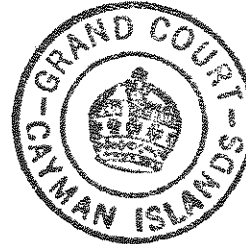


1 **IN THE GRAND COURT OF THE CAYMAN ISLANDS**  
2 **FAMILY DIVISION**

3  
4  
5 **CAUSE: FAM D0027/2007**

6  
7 **BETWEEN:**

8 **N J**



9  
10 **PLAINTIFF**

11 **AND:**

12 **J B**

13 **RESPONDENT**

14  
15  
16  
17  
18 **Appearances:**

**Parties in Person**

19  
20 **Before:**

**The Hon. Mr. Justice Patrick Brooks (Actg.)**

21 **Heard:**

**1<sup>st</sup>, 2<sup>nd</sup> and 8<sup>th</sup> July 2014**

22  
23 **JUDGMENT**  
24

- 25 1. In her affidavit supporting her application for the grant of sole decision-  
26 making/parental responsibility for her two children, NJ asserts that their  
27 father, JB, a Jamaican national, will be obliged to leave the Cayman Islands  
28 by 5 July 2014 and to remain abroad for at least a period of a year. She says  
29 that the obligation arises from a work permit restriction that affects JB. JB  
30 opposes the application on the basis that he is entitled to a further renewal of  
31 his permit to work in the Cayman Islands and that the basis of NJ's  
32 application is flawed.



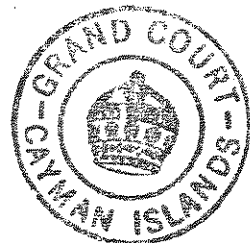
1 6. NJ provided, in support of her application, a copy of a work permit renewal  
2 issued to JB pursuant to the Immigration Law (2012 Revision). The  
3 document stipulates that the period covered by the renewal expires on 5 July  
4 2014. A specific condition endorsed on the renewal is that it is a “final work  
5 permit granted” to JB. It also stipulated that “a work permit shall not be  
6 granted or renewed for the employee until one year after departing the  
7 Jurisdiction and ceasing to hold a work permit”.

8  
9 7. On the first date of the hearing, JB indicated that he had all the  
10 documentation in place to apply for a renewal of his work permit. The court  
11 granted him time to file his application for renewal, and on the following day  
12 he provided, to the court, a receipt from the Department of Immigration,  
13 which indicated that he had done so.

14  
15 8. The likelihood of success or otherwise of his application for renewal of his  
16 work permit is not an issue for consideration by this judgment.

17 *THE APPLICATION*

18 9. The relevant portion of NJ’s formal application is set out below to allow for  
19 a clear understanding of her request. It states:



1            “Applicant is requesting sole decision making/Parental Responsibility  
2            for the children, for the following [reasons]: medical care, education,  
3            travel, passport issuance and renewal; as the Respondent is leaving the  
4            Cayman Islands on or before the date of 5 July 2014 on a mandatory  
5            Immigration Roll over.”

6  
7        10.     Relying on the contents of the work permit renewal document, mentioned  
8            above, NJ states that, JB will be obliged to remain outside of the Cayman  
9            Islands for at least one year before he will be again eligible to live and work  
10           here. During this time, she states, decisions will have to be made in respect  
11           of the children and it would be onerous, inconvenient and costly to have to  
12           seek JB’s formal input on each occasion that such a decision has to be made.

13  
14       11.     In particular, she asserts, the younger child’s passport has expired and the  
15           consent of both parents is required in order to secure a renewal.  
16           Additionally, she contends that decisions may have to be made regarding  
17           schooling for both children based on their ages (under 10 years). NJ also  
18           asserts that although the children are healthy, consent may be required for  
19           certain medical matters, if they arise.

20  
21       12.     All these matters, she contends, unless her application is granted, would  
22           involve the time and expense of sending documents to and from Jamaica,  
23           where JB is most likely to be.



**PARENTAL RESPONSIBILITY**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

13. The starting point of this analysis is that s.4 of the Children Law (2012 Revision) (hereinafter called the Children Law) stipulates that each parent of children born within wedlock has parental responsibility for such children. The relevant portion of the section states:

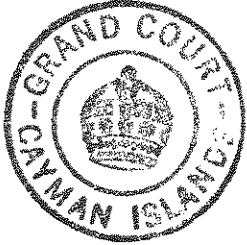
*“4. (1) Where a child's father and mother were married to each other at the time of his birth, they shall each have parental responsibility for the child.”*

14. Parental responsibility has been defined by the Children Law. Section 5 states, in part:

*“5. (1) In this Law “parental responsibility” means all the rights, duties, powers, responsibilities and authority which by law a parent of a child has in relation to the child and his property.”*

15. There is nothing in the Children Law which abrogates the conferment of that responsibility, although other persons may also secure parental responsibility for such a child.

16. The next enquiry to be made is, therefore, whether the inherent jurisdiction of the court or, indeed, any other law, allows the court to deprive a person of the responsibility with which he or she has been fixed by the Children Law.



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27

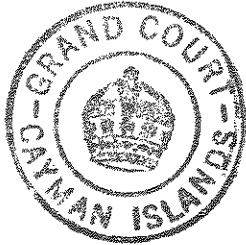
*JURISDICTION*

17. There is, undoubtedly, an inherent jurisdiction residing in the Grand Court in relation to children. This jurisdiction is recognised in several of the provisions of the Children Law. Section 10(3) is only one of such provisions. It states:

- “(3) For the purposes of this Law “family proceedings means any proceedings-*
- (a) Under the inherent jurisdiction of the Grand Court in relation to children; and*
- (b) Under.....”*

18. No other law, statutory or otherwise, addressing the court’s power to affect the entitlement to parental responsibility has been brought to the attention of the court for this analysis.

19. By virtue of its jurisdiction, the Grand Court may make such orders as are required to ensure that the best interests of the relevant child are protected. In all circumstances, the court shall consider, as paramount, the welfare of the relevant child.



1 20. "It is very unusual for parental responsibility to be terminated by order of  
2 the court."  
3

4 So said Baker J. in *CW v SG*<sup>1</sup>. The cases in which parental responsibility  
5 has been terminated have been few and far between. Two other cases on the  
6 point are *Re P (Terminating Parental Responsibility)*<sup>2</sup> and *A v D (Parental  
7 Responsibility)*<sup>3</sup>. Both *CW v SG* and *A v D* relied heavily on the principles  
8 set out in *Re P*. In *Re P*, Singer J. stated that parental participation should  
9 be encouraged. He said, in part, at pages 757-758 (as quoted in *CW v SG*):

10 *"I start from the proposition that parental responsibility – both wanting  
11 to have it and its exercise – is a laudable desire which is to be  
12 encouraged rather than rebuffed. So that I think one can postulate as a  
13 first principle that parental responsibility once obtained should not be  
14 terminated in the case of a non-marital father on less than solid ground,  
15 with a presumption for continuance rather than for termination.*

16  
17 *The ability of a mother to make such an application therefore should not  
18 be allowed to become a weapon in the hands of the dissatisfied mother of  
19 the non-marital child: it should be used by the court as an appropriate  
20 step in the regulation of the child's life where the circumstances really do  
21 warrant and not otherwise.*

22  
23 *I have been referred in outline to four authorities as to the circumstances  
24 in which a court will make an order for parental responsibility [here the  
25 learned judge identified the well-known authorities dealing with such  
26 applications] . . . .*

27  
28 *Such applications for parental responsibility orders are governed by the  
29 considerations set out in section 1(1) of the Children Act, namely that  
30 the child's welfare is the court's paramount consideration. I can see no  
31 reason why that principle should be departed from in considering the  
32 termination of a parental responsibility order or agreement.*

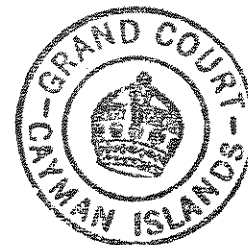
33  
34  
35  
36  

---

<sup>1</sup> [2013] EWHC 854 (Fam).

<sup>2</sup> [1995] 3 FCR 753

<sup>3</sup> [2013] EWHC 2963(Fam)



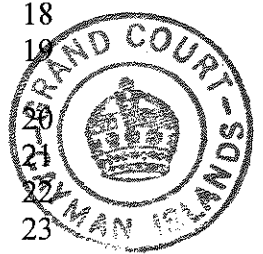
1  
2  
3  
4  
5  
6  
  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
  
18  
19  
20  
21  
22  
23  
  
24  
25  
26  
27  
28  
29  
30

*Key concepts to the consideration of the making of an order are evidence of attachment and a degree of commitment, the presumption being that other things being equal a parental responsibility order should be made rather than withheld in an appropriate case.”*  
(Emphasis supplied)

21. In the two more recent of the cases cited above, orders were made which deprived the respective fathers of parental responsibility in respect of the relevant children. Those were, however, cases involving violent or improper sexual behaviour by the fathers, which affected the relevant child either physically or emotionally. It would seem that unless the relevant child would be negatively affected, either physically or emotionally, contact with both willing, capable parents should not be denied.

22. The question of the rights which a person with parental responsibility may exercise is also addressed in s.4 of the Children Law. The relevant portions state:

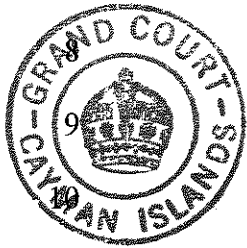
- “(4) *More than one person may have parental responsibility for the same child at the same time.*
- (5) *A person who has parental responsibility for a child at any time shall not cease to have that responsibility solely because some other person subsequently acquires parental responsibility for the child.*
- (6) *Where more than one person has parental responsibility for a child, each of them may act alone and without the other (or others) in meeting that responsibility, but nothing in this Part of this Law shall be taken to affect the operation of any enactment which requires the consent of more than one person in a matter affecting the child.”* (Emphasis supplied)



1 23. It is, therefore, only in matters where the consent of both parents is required,  
2 which matters are relatively few, that one parent, acting alone, may not make  
3 decisions in respect of a relevant child.

4 *APPLICATION TO THIS CASE*

5 24. In applying those principles to this case, it may be stated that there is nothing  
6 that has been presented in this application that justifies the removal of  
7 parental responsibility from JB and giving sole parental responsibility to NJ.



8 There is a bundle of responsibilities involved in parental responsibility. The  
9 embracing of those responsibilities ought to be encouraged and not, as  
10 Singer J said, "*rebuffed*".

11

12 25. JB, although he has not been entirely faithful to his obligations to provide  
13 maintenance for the children, has, apparently, been generally been in  
14 compliance with them. He has not sought to shirk from them and has  
15 indicated that his lapses are as a result of financial inability. NJ has not  
16 made any other complaint against JB with regard to his parental  
17 responsibilities.

18

19 26. This, therefore, is an entirely different case from the circumstances in the  
20 cases mentioned above. JB's involvement in his children's lives should be  
21 encouraged rather than discouraged. In that regard, therefore, NJ's  
22 application for sole parental responsibility must be denied.

23

1        27. For that reason also, JB's participation in critical decisions involving the  
2        children's lives augurs better for his attitude toward them and his  
3        responsibilities to them and is likely to enhance the bond with them. They  
4        can only benefit from the knowledge that they have a caring father who  
5        participates in the major decisions to be made concerning their lives.

6  
7        28. Although there may be some inconvenience which would result if JB is  
8        obliged to live outside of the Cayman Islands, it is unlikely to be onerous on  
9        the parties. The modern methods of communication enable documents to be  
10       transmitted almost instantly. Consents, when required, may be given via  
11       facsimile, e-mail and other digital methods.

12       29. Based on all the above, NJ's application must be refused.

13       30. In assessing the question of costs of the application, it is noted that there is  
14       no indication that it was made other than in good faith, the parties attended  
15       without the benefit of legal representation and only the basic documents  
16       were filed. There will, therefore, be no order as to costs.

17       **Dated this the 8<sup>th</sup> day of July 2014**

18  
19  
20       **Honourable Mr. Justice Patrick Brooks**  
21       **Acting Judge of the Grand Court**

