Having regard to the manner in which the husband has conducted
21 himself in relation these proceedings in and out of the courtroom and the nature of
22 some of the evidence about his interaction with the wife, that evidence may have

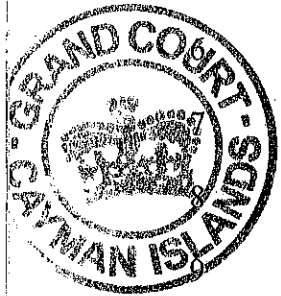


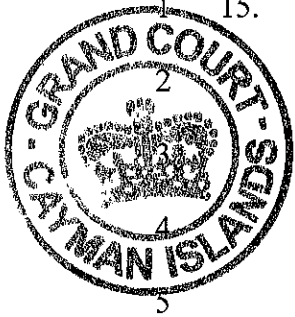
1 been helpful to enable the Court to gain a balanced and more informed view about
2 his mental health and the reasons for his actions.

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4 14. The husband has since been charged in relation to the alleged assault and he
5 contends this was due to "*fraudulent statements given by the petitioner and two*
 false police reports." Incorrectly the husband contends in his written submissions
 that the family case is inherently linked to the criminal proceedings which he
 states compromises his immigration status. He wrongly states that the reason why
 the wife went to see an attorney was "*not for the divorce, but to keep her out of*
10 *jail because she lied to the police.*" Neither party has given detailed evidence
11 about the alleged assault. Therefore, my task is not to pre-determine the outcome
12 of the criminal case currently before the Summary Court or to comment upon
13 what weight that Court may place on the wife's assertion in her police statement
14 in June 2013 that she was not suffering postnatal depression, although I note that
15 she was only first diagnosed with this in the August 2013 psychiatric report. The
16 husband demands that there be "*a judicial review of*" his "*entire case be*
17 *completed.*" The wife contends that the husband was very controlling and
18 overbearing when it comes to the raising of P, restricting the time she had with
19 him. The wife states that she became depressed and anxious due to her feeling
20 marginalised as P's mother. The wife had ongoing concerns about the husband's
21 alleged use of marijuana and alcohol.

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1 15. On the other hand, the husband has continuing concerns about the state of wife's
2 mental health, her intake of alcohol and about her ability to care for P. The
3 husband alleged that the wife had assaulted him on more than one occasion and
4 thereby put P at risk.
5

6 16. It is evident that the parties were having significant difficulties with their marriage
7 and with how they related in relation to the upbringing of P and, as a
8 consequence, they attended counselling. The wife states that counselling was not
9 successful due to the husband seeking to control the sessions and threaten the
10 counsellor, with the consequence that the counselling came to an end in June
11 2013. From what the husband has told the Court about the sessions, his views
12 about the unprofessionalism of the counsellors and how he was angered when he
13 felt his views were not being prioritised by the counsellors to the degree he felt
14 they should be, I am satisfied with the wife is right about the reasons for the
15 counselling breaking down.
16

17 17. The wife states that around July 2013 she had suggested that the husband take P
18 for a short family vacation to Little Cayman, the trip having already been paid for.
19 The wife felt that this would reduce the stress in the household and it would
20 afford her the opportunity to meet with an attorney to seek legal advice about a
21 divorce and child issues without the husband knowing. Her evidence, which is not
22 refuted, is that the husband carefully monitored her movements and actions in and
23 outside of the home before their separation. It is clear that by July 2013 the wife

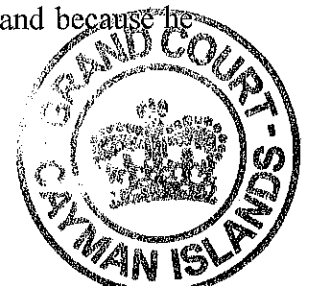
1 had great concerns about the state of the marriage and in particular the nature of
2 the parties' relationship and the detrimental effect that was having on P as well as
3 on her health and well-being. Following the husband's suggestion that he go and
4 stay with his parents in Florida, it was agreed that he would travel there with P for
5 the specified dates rather than taking a trip to Little Cayman². The husband failed
6 to return with P to the Cayman Islands by 28 July 2013.

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8 18. On 24 July 2013 the husband wrote to the wife concerning P remaining in Florida
9 past the approaching agreed return date, by expressing a concern that he had
10 "*limited rights*" in Cayman because of his "*inability to work*" and that he felt
11 "*very vulnerable*" because of "*threats*" which he said had been made by her to
12 have him "*thrown off*" the Island. Following receipt of that email the wife wrote
13 back to the husband stating:

14 *"If you and P do not plan to return on Sunday as agreed, I will*
15 *seek my legal rights as a parent to have him returned to Cayman."*
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17 19. Only two days later, on 26 July 2013, the husband filed an Emergency Verified
18 Petition for a Temporary Injunction to Prevent Removal of Minor Child in the
19 Circuit of the Eighteenth Judicial Circuit, in and for the Seminole County,
20 Florida, United States. The husband then sought, and still seeks, to justify his
21 wrongful retention of P and the issuing of the application in Florida due to his
22 stated concerns about the wife's contended inability to care for P and because he

² See paragraph 12 above – reference to notarized written agreement.



1 had been informed that she intended to have his immigration status as her
2 dependent revoked.

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4 20. On 31 July 2013 an "*Ex Parte Order on Emergency Verified Motion to Prevent*
5 *Removal of the Minor Child*" was made by Alan A. Dickey, Circuit Judge at
6 Sanford, Seminole County. The Learned Judge ordered:

- 7 (i) that the emergency verified motion to prevent the removal P be granted;
8 (ii) that the wife shall not remove P from the State of Florida, and shall not be
9 allowed to obtain a new passport for P;
10 (iii) that under the laws of the State of Florida, the Court had jurisdiction over
11 the parties and the subject matter;
12 (iv) that the ex-parte order shall remain in full effect, unless changed by
13 another order of the Court; and
14 (v) that the wife be served with a copy of the order and that a hearing, shall be
15 coordinated with the husband's counsel's office.

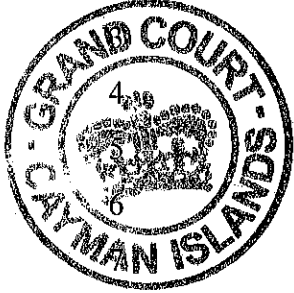
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17 Regrettably, despite the Judge's direction that the order be served on the wife and
18 despite the signed Certificate of Service found on page 2 in the order, that order
19 was not served on the wife. It is also troubling to note that in the notice of related
20 cases filed on 26 July 2013 in the Florida Court and signed by the husband's
21 attorney there appears a certificate of service indicating that on 26 July 2013 it
22 "*has been furnished via US mail*" on the wife. That notice was not received by the
23 wife and in any event the attorney should have ensured that she was personally
24 served.

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1 21. On the same day as the hearing the husband emailed the wife stating:



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"Until I know that a permanently safe, happy and stable home life exists for P and I in Cayman, we will be remaining in Florida. I explained in an earlier email what this entailed. I would like to know that you have started psychiatric treatment before visiting, and are taking the appropriate medication for your depression and the anti-anxiety."

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9 Inexcusably, the husband failed to make any mention in the email that he had
10 instructed an attorney and that he had filed proceedings in a Court in Florida and
11 that a hearing was scheduled for that very day. The husband and his Florida
12 attorneys failed to serve a copy of the pleadings on the wife or, as ordered, ensure
13 that a hearing date was provided for an on notice consideration of his application.
14 Astonishingly, the husband failed to provide the wife with a copy of the Notice of
15 the Petition or the Ex-Parte Order even when he knew that she was actually in
16 Florida seeking the child's return in August 2013. The first the wife knew about it
17 was when she was informed about the same by the Royal Cayman Islands Police,
18 who had been informed about the existence of the order by the husband when he
19 was enquiring about the status of the investigation into the allegations made
20 against him of domestic violence against the wife. The wife's Florida attorneys
21 eventually obtained a copy of the pleadings and the orders from the Florida Court
22 on 28 August 2013. At page 24 of my judgment dated 9 September 2013 I stated:

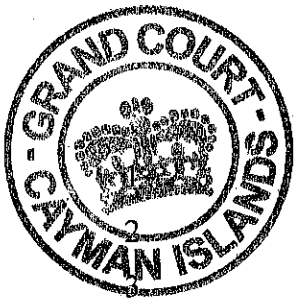
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"This inaction by (the husband) makes it questionable whether the application was in fact a genuine emergency requiring the making of an ex-parte injunction, for the order is not binding until served, or whether it was simply an example of a unilateral and

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controlling measure concerning the child's upbringing taken by him."

4 22. On 1 August 2013 the husband wrote to the wife primarily to seek child support
5 payments from her. He also reiterated his view that, if the wife sought to have
6 contact with P in Florida, it would have to be on his terms, and on condition that
7 she received psychiatric assistance. The wife duly saw a psychiatrist on 14 August
8 2013 and informed the Court that at the time she would do anything reasonable to
9 try to meet the husband's demands in order to get him to return P.

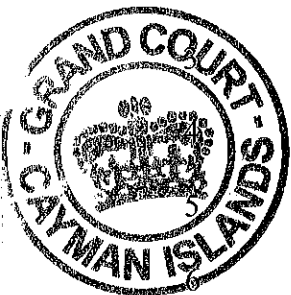
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11 23. On 29 August 2013 the husband emailed the wife indicating that he was aware
12 that she now had legal representation in Florida. In the email he informed the wife
13 that he did not wish them to fight in court as this would lead to a divorce, which
14 he did not want to happen. However, I note that in his Petition to the Florida
15 Court at the ex-parte hearing he had deliberately misled that Court concerning his
16 view about the state of his marriage by saying that he "*anticipates filing an action*
17 *for dissolution of marriage in Seminole County.*" Such an indication is
18 inconsistent with his repeated view to this Court that the marriage has not
19 irretrievably broken down. He did not file any such action in the Florida Court.

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21 24. The wife filed an Amended Ex-Parte Summons dated 4 September 2013, seeking
22 an interim residence order in her favour and an order that the husband return P to
23 the Cayman Islands, the place where he was and remains habitually resident.

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1 25. The wife appropriately contacted the Central Authority for the Cayman Islands
2 under the Hague Convention on the Civil Aspects of International Child
Abduction ("the Convention"). Assistance was sought from the United States
Central Authority for the return of P to the wife in the Cayman Islands. That
application was still being processed by the Central Authority in the United States
when the wife's aforementioned ex-parte application came before this Court.

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8 26. At the conclusion of the ex-parte hearing on 9 September 2013, I delivered a
9 detailed Ex Tempore Ruling. I found that P was habitually resident in the Cayman
10 Islands and further that it was inappropriate for the husband, to permanently
11 remove the child from this jurisdiction without an order of this Court or the
12 consent of the wife, with whom he shared parental responsibility. I ordered that
13 he return P to the care of the wife and that P be forthwith returned to the Cayman
14 Islands. An interim residence order was granted to the wife and a prohibited steps
15 order was made forbidding the husband from removing P from the Cayman
16 Islands without the wife's consent or an order of the Court. I ordered that the
17 husband hand over P's passport to the wife.

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19 27. During this contested petition hearing, the husband has been highly critical of the
20 wife and her attorney's conduct at the 9 September 2013 ex-parte hearing,
21 alleging that they failed to give full and frank disclosure to the Court. He
22 submitted that the Court was not informed about the wife's mental health, her
23 medication as well as the intervention/mediation which had taken place with the



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wife's friend, L, with both of them in Florida. However, the husband fails to acknowledge that his views about the mother's ability to care for the child were considered by this Court at the hearing, as the wife had correctly produced his Petition and supporting affidavit filed in the Florida Court.

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28. It is also highly questionable whether it is appropriate for the husband to criticise the disclosure given by the wife at an ex-parte hearing when it is clear that, even with the benefit of legal representation, he seriously misled the Florida Court at an ex-parte hearing. As noted in paragraph 27 of my Judgment dated 9 September 2013, the husband drafted his Petition and affidavit in an incomplete and misleading manner, thereby giving the Florida Court the impression that P had only been living in the Cayman Islands from 2012 until an undisclosed date in 2013. By doing this he failed to inform the Court that P had only been in Florida for 11 days prior to the filing of the Petition that the parties had been living in this jurisdiction for the previous seven years and that P had been habitually resident in the Cayman Islands since his birth. As set out at paragraph 29 of my Judgment the husband misrepresented to the Florida Court that the status quo was the child residing in Cayman when, in his Petition, he stated the mother had made threats to remove the child "out of Florida" and keep him permanently in the Cayman Islands and would not "bring him back." At paragraph 4a of his Petition the husband stated that the parties were separated, that the wife lived in the Cayman Islands, that P was born during the marriage and lived in Seminole County. He failed to mention to the Florida Court that the parties had been living in the

1 former matrimonial home until 15 July 2013 and that he and P were in Florida
2 pursuant to a notarised written agreement between the parties for the dates 15 July
3 2013 to 28 July 2013. This is important, because if the Florida Judge had been
4 made aware of the true situation, he would not have made the incorrect order that
5 his Court had jurisdiction and declined jurisdiction at that early stage, as Florida
6 was not P's home state.³

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8 29. The husband failed to show the Florida Court the email from the wife dated 24
9 July 2013 in which she stated that if he failed to return P to the jurisdiction on the
10 due date she would "*seek my legal rights as a parent to have him (P) returned to*
11 *Cayman*" and in which she further stated:



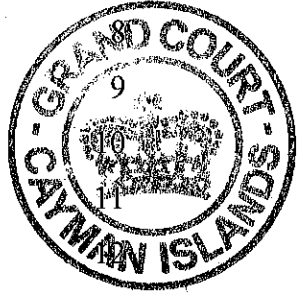
17 *"Based on how I feel our situation is progressing, yes, I have been*
18 *doing my research to know my rights and how I can protect myself*
19 *and P. That has involved contacting attorneys, the U.S Embassy,*
20 *Immigration, FSU, therapists and other mothers, that is what I've*
21 *been doing, if I was truly the problem, would I be doing all this*
22 *work?"*

19 This document would have shown the Judge in Florida that the wife was
20 following the appropriate legal mechanisms for the return of the child and that it
21 was not the 'snatch' scenario he sought to portray. The wife also addressed the
22 husband's immigration status in the email when she stated:

³ Fla. Stat. 61.503(7) provides that home state means the state in which a child lived with a parent or a person acting as a parent for at least six consecutive months immediately before the commencement of a child custody proceeding.

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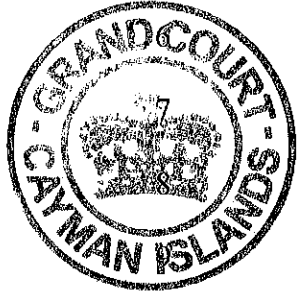
“You are correct, I do have the ability to remove you from my work permit at any time. Bear in mind, if I do this it does not give you the automatic right to take P with you off-island. We also have a legal decision pending our FSU case that will probably be heard in August or September. If you are afraid of your rights in Cayman and what is happening, I suggest you get on board and start truly evaluating what is going on with yourself and start listening to what others have been telling you. I suggest you find work under a work permit if you wish to stay in Cayman. I’m willing to give you 30 days, which could be extended if you moved out of the house and start seeing a psychiatrist for yourself..... I am willing to work with you, but I will not continue to support you, especially as you continue to make excuses why you feel justified in controlling my actions and deny my wishes with P. Let me clarify ... I will not be supporting YOU. I have full intended and abilities to support P, which includes providing him shelter (our house), managing his care, and the household not to mention the full love and support that I wish to give him as his mother.”



With these comments in mind, I note that on 29 July 2013 the wife had emailed to the husband details of a job vacancy in the Department of Tourism. This is not consistent with her seeking to have him removed from the Island but instead to help him seek employment. It is important to note that a spouse must not misrepresent to the Immigration Department the status of her dependent if the parties have separated or are separating.

30. Thereafter, further emails were exchanged between the parties. The husband indicated that he was willing for the mother to visit P in Florida, but on his

1 conditions, one being that she had “*proper psychiatric assistance* “ and that any
2 contact would be supervised. The husband therein stated a willingness to return to
3 the Cayman Islands as long as his parental rights were protected and on the
4 condition that the parties attend counselling. Interestingly, the husband sought to
5 clarify whether he would be prosecuted for the alleged domestic violence
incident. I noted in my 9 September 2014 Judgment whether this potential
criminal charge was a motivation for the husband’s failure to return to the
jurisdiction on the agreed date with P and asked whether the husband was using P
to put pressure on the wife concerning her position in relation to the domestic
violence criminal charges. The husband readily admits that the failure to return to
10 Cayman was partly motivated by his concern about his Immigration Status and to
11 try to get the wife to retain him as a dependent.
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31. The husband requested the wife to sign an agreement containing his imposed conditions before he would instruct his Florida attorneys to apply to discharge the “injunction”. In an email dated 3 September 2015 the wife stated, “*Sorry, but I will not sign L’s agreement as a condition to have P returned to his home. You will not need the “agreement” signed in order to lift the injunction, all you have to do is instruct your attorney. Please be advised that my attorneys have been hired specifically to help have P returned to his home, if you choose not to do so on your own accord. Therefore I am prepared to go to court over your injunction.....*” Importantly, the wife also informed him in the email that she had been informed by her employer, whose contact details she provided to the

1 husband, that he could only be removed as a dependent if the divorce was
2 finalised.

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4 32. The husband, in his oral evidence on 8 June 2015, relied upon the involvement of
5 L when she agreed to try to assist the parties in Florida. He gave evidence of what
6 happened when the three of them were together in Florida. He relied upon notes
taken by L. He gave the impression that during the meetings he was calm and that
L felt the wife to be unreasonable and that she had to chastise the wife for not
keeping her emotions under control. Interestingly, although relying on L's
handwritten notes, he did not wish seek to address the content of her notes
provided by her to the wife on 23 August 2013. These notes were exhibited to the
wife's affidavit dated 5 September 2013 and paint a very different picture to the
one given by the husband of the events and interaction in Florida. Although I
approach both sets of notes with caution, as they are not in affidavit form, I note
that both parties have sought to rely upon the contents of the notes which do give
some third party insight into the reasons for the state of this marriage and the
unhealthy and damaging nature of the parties' relationship.

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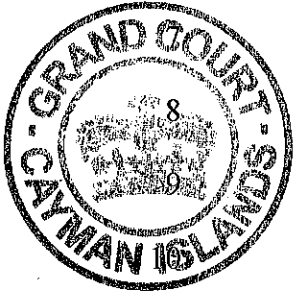
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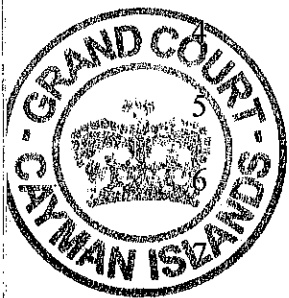
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19 33. L's notes record that she spoke with the husband on 17 August 2013 and that he
20 strived to convince her of the advantages of home parenting over daycare and
21 persuade to her to agree that he should stay at home and not get a job. He tried to
22 convince her that the wife "*she was seeing*" was not the wife that he saw. He told
23 her about a piece of plastic that looked like it had come off a DVD case which he

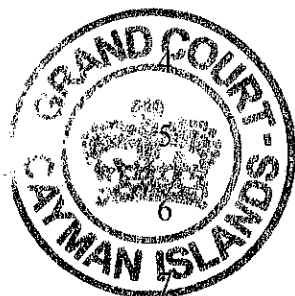




1 said he had found when he was cleaning and that when he had drawn it to the
2 wife's attention she did not seem concerned about it. The notes record that he
3 also told her that he found a second piece of plastic on the couch and a piece of
DVD plastic wrapper in P's crib. These are all events which he has informed the
Court about at great length and which he relies upon to support his contention that
the wife is unable to care for P. Lori's notes record that when the husband was
talking to her about this "*he was getting more and more excited.*" The notes
record Lori asking him if he was accusing the mother of intentionally placing
8 those objects and intentionally trying to kill P to which he replied "*how else*
9 *would they have got there and why wouldn't she be more careful... I wanted to*
10 *show concern.*"
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13 34. L's notes record that the husband moved on to talk about an occasion where he
14 said the wife had attacked him and that she was depressed and was on Prozac. In
15 her notes L states that he "*went on this rant*" about her not seeing a psychiatrist
16 and about her not seeing one on her insurance so she had to pay.

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18 35. L's notes reflect him saying that she was having an affair because "*she only wears*
19 *thongs M-Thursdays*" and that he "*keeps track of her laundry and records when*
20 *she wears what.*" The notes reflect that L said that she did not want to talk about
21 that anymore and she went into the bathroom, but when she came out he was
22 standing right outside of the door and continued talking to her about his belief that
23 she was having affairs and ignored her request to stop talking about it. The notes



1 record that *“At this point I wasn’t sure what to do because I was essentially*
2 *trapped. I couldn’t leave ...”* The notes reflect that the husband still continued to
3 talk to L about the alleged affairs with two people and then he said he thought she
was having an affair *“with her boss and her counselor T.”* The note reflects that,
when L raised the issue of affairs with the wife later in the day, the wife denied
them. In the notes L said that later on that same day she again met with the
husband who immediately continued to repeat his allegations made earlier in the
8 day about affairs. Interestingly in the notes L said, *“What was strange to me, was*
9 *the amount of “tracking” he does of (the wife). He talks about tracking what*
10 *underwear she wears, who she sent emails to who she sends text messages to. He*
11 *knows whether she had deleted text messages from her phone or not.”*

12
13 36. In his oral evidence on 8 June 2015, the husband made it clear that he believed
14 that the wife was having affairs and sexual relationships with three people at the
15 same time and informed the Court that he reached this conclusion partly because
16 she was wearing high heels and wearing lingerie under her clothes. The husband
17 also said because when they had sex he realised that this was not the first
18 intercourse during the day because he knew how it should feel. He also told the
19 Court that he felt she was having an affair with the counsellor. I note that in the
20 husband’s email dated 26 August, in which he repeats the content of separate
21 notes prepared by L, he required the wife to *“return to the conservative dress for*
22 *work – how to dress before P was born that she can dress “sexier” when we get*
23 *better as a couple.”* In the same notes he also said that she should return home

1 from work at 5:30PM and if she returned late from work she should pay \$15 for
2 every five minutes. This note referred to by the husband is consistent with the
3 wife's evidence about the husband's controlling behaviour concerning her
4 returning home after work, for she said that he used to demand that she got home
5 within 15 minutes of leaving work.

6
7 37. As the husband had clearly convinced himself that the wife was having affairs at
8 work and elsewhere, the notes reflect that he required her to notify him if she
9 went on site visits and that there was no other reason to leave work unless she
10 tells him first. These requirements are further examples of him seeking to control
11 the wife's life.

12
13 38. The husband's unsubstantiated suspicions partly based on his unusual tendency to
14 keenly record the clothing his wife possessed and was wearing and his
15 telephoning her work place do not amount to evidence of her having an affair, let
16 alone multiple affairs at the same time. On the balance of probabilities, I am
17 satisfied that she was not having any affair, and the husband's continual
18 references to the same constituted another means of him attempting to control her
19 movements and exerting improper emotional pressure on her. He exhibited no
20 understanding, at the time and during the hearing, about the effect that these
21 allegations, his demands and intrusive tracking of the wife were all having on his
22 marriage and on his wife's delicate mental health.



1 39. In her notes L indicated that she worked on a PowerPoint slide with her
2 recommendations. L indicated in the notes that she knew that the husband "*would*
3 *never go for anyone else watching P other than him, and I knew that (the wife)*
4 *needed to be able to watch P by herself without (the husband) in the house*
5 *because he would continue to tell her that she is doing everything wrong.*"
6 Throughout this hearing the husband has repeatedly and forcefully criticised the
7 mother's actions and her ability to care for P.

8

9 40. In her notes, L said that she met with the husband on the following day and asked
10 him if he thought he had done anything wrong by taking P. He told her, as he has
11 also told this Court, that he felt his actions were justified. The notes recorded that
12 he told L about an incident when the wife was walking down the stairs with P and
13 he told her to hold the railing to which she responded "*I know how to walk down*
14 *the fucking stairs.*" He told L that he was mad because he felt she was
15 endangering P's life. The notes reflect that L saw no empathy from the husband
16 towards the wife's situation and that the marriage deteriorated due to the
17 husband's ongoing criticism of the wife. The notes record that he again raised the
18 issue of the wife having affairs, but this time he said it was with three, not two,
19 people. L noted that the husband's "*stories just got more and more strange. The*
20 *stories were more about how he was keeping track of her. What shoes she wore*
21 *and everything. It really sounded like (the wife) was living under a microscope.*"

22

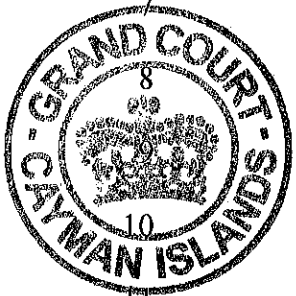


1 41. The notes reflect a meeting that took place on the Monday and detail a heated
2 argument in the parking lot of McDonald's. The husband was yelling at the wife
3 as he wanted her to answer his question and she was crying. The notes reflect that
4 he kept yelling that she should answer the question and he would not give her
5 time to answer. The notes record that he then started yelling at L to make the wife
6 answer the question. L then asked the wife to answer the question and the
7 husband again started yelling immediately not giving the wife any time to answer.

8 L indicated that she then got angry and yelled at both of them. The husband gave
9 the impression to the Court in his evidence that only the wife was chastised by L.

10 L indicated in the notes that she felt sorry that she had yelled at the wife for she
11 felt that *"the environment that she was living"* in was *"an abusive one"*.

12 Although, I again remind myself to be cautious when considering L's notes and
13 what weight to place on them, I note that the husband's therein criticisms of the
14 mother, his allegations about the mother's conduct designed to deliberately or
15 negligently injure P, his view about the wife having affairs and how he searched
16 for evidence to support this suspicion have all been repeated by him in evidence
17 before this Court. The record in the notes about the husband's obsessive
18 demeanour when talking to and trying to persuade L to his way of thinking is
19 similar to that exhibited by him in Court and in his voluminous written
20 communications sent to the Court and his complaints about a significant number
21 of professionals. In addition, I have seen the troubling level of emotional distress
22 shown by the wife in Court, particularly when being questioned by the husband or
23 upon hearing his throwaway side comments and allegations made in Court which



1 are similar to those contained in the notes, the same type of distress recorded by L
2 during the meetings between the parties in her presence.

3

4 42. I now return to the background. The detail in the notes upon which the husband
5 relies is repeated in his email of 26 August 2013. His demands and conditions set
6 out in the notes are too detailed to set out herein, but can be summarised as being
7 controlling. An example of one of the husband's unreasonable conditions was that
8 the wife agree to an order granting him sole custody of P should he be unable to
9 remain in the Cayman Islands. A further example appearing in the notes is as
10 follows:

11

*"There are 6 slots on the weekend. (The husband) wants family
12 time, (the wife) wants alone time with P. (The husband) proposes a
13 dollar incentive with no onus on a timeframe. The financial value
will help (the wife) get to want more family time. - (the wife) is
preventing family time from happening, which (the husband) wants
to happen ASAP - the onus is on (wife) to make changes and
improvements to make family time. - (The husband) proposes \$100
18 per time slot. The wife may get all 6 time frame over the weekend.
19 The husband may not be around if (the wife) not in a good enough
20 mood - If (the husband) feels nervous about (the wife's) behaviour
21 after 1 month, if we not improve, the cost of each timeslot
22 increases to \$200."*

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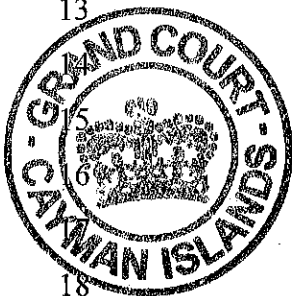
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Although the husband informed this Court and the Florida Court that he intended
this to be a light hearted suggestion, it is understandable that the wife did not view
it that way and does not view his suggestion that she pay him money for contact
with the child to be amusing and in fact found it distressing. The wording used in



1 the note did not make it appear to be lighthearted, but rather one of a number of
2 his controlling conditions. This is all indicative of the husband seeking to control
3 a wrongful child retention situation deliberately manufactured by him and demand
4 pre-conditions, when in fact he was the one who had acted inappropriately by
5 wrongfully retaining P in Florida.

6

7 43. Judge Alan A. Dickey, after he had again afforded a full opportunity to the
8 husband to air his version of events and concerns in court, stated at the 19
9 September 2013 hearing⁴ that the *“undisputed facts show that the child was
10 brought to United States, by agreement of the parties, with a return date of July
11 28th.”* Importantly, the Learned Judge also found that there was *“no emergency”*
12 and that P was *“not in any danger.”* He quite rightly concluded that the Florida
13 Court did not have the jurisdiction to resolve issues of custody and access and that
14 *“the Cayman Islands is⁵ where this case needed to be resolved.”* The Learned
15 Judge found that *“the Cayman Islands is the home state of the child, that no
16 emergency exists that would allow this court⁶ exercise any further jurisdiction.”*
17 He ordered the husband to return P and P’s passport to the wife. The husband
18 complied with the order, and P duly returned with the wife to the jurisdiction on
19 20 September 2013.

20

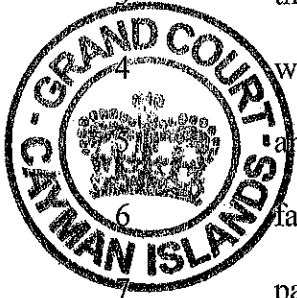
21 44. The husband returned to the Cayman Islands on 22 September 2013. Very shortly
22 thereafter the wife left the former matrimonial home with the child and has since

⁴ Transcript of hearing prepared by Court Reporter Linda Bulmer- certified by her on 1 October 2014.

⁵ Spelling found in the transcript.

⁶ The Florida Court.





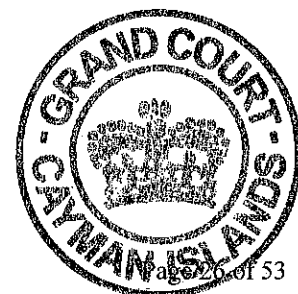
1 resided elsewhere. The wife's refusal to live with the husband, at her great
2 financial detriment as for some time she had been paying for the running of both
3 the matrimonial home and for the rented property she felt compelled to move into
4 with P, is a graphic indicator about how deep the breakdown in the marriage was
5 and remains and how she feels the marriage has irretrievably broken down. The
6 fact that the wife feels unable to live with the husband and cannot maintain
7 payments on both that home and on on her rented property, with the consequence
8 that the matrimonial home has recently gone into foreclosure, also shows how far
9 this marriage has broken down.

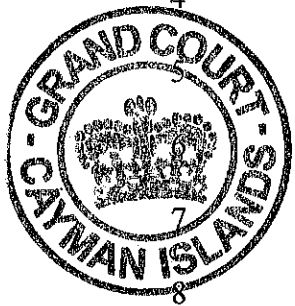
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11 45. To justify his actions and to support his contention that they did not amount to a
12 particular of conduct for the Petition, the husband spent a great deal of time
13 during the Petition hearing in Florida criticising the wife's care of P and giving
14 the impression that only he knew what was best when it came to P's care. He has
15 repeated the same at length before me during this hearing to seek to justify the
16 nature of his interaction with and behaviour towards the wife. These included his
17 above-mentioned discovery of small pieces of plastic in the home on three
18 occasions. It also includes him finding a screw on the property and his concerns
19 about the wife failing to wash her hands properly after handling pesticide in the
20 garden. He criticises her for leaving wet rags on the side of bath and for the
21 chemicals she was using to clean P's bottles. It is clear that he felt only he was
22 able to care properly for the child, especially as he tracked all aspects of the
23 child's care in a logbook. He is right to be observant about these incidents. He is

1 entitled to sensitively raise them with the wife. However, the way he raised them
2 with the wife was deliberately belittling and his inference to L and to this Court
3 that the wife was doing this to deliberately kill P is unfounded and absurd. What
4 he fails to recognise is that raising a child is not an exact science and that all
5 parents do on occasion make errors and parents are entitled to have differing
6 views about how a child should be raised and cared for.

7
8 46. I have carefully considered the husband's concerns about some of the wife's
9 conduct towards him. In particular when he was continually questioning her about
10 the plastic from the DVD case in P's crib and he says she had a psychotic episode
11 and was screaming at him and threw P in the air at him. On the evidence before
12 me I am unable to find on the balance of probabilities whether she did throw P in
13 the air in the reckless manner suggested by the husband. I also have regard to the
14 incident in the vehicle when he said that they were on the way to a birthday party
15 and that she struck him when he was driving with P in the vehicle. I am satisfied
16 that there may have been exchanges in which she struck the husband and he her,
17 however I am also satisfied that this was a result of the husband's continual
18 badgering and criticism of her. Her actions were reactive rather than proactive.
19 This does not make her actions acceptable, but for someone who the husband
20 accepts was having difficulty coping at the time, it is understandable when he was
21 piling on emotional pressure by his frequent criticism, lack of support and
22 continual undermining of her already low self-esteem.





1 47. Despite these and other concerns aired by the husband, Ms. Webb, the Court
2 Welfare Officer in her report dated 24 February 2014, felt that both parents
3 provided P with a loving environment and that P had adapted well to living with
4 his mother and visiting with his father. Ms. Webb highlighted that the parents had
different views on parenting and clearly she was aware of the difficulties in the
parents' relationship. Ms. Webb had no substantial concerns about the wife being
able to care for P and recommended a residence order to the wife with structured
contact between P and the husband. She also recommended counselling to assist
the parties to communicate in "*an amicable and constructive manner.*"

11 48. I return to the background. On 24 September 2013 the wife filed a Summons
12 seeking orders that she and P be able to return to the former matrimonial home to
13 the exclusion of the husband. She also sought an order for supervised contact
14 between the husband and P.

16 49. On 4 November 2013 the above-mentioned Court Welfare Officer's Report was
17 ordered. The Court accepted without prejudice cross non-molestation
18 undertakings offered by both parties. The Court extended the Prohibited Steps
19 Order and the Interim Residence Order. The application for an exclusion order in
20 relation to the former matrimonial home was adjourned generally with liberty to
21 restore. The Court made orders for defined unsupervised contact between P and
22 the husband. Directions were given to a final Children Law hearing to be listed
23 for the first open date after 1 March 2014. By the wife's Amended Summons

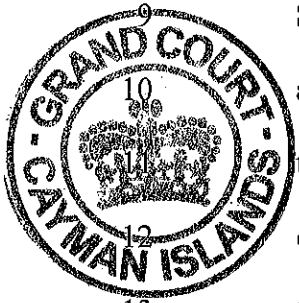
1 dated 10 December 2013, in which she sought a final residence order, the hearing
2 date of the children matters was fixed for 20 March 2014.

3

4 50. In the interim, on 17 January 2014, Beswick J. had ordered the wife to pay \$300
5 per month towards the utilities on the former matrimonial home and the balance
6 of \$321.65 on the water account.

7

8 51. The case came before Quin J. on 20 March 2014. At that hearing, by consent, a
9 Shared Residence Order in relation to P was made. The order provided for an
10 agreed two weekly shared care cycle, which in effect meant P was spending equal
11 time with each parent. The Prohibited Steps Order remained in place. Quin J. gave
12 directions to an ancillary relief hearing on the first available date. By the wife's
13 Summons dated 24 March 2014 that date was fixed for 19 August 2014.



14

15 52. On 13 August 2014 the Notice of Acting in Person was filed on behalf of the
16 husband. Samson & McGrath came off the record because the husband's
17 applications for legal aid had been unsuccessful. On the same date, the husband
18 filed his detailed Affidavit of Means sworn on 12 August 2014 and it was evident
19 that the husband's written submissions for the final hearing of ancillaries on 18
20 August 2014 had been prepared by Samson & McGrath.

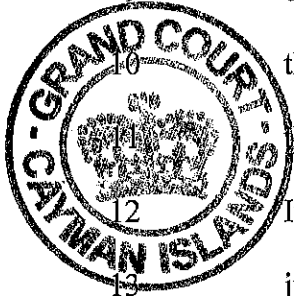
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22 53. When the matter came before Hall J. on 19 August 2014, she gave directions in
23 relation to further disclosure. The Learned Judge reiterated that the Prohibited

1 Steps Order remained in place. Hall J. required the parties to seek a listing for a
2 two-day hearing for the ancillaries. In her order Hall J, also provided that the
3 hearing of the contested petition would be fixed for one day on 17 November
4 2014. On 6 November 2014 a Notice of Hearing was issued by the Listing Office
5 indicating that the final ancillaries hearing would be on 15 January 2015.
6

7 54. The contested petition hearing commenced on 17 November 2014. The husband
8 attended in person, as his further applications for legal aid coverage post the
9 children proceedings had been unsuccessful. The Chief Justice considered all of
10 the applications. On the 7 May 2014 his application was refused on the ground
11 that the husband should be able to explain his interest in the matrimonial property.
12 It was refused on 15 August 2014 on the basis that the circumstances did not
13 justify the expenditure of public funds in relation to a contested divorce. It was
14 again refused on 14 October 2014 on the same basis as before and secondly on the
15 means test. In the husband's written 'Response for Petition' document filed at
16 2:13 PM on Friday, 14 November 2014, he intimated that he would be applying
17 for an adjournment at start of the 17 November 2014 hearing, to enable him to
18 raise sufficient funds to pay for an attorney. Upon reflection, at the outset of the
19 hearing, the husband decided not to seek an adjournment and indicated that he
20 was willing to proceed with the hearing.
21

22 55. At the close of the first day, the contested petition hearing was adjourned part-
23 heard. It next came before the Court on 16 January 2015 and by the end of that



1 day the hearing was again adjourned part-heard to the next available date. On 6
2 March 2015 the Court considered the wife's Summons filed on 21 November
3 2014 and made orders in relation to disclosure in the ancillary relief proceedings.
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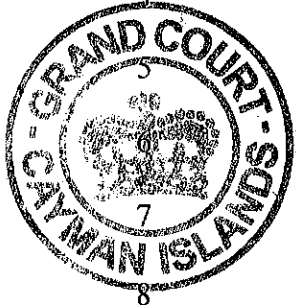
5 56. On 14 April 2015, the parties again appeared before me. The Court was required
6 to rule on a number of issues which had arisen during the 14 April hearing, and
7 my ruling was delayed as it could only be delivered on 15 April due to a power
8 outage on the previous day. I made orders for the wife to remove certain materials
9 relating to these proceedings from social media and placed on an online website. I
10 also made Prohibited Steps Orders preventing either parent from removing P from
11 the jurisdiction.
12

13 57. At the hearing the husband had pursued his application set out in an Amended
14 Summons filed on 10 April 2015 for what amounted to leave to amend his
15 Answer which had been filed 18 months previously on 30 September 2013. He
16 sought to include, for the first time, a Cross-Petition. This was a surprising
17 application, not only because of the delay in him bringing it, but because the
18 husband has consistently contended that the marriage has not irretrievably broken
19 down and is "*salvageable*." The application was not brought in the proper
20 procedural manner and accordingly leave was refused.⁷
21



⁷ See paragraphs 41 & 42 of the judgement dated 15 April 2015.

1 58. At that hearing the husband had also pursued his application set out at paragraph 9
2 of his Amended Summons, namely for an adjournment/stay of the part-heard
3 contested petition hearing for 12 months to enable him to obtain legal
4 representation. In my judgment I noted that this was a similar application to the
5 one that he had raised but not pursued on the first day of this contested hearing.
6 For the reasons set out at paragraph 44 to 46 of the April 2015 judgment I did not
7 accede to the husband's application.
8



9 59. Although dates had been offered to the parties for the adjourned contested petition
10 hearing to be restored in May 2014, the matter was not listed until 8 June 2015 at
11 their convenience. The hearing of evidence was concluded on 9 June 2015. The
12 parties were informed that there would be reserved written judgment and they
13 were ordered to provide written submissions by or on 26 June 2015. At the
14 request of the parties the time for the filing of the written submissions was
15 extended on more than one occasion. Eventually, the wife's written submissions
16 were filed on 2 July 2015 and the husband's on 7 July 2015.

17
18 **The Law**

19 60. In the matter before me I have to decide if the wife's Petition brought on the
20 ground of behaviour should be proved against the husband. It appears that there
21 is little or no Cayman Islands case law to assist the Courts with the approach to be
22 taken when determining a contested petition, particularly where the ground
23 alleged is behaviour. With this in mind, I feel it appropriate to set out a more

1 detailed review of helpful precedent from other jurisdictions than I may ordinarily
2 undertake.

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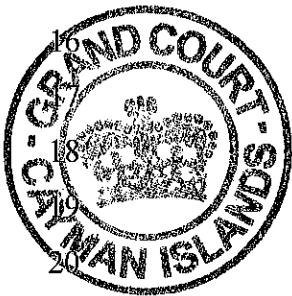
4 61. Section 10(1)(b) of the Law provides that irretrievable breakdown of the marriage
5 may be proved by satisfying the Court that the respondent has behaved in such a
6 way that the petitioner cannot reasonably be expected to live with the respondent.
7 It is the responsibility of this Court to “*inquire so far as it can into the facts of the*
8 *case.*”

9

10 62. Lord Justice Ormrod stated in the case of *Grenfell v Grenfell* [1978] 1 All E.R.
11 561 at 567 that:

12 *“Proof of any one of those five (and Parliament plainly chose each*
13 *of these five facts as being facts which would raise in any*
14 *reasonable mind a presumption that the marriage had broken*
15 *down) Parliament provided that the court shall grant a decree of*
16 *divorce unless it is satisfied all the evidence that the marriage has*
17 *not broken down irretrievably. In other words, on proof of any one*
18 *of the five facts, there is a presumption, rebuttable it is true, of*
19 *irretrievable breakdown and the onus is quite plainly on the party*
20 *who is asserting that the marriage has not irretrievably broken*
21 *down to satisfy the court by evidence that the presumption should*
22 *be treated as rebutted. Whichever side proves a fact under s 1(2)*
23 *proves prima facie that the marriage has irretrievably broken*
24 *down, and the court is not, in my judgement, concerned with*
25 *anything else....”*

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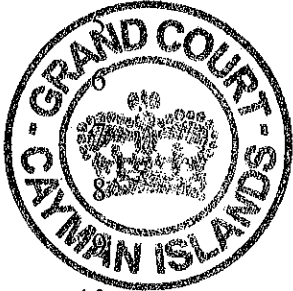
1 63. Lord Reid made it clear in *Gollins v Gollins* [1964] A.C. 644, at page 660 that the
2 Court is “not concerned with the reasonable man as we are in cases of
3 negligence. We are dealing with this man and this woman.” This is consistent
4 with what Mr. Justice Dunn stated in *Livingstone-Stallard v Livingstone-Stallard*
5 [1974] Fam 47 at 54 where he said that the Judge must ask the question “would
6 any right-thinking person come to the conclusion that this husband has behaved
7 in such a way that this wife cannot reasonably be expected to live with him.” Mr.
8 Justice Dunn added that when asking this question the Court consider the effect of
9 the respondent’s behaviour on this petitioner and this involves taking into account
10 not only the nature of the behaviour but of the whole of the circumstances
11 characters, personality disposition of the parties. Therefore I must have regard to
12 each party’s sensitivities and I should have regard to their capacity for endurance
13 and what the other party knew or should have known about that capacity.

14
15 64. I must ask myself whether this husband has behaved in such a way that is
16 unreasonable to expect this wife to live with him. I will need to consider the
17 evidence and make findings of fact as to what the husband, if anything, did. I will
18 then have to make findings as to the impact of such conduct by him on the wife.

19
20 65. In *Katz v Katz* [1972] 1 WLR 955⁸ it was held that it was the effect or reasonably
21 apprehended effect of the respondent’s behaviour that has to be considered,
22 behaviour of such gravity that causes the court to come to the conclusion that the
23 petitioner cannot reasonably be expected to live with the respondent. In *Katz* Sir

⁸ The Court provided the parties with a copy of this case at the outset of the hearing.

1 George Baker P. when considering the similar English section 2(1)(b) of the
2 Divorce Reform Act 1969⁹ summarised at 959H- 960 F the approach the Court
3 should take when he stated that the section:



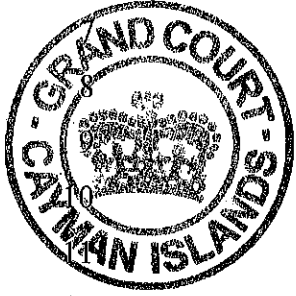
4 *"...requires first that the husband "has behaved." Behaviour is
5 something more than a mere state of affairs or a state of mind,
6 such as for example, a repugnance to sexual intercourse, or a
7 feeling that the wife is not reciprocating his love, or not being as
8 demonstrative as he thinks she should be. Behaviour in this context
9 is action or conduct by the one which affects the other. Such
10 conduct may either take the form of acts or omissions or may be a
11 course of conduct and, in my view, it must have some reference to
12 the marriage.*

13 *"Then the question is what is the standard of the behaviour? The
14 standard is that he must behave "in such a way that the petitioner
15 cannot reasonably be expected to live with [him]." That is the test.
16 It is for the judge not the petitioner alone to decide whether the
17 behaviour is sufficiently grave to fulfil that test, that is, to make it
18 unreasonable to expect the petitioner to endure it, to live with the
19 respondent. Also it is for the judge to say whether the marriage has
20 irretrievably broken down. To that extent I agree with what
21 Bagnall J. said in Ash v. Ash [1972] Fam. 135. The court must
22 consider the effect of the behaviour on the particular petitioner
23 and ask the question is it established, not that she is tired of the
24 respondent, or, colloquially, fed up with him, but that she cannot
25 reasonably be expected to live with him. In a sense it seems to me
26 wrong to call it, as we are apt to do, unreasonable behaviour. It is
27 behaviour that causes the court to come to the conclusion that it is
28*

⁹ Which reads "(1) the court hearing the petition for divorce shall not hold the marriage to have broken down irretrievably unless the petitioner satisfies the court of one or more of the following facts, that is to say -... (b) that the respondent has behaved in such a way that the petitioner cannot reasonably be expected to live with the respondent..."

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of such gravity that the wife cannot reasonably be expected to live with him.
Ormrod J. in Pheasant v. Pheasant [1972] 2 W.L.R. 353 at 357, said: "All these considerations point to only one conclusion, namely, that the test to be applied under paragraph (b) is closely similar to, but not necessarily identical with, that which was formerly used in relation to constructive desertion. I would not wish to see carried over into the new law all the technicalities which accumulated round the idea of constructive desertion but rather to use the broader approach indicated by Pearce J. in Lissack v. Lissack [1951] P. 1 and consider whether it is reasonable to expect this petitioner to put up with the behaviour of this respondent, bearing in mind the characters and the difficulties of each of them, trying to be fair to both of them, and expecting neither heroic virtue nor selfless abnegation from either. It would be consistent with the spirit of the new legislation if this problem were now to be approached more from the point of view of breach of obligation than in terms of the now out-moded idea of the matrimonial offence."



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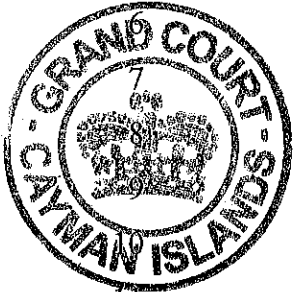
21 66. Although I am in no way bound by decision of the Royal Court of Guernsey, at
22 the outset of this hearing, I provided the parties with a transcript of the helpful
23 decision of Finch L.B. in *A v A* (19/2009). The Lieutenant-Bailiff referred to the
24 principles set out by Brelsford LB in *F v F* (2003-04 GLR Note 29). I
25 respectfully agree with Finch L.B. that Brelsford L.B. splendidly summarises the
26 legal principles, and although I have already mentioned some of them herein, I
27 also see value in now setting them out in full herein as I adopt them:

28

"The legal principles

1 5. The words "reasonably be expected" prima facie suggest an
2 objective test. Nevertheless, in considering what is reasonable the
3 Court (in accordance with its duty to inquire, so far as it
4 reasonably can into the facts alleged) will have regard to the
5 history of the marriage and to the individual spouses before it, and
6 from this point of view will have regard to this petitioner and this
7 respondent in assessing what is reasonable: allowance will be
8 made for the sensitive as well as for the thick skinned; or as it used
9 to be put in cruelty cases the conduct must be judged up to a point
10 by reference to the petitioner's capacity for endurance, and in
11 assessing the reasonableness of the respondent's behaviour the
12 court would consider to what extent the respondent knew or ought
13 reasonably to have known of that capacity. The approach can thus
14 be summed up: -the Court has to decide the single question
15 whether the respondent has so behaved that it is unreasonable to
16 expect the wife to live with him: in order to decide that, it is
17 necessary to make findings of fact as to what the respondent
18 actually did, and findings of fact as to the impact of that conduct
19 on the Petitioner: there, of course a subjective element has been
20 evaluated but at the end of the day the question falls to be
21 determined by an objective test. It has been said that the correct
22 test to be applied is whether a right thinking person looking at the
23 particular husband and wife, would ask whether the one could
24 reasonably be expected to live with the other taking into account
25 all the circumstances of the case and the respective characters and
26 personalities of the two parties concerned. It is the effect or
27 reasonably apprehended effect of the Respondent's behaviour that
28 has to be considered, behaviour of such gravity that causes the
29 Court to come to the conclusion that this petitioner cannot
30 reasonably be expected to live with the respondent.





1 6. Any and all of behaviour whether active or passive may be
2 taken into account: the court will have regard to the whole history
3 of the matrimonial relationship but behaviour is something more
4 than a mere state of affairs or a state of mind. Behaviour in this
5 context is action or conduct by the one which affects the other. It
may be an act or omission or course of conduct: but it must have
some reference to the marriage. While in most cases it is behaviour
after the marriage that is solely to be considered, cases can be
envisaged where after the marriage the respondent behaves
unreasonably in relation to pre-marriage matters: such
unreasonable behaviour may, for example, relate to breaking
promises made before the marriage, or to the disclosure to the
petitioner after the marriage of facts which ought reasonably to
have been disclosed to the petitioner before the marriage. The
behaviour in question may occur when the parties are living
together or when they are separated. Regard will be had to the
cumulative effect of behaviour, for while conduct may consist of a
number of acts each of which is apparently reasonable in itself, the
conduct may well be even more effective if it consists of a long
continued series of minor acts no one of which could be regarded
as serious if taken in isolation, but which, taken together, are such
that the petitioner cannot reasonably be expected to live with the
respondent.

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24 7. It is "behaviour" to which the court must have regard, not
25 "intentional behaviour". Intent may aggravate the effect of the
26 behaviour of which the petition complains, and intent may make
27 behaviour unreasonable that without such intent would not have
28 been unreasonable that without such intent would not have been
29 unreasonable. There may be conduct which it is difficult, *prima*
30 *facie*, to assess as reasonable or unreasonable, and in this
31 category the question of intention may be the decisive factor.



1 Knowledge that the petitioner regards certain conduct as
2 unreasonable may make behaviour by the respondent
3 unreasonable, whereas absence of such knowledge might result in
4 the respondent's conduct not being stigmatised in that way. It is a
5 question of fact in every case and there may be circumstances
6 where the respondent is in a sense completely blameless but
7 nevertheless his behaviour entitles the petitioner to a decree.
8 Negative as well as positive behaviour is capable of forming the
9 basis of a decree of divorce. The court is not in a sense concerned
10 with putting conduct into categories but in investigating the facts
11 of the particular case before it and deciding the reasonableness of
12 the respondent's behaviour...

13 ...if the Petitioner can prove sufficient of her allegations to
14 convince me that the Respondent did act unreasonably towards her
15 in such a way that she could not continue to live with him, then she
16 is entitled to a divorce.

17 Burden of proof

18 8. The burden of proof is on the person alleging that the other
19 spouse has behaved in such a way that he or she cannot
20 reasonably be expected to live with the respondent. It is for the
21 person making the allegation to prove the behaviour by the other
22 party and that he or she cannot reasonably be expected to live with
23 the respondent, and, unless he or she satisfies the court of both
24 these matters, the court will not hold that the marriage has broken
25 down irretrievably. Divorce is a civil matter, and the allegations
26 may be proved by a preponderance of probabilities."
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28 67. In *A v A Finch*, L.B. went on to say that he:

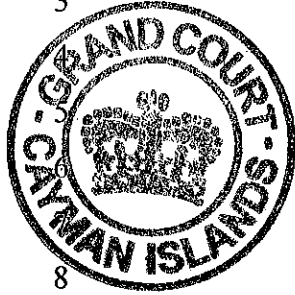
29 "Must first consider whether this marriage has irretrievably
30 broken down. Again I refer to Brelsford LB's helpful judgement in

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F v F (supra), where secrets the words of Simon P in 1970 lecture, including:

“if even one of the parties adamantly refuses to consider living with the other again, the court is in no position to gainsay him or her.”

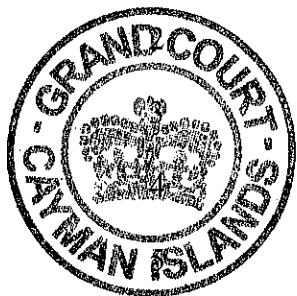
If the petitioner can establish allegation on “unreasonable behavior” there is a presumption the marriage has irretrievably broken down. It is a question ultimately to be decided on the facts found in a particular case.”



The Petition, Answer and the Evidence

68. When I further consider the facts of this case I apply the above legal principles to the facts found.

69. During the course of the hearing a great deal of evidence was presented by the parties. A significant part of the evidence and submissions made are not helpful to me when determining the issues at this contested petition hearing. For example the vociferous and inappropriate attack on the professional integrity of Ms. Allard on pages 5 to 12, 15 and 18-22 of the husband’s closing written submissions. His criticisms appear to stem from the fact that the husband is unable to accept that the evidence in the wife’s affidavits has been freely given by the wife and the pleadings are not, as he suggests, the “*slanderous affidavits*” of Ms. Allard. The husband wrongly characterises Ms. Allard’s conduct of the proceedings on behalf of the wife as being “*debaucherous behavior*” and solely motivated by financial gain as he viewed this not to be the wife’s case but Counsel’s case. The husband in his affidavit sworn on 4 June 2015 and in his similar closing submissions states



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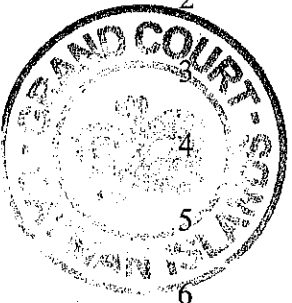
that the wife's *"anger is misplaced, and should be directed at her attorney who appears content to continue to drive a wedge between us, by advising the most contentious course of action to the detriment of family so that she can continue to be paid massive fees."* He says that the marriage can succeed and this can only *"start with the removal of the problem from our lives, Brooks and Brooks."*

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7 70. Interestingly, on the penultimate day of the hearing, he informed the Court that
8 relating to this case he had made complaints against a number of persons. He said
9 he had made complaints against (i) the Director of Planning to the Chief Officer at
10 the Ministry, (ii) Ms. Webb the reporting Welfare Officer with the Director of
11 Children and Family Services ("DCFS") to the Deputy Governor, (iii) two police
12 officers to the Deputy Chief Officer of Home Affairs and to Mr. Gary Benham at
13 the Governor's Office, (iv) the Cayman Islands Central Authority (Hague
14 Convention) to Mr. Benham, and (v) officers who took his police grievance
15 complaint at the Professional Standards Unit to the Chief Officer at the Ministry
16 of Home Affairs. Right at the close of the final day of the hearing the husband
17 indicated that he wished to inform the Court about the identity of two additional
18 persons that he had made complaints against in relation to these proceedings,
19 those being the Director of the DCFS and the Deputy Governor.

20

21 71. In addition, the husband has levied very serious allegations against the counsellor
22 to the Court and, it appears from his evidence, also widely to different members in
23 community. In his evidence that he said he felt he must *"champion the cause, to*



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stop an unethical person.” The husband believes that the counsellor was having an affair with the wife stating in his evidence that this was “...*because of his mannerisms when we in session together- close body contact- I got a handshake and she got a semi-hug with arm around back. Eye contact in the sessions. He would give her a quick glance when I address her – refusal to address any of my concerns about assaults, refuse to report her about driving.*” He also felt the counsellor was having an affair with the wife because of the clothing that she was wearing when she went to see him. It is quite clear, even from his own evidence, that the husband did not like the fact that the counsellor would not accept his version of events or adopt his views as to where fault lay in the marriage and wished to concentrate on issues relevant to counselling and not the husband’s grievances.

72. The husband referred to these professionals in his closing submissions under the heading “*Concerns of conspiracy to violate the human rights of myself and the child.*” The husband demands that there be a “*judicial review*” of all of these individuals and that a failure to do so “*contradicts the court’s position that the welfare of children is the primary area of concern.*”

73. The husband has also criticised the handling of the case by at least three members of the judiciary in his written Response filed on 14 November 2014. He believes that he has faced gender bias at the hands of the Court. This is summarised when he says “*Although Mr. Fee has consistently tried to reassure me it was simply the*

1 *process he too has told me that the reality is, I'm a man, and I don't look or sound*
2 *like a fragile woman, which creates difficulty with receiving the treatment that a*
3 *woman would probably have received. The petitioner simply has to turn on the*
4 *"tears" and she immediately gained points... I find it incredibly difficult to*
5 *believe that if a woman had been put through this nightmare, that they would*
6 *have faced the same scrutiny and judgements that I have faced throughout these*
7 *proceedings."*

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9 74. The nature of the language used by the husband in his evidence and submissions
10 frequently degenerated into him venting. The time and effort expended by him on
11 this unfounded criticism, rather than on the relevant issues raised in the Petition,
12 unfortunately for the husband, illustrates a misguided approach by him to these
13 proceedings and the purpose of this hearing. The husband's continuous stream of
14 criticism about and serious allegations made towards the wife, Ms. Allard, and
15 numerous professionals gives great insight into his personality and the way that he
16 interacts with individuals, including the wife and professionals who disagree with
17 his approach. The husband is of the view that his approach is always the right one
18 and that for any person or professional to hold a different view to the one held by
19 him is wrong and merits formal complaint against them. His way of dealing with an
20 individual who departs from his viewpoint or wishes is to complain vociferously
21 about them. This is how he treated and viewed his wife.

22





1 75. Parts of the evidence, particularly from the husband, focuses on wide ranging
2 grievances and with some issues which may be relevant to the later financial and
3 child applications, but do not assist the Court when determining the issues arising
4 in this contested petition. In a case of this nature, although I accept it is not a
children matter, I am guided by the approach of *Thorpe LJ in Re F (Shared
Residence Order)* [2003] EWCA Civ 592, [2003] 2 FLR 397 when he said “*one
of the functions of the judge is to make findings and that another function is to be
selective and to make findings that are relevant and necessary for the disposal of
the issue.*” Thorpe L.J. stated that a Judge was not required to make findings on
9 every area or issue that has been presented to the Court for determination or
10 which had become apparent during the hearing. Thorpe L.J. concluded that the
11 Judge must determine the factual issues that have implications for the decisions
12 that he has to take in relation to the child.
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15 76. I have concentrated on the factual issues that have a bearing on the contested
16 petition. I have examined the husband’s conduct, the effect on the wife and I carry
17 out an assessment in light of the examination of the evidence available as to the
18 history of the marriage. I should also look for any provocation offered by the
19 wife, acquiescence of the wife for a lengthy period in relation to the husband’s
20 behaviour and at the wife’s behaviour towards the husband. The husband’s state
21 of mind should be considered and in certain circumstances his conduct that may
22 be viewed as trivial will satisfy the ground of behaviour if he continues with it

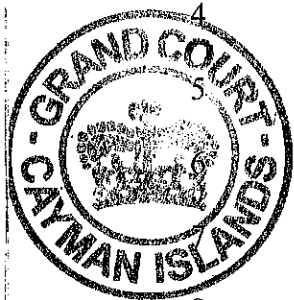


1 knowing what the effect of that is on the wife or in callous disregard of such
2 effect where the sensitivity of the wife is known to him.¹⁰

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4 77. In her Petition the wife indicated that she suffered an anxiety attack as a result of
5 severe stresses in the marriage. The husband accepts she had an attack in his
Answer. In his evidence the husband vividly describes how this attack physically
manifested itself. The wife has suffered depression and at different stages has had
to take medication. I must bear this in mind because when assessing whether this
wife can reasonably be expected to live with this husband I must consider her
10 capacity to endure the husband's conduct towards her. The wife's temperament
11 and the clear sensitivity in her personality are relevant as she may be acutely
12 affected by a certain type of behaviour, and in this case continued series of acts,
13 which have taken her to breaking point.

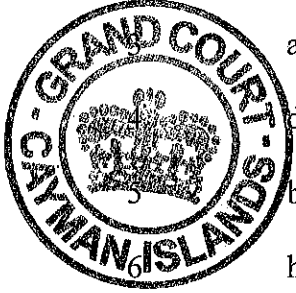
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15 78. With this in mind, I have noted the content of the medical report prepared by
16 Blanca Bole-Alamanac, a consultant psychiatrist, dated 14 August 2013 following
17 a two hour psychiatric evaluation of the wife. She felt that the wife was bright and
18 able to relate and explain her symptoms during the interview. Mrs. Bole-
19 Alamanac noted that the mother's difficulties started during her pregnancy and
20 that she had anxiety and panic attacks which subdued slightly after the birth. She
21 recorded that the mother attended at the general hospital with postnatal depression
22 and was prescribed Fluoxetine and a Benzodiazepine. Mrs. Bole-Alamanac

¹⁰ *Windeatt v Windeatt* [1962] 1 All ER 76.



1 recorded that she had been informed that there was some improvement in the
2 wife's postnatal symptoms and that the mother returning to work had helped. She
3 was informed that the wife had stopped taking Ffluoxetine in or around June
4 2013. Mrs. Bole-Alamanac recorded that the wife reported to her that there were a
5 number of recent stressors such as arguments with the husband and his inability to
6 find employment. The consultant was told by her that they had decided to separate
7 with him moving out. She indicated that she was commencing legal proceedings
8 to gain custody of the child who the husband had retained without agreement in
9 Florida. Mrs. Bole-Alamanac found that the wife was concerned about P's
10 situation. She found that the wife had no thought disorder, paranoia or
11 hallucinations. She found that the wife's insight was good, that the postnatal
12 depression was in partial remission and that no pharmacological treatment was
13 required. Importantly, to my consideration about the effect of the husband's
14 conduct, the consultant noted that the wife was under marital stress.

15
16 79. The wife's demeanour in Court during the hearing made it patently clear that the
17 marriage, the husband's behaviour and these drawn out proceedings had, and
18 were still, placing great stress upon her. This is consistent with the diagnosis of
19 the psychiatrist. The wife's face to face and written interactions with the husband
20 and her very evident distress during the hearing when she was in close proximity
21 with the husband, especially during cross-examination, also vividly illustrates to
22 the Court that she feels she could no longer be with him and how their interaction
23 adds to her stress. In November 2014 the wife reported an improvement in her



1 mental health as a result of the separation which had resulted in her coming off
2 medication. During the hearing on 9 June 2015 she stated that she had restarted
anxiety medication due to the foreclosure of the matrimonial home, the protracted
divorce proceedings and emails received by her and third parties which were sent
by the husband. It is evident that she was still being affected by the conduct of the
husband even though the parties had separated. Regrettably, despite the husband
acknowledging the wife had suffered panic attacks and postnatal depression, he
has throughout shown little empathy towards her and been unable to recognise
how his behavior distresses her and exasperates her fragile condition.

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11 80. The allegations of behaviour must be set out in the Petition with sufficient
12 particularity to enable the husband to know the case being made against him. One
13 of the significant particulars of the husband's behaviour contained in the Petition
14 is an allegation that he has behaved towards her in a controlling manner in a
15 number of areas of her life, but particularly in relation to her interaction with P. I
16 have already referred to this behaviour in quite some detail in this judgment.
17 Examples pleaded in the wife's Petition include the husband not permitting her to
18 take P unaccompanied out of the apartment complex and restricting the time she
19 spent with P. In his Answer the husband denies this allegation, stating that he
20 encouraged the mother to become more involved in P's care and that it was not
21 until April 2013 that the mother showed any interest in taking P out of the
22 complex. I prefer the mother's which is consistent with parts of the husband's
23 evidence where he made it clear that he felt he had to monitor her care of P.



1 81. Another particular contained in the wife's Petition is her allegation that the
2 husband did not support her role as a mother to P, and that he, in an insulting
3 manner, questioned her capacity to care for P. In his answer the husband denies
4 this allegation, but accepts that he did express concerns about P's welfare and the
5 mother's ability to care for him due to her mental health. He said, despite
6 incidents where he alleges the wife's conduct placed P's safety at risk, he
7 encouraged and supported the wife in her role as P's mother. I am satisfied that
8 the husband did restrict her movements with the child and her independent care of
9 the child. This and other controlling behaviour outlined in this judgement, forms
10 part of a course of conduct by him which clearly has detrimentally affected the
11 wife.

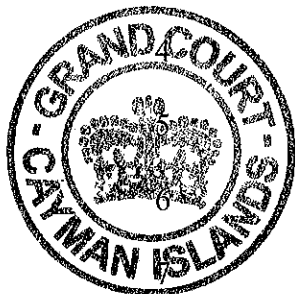
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13 82. At the time of filing the Petition the wife alleged, as a further particular of the
14 husband's behaviour, his wrongful retention of the child in Florida and his refusal
15 to return P unless she submitted to a "lengthy list" of his demands. In his Answer
16 the husband justifies his actions on the basis of his concerns about the P's safety
17 when cared for by the wife, especially due to what he calls an ultimatum from the
18 wife for him to leave the matrimonial home and her indication that she intended to
19 remove him as a dependent of a work permit. I have already dealt with this
20 particular at great length earlier in the ruling. Despite the expressed reasons for
21 his retention, I am still satisfied that the husband was wrong to behave in this
22 manner. I am satisfied that he knew that this behavior would have a detrimental
23 effect on the welfare of the wife, who he knew was vulnerable at the time. The



1 wife informed the husband when he cross-examined her on the issue of her
2 medication that *“my child was missing in Florida, had to fight legal battles to
have him returned to Cayman, that was extremely stressful. It was very stressful
for me to try to figure out what I do. I felt I needed to get back home. Contact and
stress caused by you taking the child to Florida.”* I am satisfied that this
behaviour coupled with his controlling action and demands at that time would
amount to behaviour for the purposes under section 10(1)(b) of the Law.

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9 83. The wife contends in the Petition that, although she attempted counselling with
10 the husband, it was unsuccessful because the husband belittled a counsellor who
11 he felt to be incompetent and another one who he felt was having an affair with
12 her. The wife states that it is abundantly clear to her that the marriage is over, that
13 she no longer loves the husband and she is in no doubt that the marriage has
14 broken down irretrievably. When the husband was given leave to further cross-
15 examine the wife, she informed him that it was being around him that drives up
16 her anxiety. She made it clear that although she came back home to collect her
17 belongings when he was not at home she did not return to live there because she
18 was afraid of the husband stating *“I did not move back in the home, this was
because I did not feel safe and I cannot bear to be around you.”* She stated in
19 cross-examination when the husband questioned her about informing him about
20 taking medication *“what about your concern for me... For my medical help-I had
to seek this help myself. My husband does not give any help to me. I didn’t tell you
because you never showed any compassion or empathy to me. You cared more*



1 his evidence referred to as being “*psychotic*”, which includes but is not limited to
2 issues such as how she takes pictures, how she cleans the house, how she cleans
3 P’s bottles, how she holds the child, his wearing down accusations of her having
affairs and his invasive searches for evidence to support that suspicion which all
have the effect of belittling her and eroding her confidence and self-esteem. The
cumulative effect of this criticism, coupled with controlling behaviour which has
already been outlined in detail in this judgment, when having regard to the whole
8 history of the matrimonial relationship satisfies me the gravity of the behaviour is
9 such that it would be unreasonable to expect the wife to continue to endure and
10 remain married. He still feels she is unable to care for P despite the Welfare
11 Officer’s report, the Florida Judge’s finding that there was no emergency or risk
12 to P and the fact that the wife, since September 2014 despite working full-time,
13 has been able to independently care well for P. It is clear that the husband was and
14 remains unable to accept that the wife was and is entitled to have views of her
15 own in relation to the care of P and he still wishes to exert control over her by his
16 non-acceptance of her genuine and reasoned desire to live an independent life no
17 longer under his influence. The husband lacks the insight to understand that the
18 wife can and has independently expressed to the Court that she wishes the
19 marriage to be over and that she is not purely the mouthpiece of professionals
20 who he says are running her life and taking advantage of her.

21
22 85. I am satisfied that the wife’s health issues significantly improve when the day-to-
23 day stresses of this marriage are no longer upon her. I accept her evidence that the



1 husband has been and remains a cause of anxiety for her and that his conduct and
2 his physical presence “triggers” her anxiety. Save for the pressure primarily
3 brought on by the recent foreclosure and the prolonged proceedings, her health
4 has improved and this is when she has been able to live independently from the
5 husband. The husband shows little insight when he says that he does not believe
6 that he was contributing to her anxiety. In fact, his view that none of the causes of
7 the difficulties of the marriage all are the fault of the wife and the negligence or
8 improper interventions of third-party professionals shows a concerning inability
9 to recognise the unhealthy and damaged state of the parties’ relationship and
10 marriage.

11
12 86. From the evidence, the wife has satisfied me at this hearing that any right-thinking
13 person would come to the conclusion that the husband has behaved in such a way
14 that she cannot not be reasonably expected to live with him, especially when
15 having regard to the impact of his conduct on her. Having established this, when
16 considering the history of this marriage and the characteristics of the parties, I am
17 satisfied that this marriage has irretrievably broken down. Accordingly, I prove
18 the Petition under section 10(1)(b) of the Law.

19
20 87. I wish to make it clear that, despite my findings about the husband’s behavior, I
21 am of the view that he genuinely believes that he has acted appropriately in the
22 best interests of the child. I accept the views of the Welfare Officer that he loves P
23 dearly and that he wants what he believes is best for him. I accept that the



1 husband is a very important figure in P's life and that he, like the mother, showers
2 P with love and good quality care. That is probably why, having regard to the
welfare checklist, Quin J. would have agreed with the parties in March 2014 that a
shared residence order should be made. However, the husband must learn to
accept that the wife is at least an equally important figure for P and that she
entitled to bring up P in a manner which may not be the same as the approach he
advocates. I hope that now that the Petition has been proved, and the inevitable
tensions that come with such protracted proceedings, the parties can now
concentrate on cooperating with mutual respect for the other in relation to the
upbringing of P.

11

12 **Costs**

13 88. As set out by me in *AT v JT* Fam 34 of 2012 in my Ruling on costs dated 10 July
14 2015 the governing provision is contained in GCR Order 62, r.4(2). Therefore, the
15 general principle is that costs follow the event if they have adhered to the
16 overriding objective by conducting the proceedings in an economic, expeditious
17 and proper manner. The wife has been the successful party and in her written
18 submissions she seeks an order for the husband to pay her costs and goes on to
19 ask that, if such an order is made, it be on the indemnity basis.

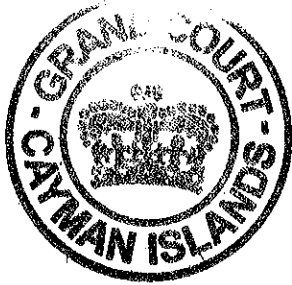
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21 89. If costs cannot be agreed, I must afford the husband an opportunity to make
22 submissions as to costs. Accordingly, I will afford the opportunity to both parties
23 to file written submissions on costs within 21 days of receipt of this perfected

1 Judgment. I will thereafter provide them with a brief written ruling on costs. I
2 would be particular interested to have clarified in the submissions, preferably with
3 supporting documentation, what offers to amend the petition were made by either
4 party to try to avoid the need for a contested petition hearing.

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Dated this 10th day of August 2015.




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THE HONOURABLE MR JUSTICE RICHARD WILLIAMS
JUDGE OF THE GRAND COURT