

1 GRAND COURT OF THE CAYMAN ISLANDS
2 FAMILY DIVISION

3 CAUSE NO. FAM 118 OF 2014

4 BETWEEN:



5 JL

6 Plaintiff

7 AND

8 RL

9 Respondent

10
11 **Appearances:** Mr. Conor Fee for the Applicant
12 Mr. Guy Dilliway-Parry for the Respondent

13
14 **Before:** Hon. Justice Richard Williams

15
16 **Heard:** 22, 23 & 25 July 2014

17
18 **Date of Ex-Tempore Ruling:** 25 July 2014

19
20 **Transcript of Ruling circulated:** 31 July 2014

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23
24 **HEADNOTE**

25
26 *Family Law – Protection From Domestic Violence Law 2010 – Protection Orders-*
27 *Cross-Protection Order and the inherent jurisdiction of the Court – Making of an*
28 *Occupation Order – Interim monetary relief direction pursuant to section 6(1)(c) –*
29 *Matters to be considered before making an order and before giving directions under the*
30 *Law. Consideration of the best interests of a child when making an order and give*
31 *directions under the Law.*
32
33

34 **TRANSCRIPT OF EX TEMPORE RULING**

35
36 1. I deliver this Ex Tempore Ruling to enable the parties to have an immediate
37 decision and to leave this hearing with the reasons why I have reached that



decision. I will ensure that the parties are provided with the Ex-Tempore Ruling transcript. That transcript is not intended to read as a formal written ruling.

3

4 **The parties, applications and previous hearings**

5 2. The Plaintiff ("the wife"), in her Summons dated 25 June 2014, seeks a number of
6 orders against the Respondent ("the husband"), pursuant to section 5 of the
7 Protection from Domestic Violence Law, 2010 ("the Law").

8 The first is a Protection Order (which is sometimes referred to as a non-
9 molestation injunction). The second, pursuant to section 10, is an Occupation
10 Order permitting the wife to live in the matrimonial property with the children to
11 the exclusion of the husband. Finally, pursuant to section 6(1)(c) the wife applies
12 for the Protection Order to direct interim monetary relief for her and the children.
13 The husband has not filed a Cross-Summons. I hope that the parties do not mind if
14 I refer to them hereafter as the wife and the husband.

15

16 3. On 27 June 2014 that Summons came before me in an ex parte hearing. A
17 Protection Order prohibiting the husband from assaulting, threatening, abusing,
18 molesting, interfering with, text in, emailing, telephoning, coming within 100
19 yards of, approaching or in any way communicating with the wife (save through
20 her attorneys at law) was made until the return date on 3 July 2014. The Court
21 deemed it inappropriate to make an Ex-Parte Occupation Order.

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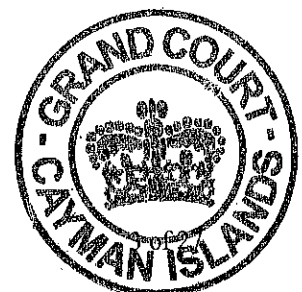
1 4. At the hearing on 3 July 2014, Brooks J., by consent adjourned the hearing to 22
2 July 2014 and extended the Protection Order to that date.

3
4 5. The parties have been married for five years, having cohabited for approximately
5 four years before the marriage. The 60 year-old husband is a Caymanian national
6 and he has a number of family members who live in the Islands. The 32 year-old
7 wife, a Nicaraguan national, has residency here through the marriage. The wife
8 has two family members residing here, but they live in cramped one-bedroom
9 accommodation.

10
11 6. The wife was employed at Hurleys, but lost her job in February 2014. The
12 husband is self-employed and is a part owner of a family-owned construction
13 company which pays his salary. It is accepted that the husband has recently been
14 involved in a sexual relationship with a much younger woman who resides in
15 Nicaragua. She has very recently had a child. Although the husband is not sure
16 about the paternity of the child, he has recently sent over \$300 to the mother in
17 Nicaragua to assist with child related expenses.

18
19 7. There are no divorce proceedings pending, although the husband has said that he
20 has made preparations for divorce proceedings to be issued in Nicaragua.

21





1 8. There is one child of the marriage JL, aged 7, who was born on 4 April 2007.
2 There is another child, J age 11, who is the child of the wife from a previous
3 relationship. J's residency in Cayman is based on an application made by his
4 mother. He has spent most of his life living with family members in Nicaragua or
5 Costa Rica, although he came to live at the parties' home in the Cayman Islands
6 around April 2012.

7

8 9. The father, unlike the mother, does not agree that J should be regarded as being a
9 child of the family. On evidence before me I am not in a position to resolve that
10 issue in these proceedings. However, that does not cause difficulties because,
11 having regard to section 2 (the interpretation section) in the Law, a child is
12 defined as being:

13 *"any individual under the age of eighteen who has never been*
14 *married and who is-..... (d) a child (whether or not a child of the*
15 *man and woman referred to in paragraph (c) or either of them)-*
16 *(i) who is or has been a member of the household residence;*
17 *(ii) who resides in that household residence on a regular*
18 *basis;..."*

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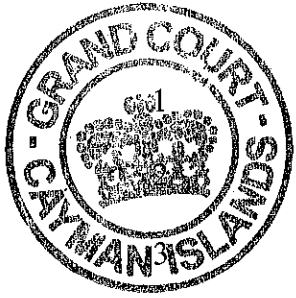
20 10. Despite the fact that it appears that J has a poor relationship with the husband,
21 both of these subsections apply to J. Therefore, when applying this legislation to
22 this case I am satisfied that both J and JL should be regarded as being relevant
23 children.

24

1 11. I have considered the content of each party's sworn affidavit and additional
2 documents provided to the Court. It is evident that there were witnesses to some
3 of the incidents relied upon by the parties. Regrettably, each party has failed to
4 obtain affidavit evidence or sought to call oral evidence from any of these persons
5 to corroborate or bolster their respective cases. I accept that this matter has come
6 on for hearing promptly and it is often difficult to obtain affidavit and additional
7 evidence on short notice.

8

9 12. The parties have also failed to provide police reports. I have been told that this is
10 because such reports are too expensive to obtain. This is not the first time in
11 domestic violence proceedings that such a predicament has arisen. I have been
12 informed by a number of litigants in like proceedings that the police require a \$25
13 fee for each report provided. This is of concern to the Court. Regrettably, victims
14 of domestic violence are frequently vulnerable persons with very limited financial
15 means. They often do not have the resources to pay such a fee, especially as such
16 applications, by nature, ordinarily require an urgent Court hearing. This means
17 that this potentially important piece of evidence is not before the Court. The
18 Court's understanding is that the Royal Cayman Islands Police Service recognises
19 the importance of protecting victims of domestic violence. I believe that a few
20 police officers have received special training sensitising them the unique nature of
21 such cases. Therefore, I respectfully invite a review of the apparent policy of
22 charging \$25 per report in domestic violence matters. With this in mind, I direct



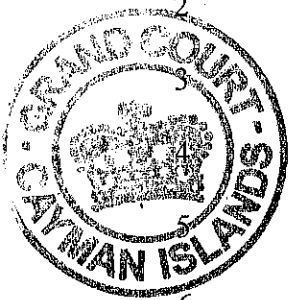
the Clerk of the Courts to send a copy of this judgment to the Commissioner of Police, respectfully drawing his attention to this paragraph.

4 13. At this, and at the ex parte hearing, I had the opportunity to receive oral evidence
5 from Mrs. Smith, the family's allocated social worker. Both parties have already
6 been provided with the extract from my notebook containing the oral evidence
7 given by Mrs. Smith at the ex parte hearing. I have also provided the parties with
8 an extract of the transcript of my Ex-Tempore Ruling from the ex parte hearing.

9
10 14. The parties have also given detailed oral evidence and been subject to cross
11 examination during this rather lengthy hearing.

12
13 **The law and the facts**

14 15. Pursuant to section 5(1) of the Law, the Court may make a protection order
15 prohibiting a person from committing any further act of domestic violence if
16 satisfied that he or she has committed or threatened to commit an act of domestic
17 violence against a spouse (prescribed person) and is likely to repeat such acts or
18 having regard to all the circumstances, the order is necessary for the protection of
19 the spouse. Pursuant to section 6(7) the protection order may be made for such
20 period as the Court considers necessary but may not exceed three years. If the
21 Court adds any directions to the order they may expire before the end of the
22 protection order but they must not extend beyond three years.

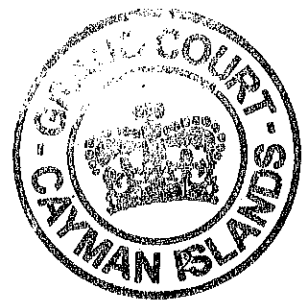


1 16. A person commits an act of violence against a spouse if it is proved that his
2 conduct caused or is intended to cause amongst other things emotional or
3 psychological abuse (section 3(1)(a)), or physical abuse (section 3(1)(c)). I note
4 that financial or sexual abuse may also establish domestic violence, but these are
5 not relevant considerations in the matter before me.
6

7 17. Pursuant to section 3(2)(a) emotional or physical abuse means behavior which is
8 intended to harass or undermine the emotional or mental well-being of a
9 prescribed person. Pursuant to section 3(2)(a) This behavior may include
10 intimidation by using abusive or threatening language in a manner calculated to
11 cause annoyance to, instil fear in or result in ill-treatment of the prescribed
12 person. Pursuant to section 3(2)(f) this behavior may include damaging any
13 property owned by, or available for the use or use or enjoyment of the prescribed
14 person, or any property in the care or custody or situated in the residence of the
15 prescribed person.
16

17 18. Pursuant to section 3(2) physical abuse means any act or omission which causes
18 or threatens physical injury.
19

20 19. Pursuant to section 3(3) an act of abuse, including section 3(1)(a) emotional or
21 psychological abuse and section 3(1)(c) physical abuse, which is committed on a



single occasion shall be regarded as act of domestic violence even though some or all of those facts, when viewed in isolation may appear minor.

3

4 20. If the Court is satisfied that an act of domestic violence has been committed then,
5 pursuant to section 4(1) the Court may grant a protection order and/or an
6 occupation order.

7

8 21. Section 6(1) sets out what terms may be included in the protection order. Section
9 6 (1)(c)(iii) provides that the order can direct that the Respondent pay interim
10 monetary relief to the Applicant for the benefit of the Applicant and any child,
11 where there is no existing order relating to maintenance until such time as an
12 obligation for support is determined, pursuant to any other written law.

13

14 22. Section 6(1)(c)(v) provides that the Court can order the Respondent "*to make or*
15 *continue to make payments in respect of rent or other payments for premises*
16 *occupied by the applicant.*" Therefore, this means that the Court is entitled to
17 make an order for the Respondent to make mortgage payments on the matrimonial
18 home if it is occupied by the spouse in appropriate cases.

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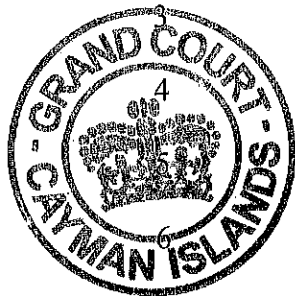
20 23. Interestingly section 6(2) provides that a protection order may contain such other
21 prohibitions or directions as necessary. A very wide provision.

22

1 24. Following the closing submissions, I considered section 19 of the Law. This
2 section provides that when making of a protection order, an occupation order or a
3 tenancy order the Court may at the same time and of its own volition or at the
4 instance of an applicant, make an order in accordance with the provisions of the
5 Maintenance Law (1996 Revision), for the maintenance of any prescribed person
6 entitled to be maintained by the Respondent if no such order for maintenance is
7 already in force. If any such maintenance order was made it could not exceed
8 beyond the duration of the protection order or occupation order.

9
10 25. Neither party made any submission in relation to section 19. An application for
11 orders under section 19 was not made, the parties agreeing that an order may be
12 made for interim monetary relief pursuant to section 6. Therefore, I have not gone
13 on to consider whether the order would be better made under section 19. I reserve
14 my position in relation to the interaction between these two sections. The reason
15 why the Summary Court may not have wished to deal with the Maintenance Law
16 at a recent hearing may be because they had regard to this Court's section 19
17 powers in these pending proceedings.

18
19 26. It is important to note at this time that, on the facts of this particular case, the
20 Court is greatly concerned about ensuring there is appropriate housing for the
21 children. Both parties have indicated that they cannot live together in the same
22 house. The Department of Children and Family Services ("the Department") has





1 made it clear that the children should not live in the same household with both
2 parents. The Department has indicated that if the parents live together, due to the
3 dysfunctional and abusive nature of their relationship, public law care
4 proceedings would likely be brought. Having reviewed all of the evidence, which
5 illustrates that these parties have a physically and emotionally unhealthy and
6 abusive relationship, with some violent incident occurring in front of the children,
7 the Department's conclusions are understandable.

8

9 27. Therefore, if the Court establishes that there has been domestic violence whether
10 by one or both of the parties (which I do) it must go on to consider what orders
11 should be made. When doing so, the Court should have regard to a number of
12 matters, including the best interests of the two children.

13

14 28. Section 10(1) permits the Court to make an occupation order to a spouse for such
15 period and on such terms and subject to such conditions as the Court thinks fit, the
16 right to occupy the household residence to the exclusion of the Respondent.

17

18 29. Pursuant to section 10(3) the Court may make such an order only if it is satisfied
19 that such an order (a) is necessary to protect the prescribed person from an act of
20 domestic violence; or (b) would be in the best interest of a child. I highlight or
21 emphasise sub-section (b).

22

1 30. In this case there can be no doubt that either an occupation order permitting the
children to reside in that property with the mother, or an order ensuring that
sufficient financial provision is made to enable the children and the mother to live
in rented accommodation, would be in the best interests of the children. During
the hearing the parties have been given the opportunity to address the Court on
both options.

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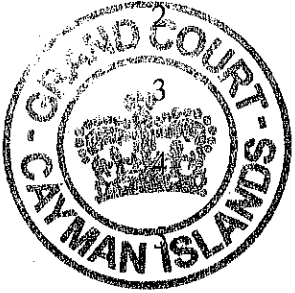
8 31. The husband has made it clear that he does not wish to vacate the home. The wife
9 says that he has family members whose properties he could reside at. The husband
10 says that he does not. The husband has made certain offers for monetary relief
11 which he believes would enable the wife to rehouse and support herself and the
12 children.

13

14 32. The wife says that her primary application is to return to the family home with the
15 children with an occupation order. I note that Mrs. Smith stated in her oral
16 evidence that the Department feels that such an order would be in the best
17 interests of the children. However, if an occupation order is not made, the wife
18 seeks to be housed with the children in suitable rented accommodation with
19 sufficient financial support from the husband.

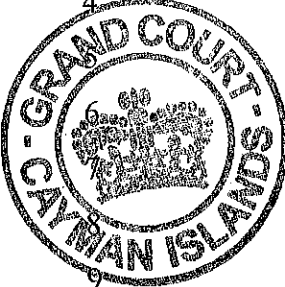
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21 33. Pursuant to section 29, if there is any question of fact, that should be decided on a
22 balance of probabilities. I can indicate at this stage that neither witness was



1 overwhelmingly convincing when giving their evidence. I remind myself of what

2 I stated in my ex tempore judgment at the ex parte hearing namely:



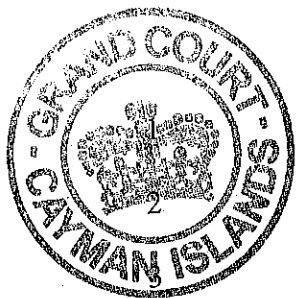
3 *"I note from the evidence of the social worker that some material*
4 *things mentioned by her do not appear in the affidavit. This is not a*
5 *criticism of the plaintiff's counsel, as it is clear that he was*
6 *unaware of such detail. Upon hearing the evidence of the social*
7 *worker, it is clear that the factual background to this case may not*
8 *necessarily be the same as that put by the plaintiff. The social*
9 *worker's evidence does not support a contention that the fault for*
10 *the family's difficulties lies necessarily only at the door of the*
11 *father."*

12
13 I still share this view after hearing oral evidence at this inter partes hearing.

14
15 34. Even on each party's own evidence, it was clear that each party had committed at
16 least one act of domestic violence. Mr. Dilliway-Parry insightfully and correctly
17 commented that based on each party's admissions in their evidence the threshold
18 for finding domestic violence has been met. A contention that was accepted by
19 Mr. Fee during his closing submissions.

20
21 35. I am satisfied that the threshold has been met for the Court to make a protection
22 order against the Respondent husband under this Law. I am also satisfied that
23 within these proceedings the Court may make a non-molestation/protection order
24 against the Applicant wife pursuant to the Grand Court's inherent jurisdiction.

25 Neither Counsel has contended that the Court does not have this jurisdiction under



the inherent jurisdiction, something I had invited them to comment on in their closing submissions if they wished. I have little doubt that cross-non-molestation orders are required.

4

5 36. What requires more careful consideration is, whether the Court should then go on
6 to make an occupation order or alternatively make any of the monetary relief
7 directions which are sought.

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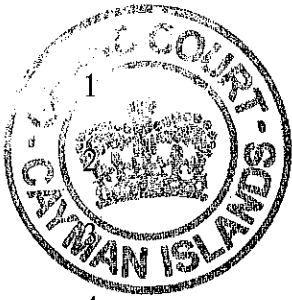
9 37. When considering what orders to make the Court must have regard to section 7:

10 (a) **The nature, history or pattern of the violence that has occurred and**
11 **whether a previous protection order or interim order has been issued.**

12 Although there are alleged to have been a number of incidents which have
13 resulted in the police becoming involved at the request of both parties on
14 numerous occasions, save for the present interim order, there have been no
15 previous protection proceedings/orders made.

16

17 When reviewing all of the evidence, I take the approach adopted by both
18 Counsel who primarily concentrated on the incident in February and the
19 incident in March. I do not seek to analyse the evidence in any great detail
20 in this Ex Tempore Ruling, as both Counsel conceded in their closing
21 submissions that, based on what could be perceived as being admissions in



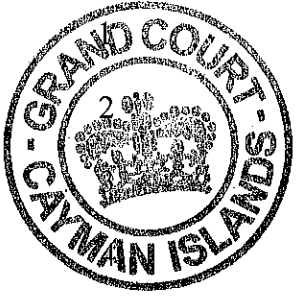
1 each party's own evidence, the threshold for making protection orders has
2 been crossed.

4 I am satisfied each party has been abusive to the other and due to their
5 behaviour towards each other that they cannot live with each other even
6 with cross non-molestation orders in place.

7
8 The wife alleges that the husband has been regularly verbally abusive to
9 her and has told her that he would shoot her with a gun.

10
11 The wife outlined an incident in February 2014 when she said she
12 challenged the husband about buying a house for his Nicaraguan girlfriend
13 and, as a consequence, he held her down on the floor when choking her. In
14 oral evidence she said that he had two hands around the throat choking for
15 between 5 to 10 minutes. The wife said that he was choking her before the
16 telephone call was made to the police right up until the police arrived. If
17 she is right, it is pleasing to see that the response time of the police is less
18 than 10 minutes. I am of the view that the wife is exaggerating in her
19 evidence.

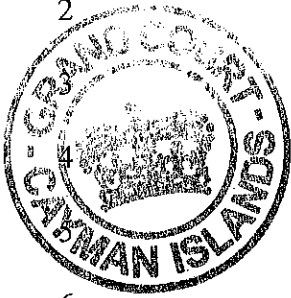
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21 The wife said in her affidavit that she called the police, but in oral
22 evidence indicated that J had called the police. In her oral evidence, not in



5 her affidavit, she said that his fingernails cut into her throat and that she
6 still has scars which she endeavoured to show the Court. She said when
7 the police arrived the husband's hands were still around her throat,
8 choking her. The wife said that although the police saw all this they did
9 not do anything.

10 The husband says that the wife started the fight by coming at him with a
11 knife. He said that he had to pin her down on the floor in self defence,
12 after he had knocked the knife out of hand in the struggle. The husband
13 said that he had her pinned her down until the police came. He said that J
14 called the police. He said that he called out to his own son who resides in
15 the property, stating that his wife has trying to stab him with a knife.
16 Rather unconvincingly, the husband said that his son, upon hearing him
17 say this, did not want to get involved, simply stating that he was sick of
18 having these problems and that they had to resolve it themselves.

19 Both of the parties' evidence in relation to this incident has flaws.
20 However, I am satisfied from it that both parties used unjustified force
21 amounting to physical abuse and domestic violence as defined by section
22 3(1)(c) against each other. Having regard to this incident and the other
evidence before me I am satisfied that they will continue to abuse each
other unless cross orders are made.



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When reaching this conclusion I also have regard to the parties' evidence concerning the March 2014 motor vehicle incident which has resulted in criminal charges brought in the Summary Court against the husband. On each parties' evidence it is agreed that they damaged the other's motor vehicle. I am satisfied that neither of them had good cause for doing so and that the incident spiralled due to both parties' uncontrolled conduct. The husband damaged the windscreen of the wife's vehicle by pounding on it with his fists. A fact he failed to mention in his affidavit. The husband damaged the wife's vehicle by reversing his vehicle into it. The wife picked up a big breeze block which she threw at the husband, damaging his car window. The wife failed to mention this in her affidavit at the ex parte hearing, although it was contained in a letter written by her sister exhibited to the affidavit. Each party alleges that the other hit them with a hurricane strap. Interestingly, neither party has sought to provide appropriate affidavit evidence from or provide oral evidence from any of the number of witnesses who were at this public place, outside of a bar, to support their version of events. Having regard to the manner in which the parties gave their evidence, such evidence would have been useful.

The conduct of both parties was not acceptable. Their conduct amounted to emotional and psychological abuse intended to harass the emotional and well-being of the other party. Both Counsel rightly concede that the

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conduct by both parties constituted domestic violence pursuant to section 3(f).

Although the parties indicate that the police have been involved on numerous occasions due to each party's behaviour towards the other, these other incidents were not detailed. Although I am unable to make any findings in relation to those, they are a further indicator that each of these parties act abusively to the other.

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(b) The need to protect the plaintiff from further domestic violence.

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On the evidence before me there is such a need. However, I also think that there is a need for orders to regulate the wife's conduct towards the husband. Both parties need to understand that their conduct towards the other is highly inappropriate and abusive. The only way that they may understand this is by the Court making cross protection/non-molestation orders.

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(c) The welfare of any children.

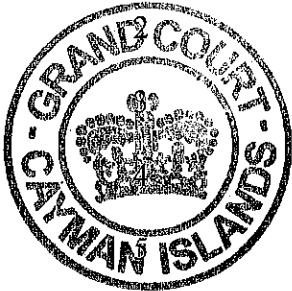
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In my view, this is an important matter for consideration in this case. If there were no children involved the Court might have taken the view that there should be cross non-molestation injunctions and possibly a reduced level of financial relief orders and left it at that. The Court recognising that

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1 it is Draconian order which, should not be used as a stepping stone to
2 divorce, may not in those circumstances have considered an occupation
3 order to be appropriate.

4
5 I am satisfied that the two children are at risk of emotional and potentially
6 physical harm from the nature of the dispute taking place within the
7 matrimonial home. The children witnessed the February incident in which
8 one party says a knife was involved and in which the other party says there
9 was prolonged choking. There is evidence from one party that one of the
10 children took up the knife during the fight and that JL was shouting out in
11 distress. As I have already mentioned, the Department have made patently
12 clear their understandable concerns prior to these proceedings and during
13 these proceedings.

14
15 As stated at the ex parte hearing, there are a wide ranging number of
16 factors to be considered by the Court when determining what is in the best
17 interests of the children. Each child's interests must be considered
18 separately. At this time the husband has not made an application for a
19 residence order in relation to JL. From the way that the evidence has been
20 put during this hearing, the parties appear to accept that, at this time, the
21 children will be residing with the wife.

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I find that the welfare of the children cannot be met when the children are living in the Crisis Centre ("the Centre"). It is clear from the wife's evidence about the living conditions at the Centre that such an arrangement can only be a temporary one. It is agreed by both parties that the children cannot remain at the Centre. It is imperative that the children and their carer are promptly found suitable accommodation, whether that be in the former matrimonial home under a suitable occupation order or whether that be in rented accommodation. For the latter to be a realistic option, there must be sufficient financing to provide the housing and the children's ancillary day-to-day expenses to be met.

The wife is not in work. It is right that she could find employment to also contribute towards the children's upkeep but, due to the nature of the work if she has to find a paid minder for the children when she is at work then any interim left over will be insignificant.

It is been suggested that the parties could make arrangements for the free care of the children. However, from the evidence, it is clear that the husband is unwilling to care for J and the mother has expressed historical concerns from the time when the children used to be left with him when she was at work. I also note that the Department's first involvement came about due to the school's concern about child care arrangements. I also



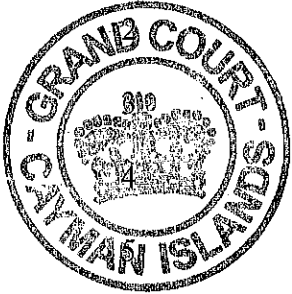
note that the wife's evidence is that she lost her employment due to her having to leave work early due the father's unreliability when he was supposed to be caring for the children when she was at work.

5 (d) **The accommodation needs of the applicant and any other person.**

6 I have regard to the fact that the wife has nowhere out of the matrimonial
7 home to reside, which has resulted with her having to live with the
8 children at the Centre. As I have already stated, the Centre is intended as
9 an emergency and not long term arrangement, such an arrangement
10 moving forward is not in the best interests of the children.

11
12 At paragraph 29 of her affidavit and repeated in her oral evidence the wife
13 contends that the husband has various options in terms of alternative
14 accommodation, including with his adult son and daughter from a
15 previous relationship who have their own homes and with other family
16 members. I note that he is a Caymanian national whereas the wife is from
17 Nicaragua and does not have the supportive family network here that the
18 husband enjoys. The husband indicates that he could not live with his
19 family members, stating that they have limited space and that he does not
20 talk to his daughter's husband. I note that his son had been willing to offer
21 accommodation to JL rather than have the Department initiate public law
22 proceedings. This is an indication that his family are more willing and able

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to offer support if required than he suggests. The husband has not filed any evidence from his family members in support of a contention that they would not be willing or able to offer him accommodation. On the balance of probabilities, I'm satisfied that if out of the home, that the husband would be more likely to be accommodated by a third party than the wife, especially if it was he alone without the children.

7

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The wife has indicated that if she were to return to the property that she would have no problem with the husband's adult son remaining there.

9

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11

(e) **The hardship that may be caused as a result of making the order.**

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I have regard to the same factors that I considered in paragraph d).

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However, if the wife's housing situation is not resolved the resultant

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hardship caused to the children having to remain in accommodation such

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as the Centre would be severe and supersedes the hardship that may be

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caused to either of the adults.

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(f) **The income, assets and financial obligations of the Respondent, the Applicant and any other person affected by the order.**

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I have regard to the fact that the husband is in full-time employment. He

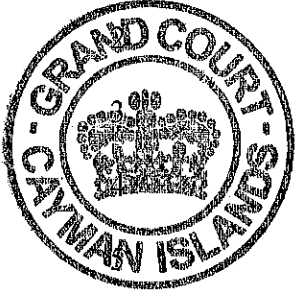
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has his own business and in October 2011 he provided a signed letter from

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the business to the Chief Immigration Officer representing that his gross

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income was \$5,500 every month with deductions of \$170. The husband during the hearing presented documentation tending to show that his monthly income averages \$4,800 over the last seven months. He contends that this might be reduced a little over the coming months as there are fewer cruise liners docking at this time of year. The husband makes a rather unattractive submission that the higher figure in the October 2011 letter was at the time exaggerated to bolster the residence application made to the Immigration Department. The husband then goes on to say that the ESSO contract that he had at that time no longer existed and there been a reduction in his income as a consequence.

The wife is unemployed and she says that throughout the relationship she has been largely dependent on the husband's income. She contends that she has been responsible for running the home and caring for JL, thereby enabling the husband to go to work.

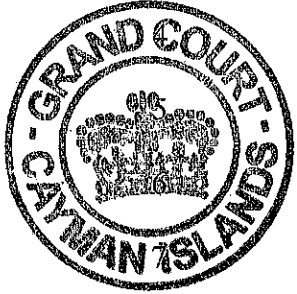
The wife sets her monthly outgoings in her written schedule of basic outgoings to be \$3,836. This would include rent of \$1,200 per month. During the hearing it was conceded that, although not ideal, an amount of \$2,500 would be acceptable if she were in rented accommodation. If she were not in rented accommodation and she was in the matrimonial home it was conceded that her outgoings would be similar, and therefore, after

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deducting the rent element, the financial assistance required would be \$1,300.

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The husband's position is that he has income in the region of \$4,800 per month. He says approximately \$1,500 would have to be deducted for the mortgage and other loans. This gives a sub total of \$3,300. He also says he has strata fees of \$325 per month and life insurance payments of \$163 per month. This gives total of \$1,988 for his outgoings, leaving a balance of \$2812. In his affidavit the husband lists other outgoings, including contributions to his elderly mother, but excluding costs of clothes, of an additional \$800.

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The husband has offered to pay \$1,250 towards a deposit of a rental property for the wife. At the same time he would pay her \$1,500 for the first month when it is likely that she, upon of moving into a rental property, would be required to pay one month deposit and one month's rent upfront. Therefore, if she rented a property for \$1,000 per month, she would be left with only \$500 to meet all of her and the children's living expenses for that month. This clearly would not be enough to survive on.

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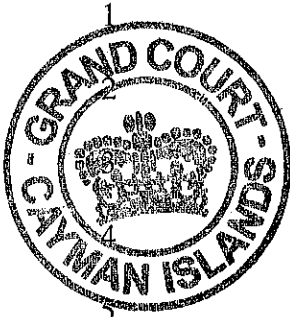
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The husband then proposes that maintenance for the second month be reduced to \$1,250, which would leave the wife with only \$250 for the month after rent. Thereafter the husband says he would provide \$1,000 per



1 month, which would mean that she would have nothing to survive on after
2 rent.

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5 The father expresses a view that the wife should find employment. I am
6 not satisfied on the evidence before me that there are appropriate cost free
7 child care arrangements that could be put in place. The husband has not
8 persuaded me that there is any realistic alternative to paid child care.
9 Therefore, any income she earned would be swallowed up by paying for
10 minder's fees.

11 Although the husband indicates that he would be willing to be flexible by
12 borrowing additional money to increase the monthly financial assistance
13 over the levels he has offered, he has not provided with any certainty that
14 this would happen or what the figures would be.

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16 Neither party appears to have immediately realisable capital. The fact that
17 there is property in Nicaragua which I am told is in the wife's name, and
18 property in Jamaica which is in the husband's name, is not a factor at this
19 time.
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(g) **The need to preserve and protect the institution of marriage and other relationships affording protection and assistance to the family as a unit.**

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I am aware that the wife has indicated through her Counsel that she has no intention at this stage of issuing a Petition for divorce in the foreseeable future. The husband indicates that he has taken legal advice about starting divorce proceedings in Nicaragua. He admits that he is in an adulterous relationship with a young woman who lives in Nicaragua.

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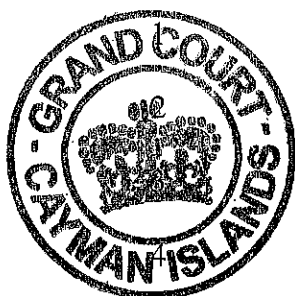
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10 38. On the evidence before me I am satisfied that Cross-Protection/Non-Molestation
11 Orders should be made.

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13 39. I have considered carefully whether the option of the mother and children being
14 housed in rented accommodation is a feasible one. However, upon reviewing the
15 parties' pooled income, this would be the most costly option for the parties and put
16 the severest strain on their finances. I am satisfied, on the balance of probabilities,
17 that the husband has children in the jurisdiction who would likely be able to offer
18 him temporary accommodation. This would mean that there would be no need in the
19 interim to pay rent for a second property, although he would no doubt be making a
20 financial contribution to that household. Even if a family member were not able to
21 offer him accommodation, he would only need to find a property large enough to
22 house himself. Therefore, the property he would have to find would be cheaper and



smaller than the one that the wife would have to find. Economically, the most sensible course and, likely the only viable option on the financial evidence placed by both parties before me, is for the wife and the two children to move back into the home and the father to find alternative accommodation.

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6 40. Apart from economically, and although the social worker expressed a general view
7 that seven year-old children can adapt if required to move to a new property, I note
8 that she was of the view that it was in the children's best interests in this case to
9 return to their home. This is especially so at this traumatic time in the breakup of this
10 family, and I find that it would be in the children's best interests at this time to be
11 back in a familiar setting with their belongings around them.

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13 41. Accordingly, I therefore make Cross-Protection Order to last for twelve months
14 (until 25 July 2015) or until further order of the Court. The order prohibits each
15 party from assaulting, threatening, abusing, molesting, interfering with the other.
16 A penal notice is attached to this paragraph.

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18 42. I make an Occupation Order permitting the wife to reside with the children at the
19 matrimonial home to the exclusion of the husband. The Occupation Order is made
20 for six months (running from 28 July 2014) or until further order of the Court. I
21 respectfully suggest that the parties start to consider their respective positions and

1 whether they should be progressing in separate proceedings, including divorce, at
2 this time.

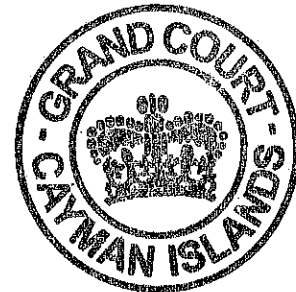
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4 43. Although an application has been issued in the Summary Court for maintenance,
5 no order has been made therein, so I may make an order for interim monetary
6 relief pursuant to section 6(1)(c)(iii). I direct that the husband provide interim
7 monetary relief order in the sum of \$1,200 per month. On the outgoing figures
8 provided by the husband he would have \$1,812 per month after meeting the
9 mortgage, strata and life insurance payments. I accept that this figure may reduce if
10 his monthly income is below \$4,800 however, it would be sufficient if he were
11 living with a relative, and an amount sufficient to him temporarily rehoused as a
12 single person if he was required to find smaller rented accommodation. The parties
13 agree that this payment should be made into the Court Funds Office on the first day
14 of each month, commencing 1 August 2014.

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16 44. The parties have agreed that the husband will vacate the property at noon on
17 Monday, 28 August 2014.

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



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