

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

3
4 **CAUSE NO. FAM 237 OF 2010**
5

6 **BETWEEN:**
7

8 **DEPARTMENT OF CHILDREN AND FAMILY SERVICES**

9 **APPLICANT**

10 **AND**

11 **DE**

12 **1st RESPONDENT**

13 **AND**

14 **NE**

15 **2nd RESPONDENT**

16 **AND**

17 **H & T & J**

18 **(by Mrs. M. McCormac, their Guardian ad Litem)**
19
20
21

22 **Appearances:** **Mrs. S. Bothwell of the Attorney General's Chambers for the**
23 **Applicant**
24 **Mr. C. Fee of Samson and McGrath for the 1st Respondent**
25 **Mrs. K. Thompson for the 2nd Respondent**
26 **Guardian ad litem in person**
27

28 **Before:** **Hon. Justice Richard Williams**
29

30 **Heard:** **19th & 20th February 2015 & 2nd, 3rd, 4th, 10th, 11th, 12th, 16th,**
31 **17th, 18th, 24th, 25th, 26th March 2015 & 4th, 5th May & 4th**
32 **August 2015**
33

34 **Written Submissions:** **Applicant - 9th June 2015 & 14th August 2015**
35 **1st Respondent - 9th June 2015**
36 **2nd Respondent - 22nd July 2015 & 26th August 2015**
37 **Guardian - 17th August 2015**

38 **Draft Judgment**

39 **Circulated:** **21 October 2015**
40

41 **Judgment Delivered:** **26 October 2015**
42
43

1 **HEADNOTE**

2 *Children Law (2012 Revision) - Supervision orders - Threshold Criteria - Definition of harm -*
3 *Care/supervision proceedings standard of proof - Welfare checklist - Function of Judge in*
4 *relation to the making of findings - Making of a Residence and contact orders at the same time as*
5 *making an supervision orders - Making a prohibited steps order against a non-party.*

7 **JUDGMENT**



9 **The Parties and the Applications**

10 1. The Department of Children and Family Services (the "DCFS") applies for
11 supervision orders for three children pursuant to s.33 the Children Law (2012
12 Revision) ("the Law"). The three children who are my paramount consideration
13 are firstly H, a 16 year old girl born on 18 May 1999. I shall refer to her as H in
14 this judgment. Secondly, T, a 12 year old girl born on 11 April 2003. I shall refer
15 to her as T in this judgment. Thirdly, J, a 5 year old boy born on 5 May 2010. I
16 shall refer to him as J in this judgment. I will on occasion refer to the three of
17 them collectively as the children in this judgment.

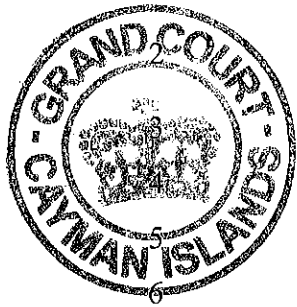
18
19 2. The children's biological mother, DE, was born in Honduras on 27 August 1980
20 and is 35 years old. NE was born in the Cayman Islands on 21 December 1950
21 and is 64 years of age. NE is the biological father of T and J. NE accepts H as a
22 child of the family. H is aware that NE is not her biological father although he is
23 named as her father on her Honduran birth certificate. I shall refer to DE as "the
24 mother" and NE as "the father" in this judgment.

1 **The Court's Investigative Duty and the Law**

2 3. During this overly protracted hearing the parties seemed intent on trawling
3 through, in great detail, the whole history of the parties' relationship from its
4 inception to the close of the hearing. They also sought to analyse in great detail
5 the mother's relationships and movements in Honduras. Although some of the
6 information is relevant, the bulk of the parties' drawn out analysis is not as
7 helpful to the Court when determining the applications as the parties appear to
8 believe it to be. It is interesting to note that the parties chose not to review in
9 detail during their submissions, or at all, the majority of the dated historical
10 evidence they recounted during the evidence stage of the hearing. This may be a
11 belated recognition, when carrying out their reviewing exercise of the whole case
12 to enable them to produce their submissions, that a large part of the evidence was
13 not as relevant as was first thought by some of the parties. As the parties have
14 been afforded the opportunity to conduct such an exercise at this hearing, the
15 Court would not now expect them to seek, or feel the need, to again do so at any
16 future hearing relating to these children.



17
18 4. Although issues for determination have greatly narrowed down since filing of the
19 application for supervision orders, and the prevailing circumstances are now
20 different to the those placed before the Summary Court at the commencement of
21 these public proceedings when the emergency protection order applications were
22 granted in April 2014, it is still necessary to look at some of this family's history
23 and to review the proceedings to put matters into context. When conducting such
24 an exercise, in a case of this nature, I adopt the approach of Thorpe L.J. outlined



1 in *Re F (Shared Residence Order)* [2003] EWCA Civ 592, [2003] 2 FLR 397

where 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."

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

13 5. The law that I am principally concerned with is contained in s.3 and s.33 of the
14 Law. Although the parties all accept that the threshold criteria is met with respect
15 to the children and invite the Court to make supervision orders in relation to the
16 children¹, before I may make any order with respect to any of these three children,
17 I must first be satisfied that the threshold set out by s.33(2) of the Law is satisfied.
18 If I am satisfied, I must then go on to consider s.3 of the Law, the welfare
19 checklist at s.3(3) of the Law and the no order principle at s.3(5) of the Law.
20

21 6. S.33(2) of the Law provides:

22 *"A court may only make a care order or supervision order if it is*
23 *satisfied –*
24 *(a) that the child concerned is suffering, or is likely to suffer,*
25 *significant harm; and*

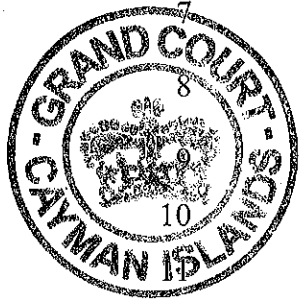
¹ This is spelt out in the Agreed Statement of Facts document signed by all of the parties.
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- (b) *that the harm, or likelihood of harm, is attributable to-*
- (i) *the care given to the child, or likely to be given to him if the order were not made, not being what it would be reasonable to expect the parent to give to him; or*
 - (ii) *the child's being beyond parental control."*

7
8 7. This means that the Court must conclude, upon considering all of the relevant
9 facts, that the preconditions in a) and b) are satisfied. As stated by *Wall J* in *Re G*
10 *(A minor) (Care Proceedings)* [1994] 2 FLR 69 this section means that the Court
11 has to be satisfied by evidence that the significant harm suffered by the relevant
12 child is attributable to the care, or absence of care, given to the child by the
13 parent(s) against whom the order is sought. In this context the phrase
14 "attributable" should be given its normal meaning and does not mean merely
15 capable of being attributed to the parent.

16
17 8. As mentioned in my judgment delivered on 27 May 2014, the DCFS initiated its
18 protective arrangements when it sought and obtained emergency protection
19 orders. When I consider whether any of the children are suffering significant harm
20 I may consider the circumstances at the time when the protective arrangements
21 commenced and not just the circumstances at the date of this hearing. At the time
22 that the protective measures were taken the DCFS asserted that "*each child had*
23 *suffered significant harm to either their physical well-being, emotional or*
24 *psychological development*" and that they "*faced a significant risk of harm due to*
25 *the parenting they had been receiving*". This assertion is accepted by all of the
26 parties in the Agreed Statement of Facts. Having regard to the case of *Southwark*
27 *LBC v B* [1998] 2 FLR 1095 when considering whether one of the children is



1 likely to suffer significant harm, the relevant date is the date upon which the
2 DCFS initiated the arrangements to protect the children, provided such
3 arrangements have been continuous in place to date.

4
5 9. When I consider future harm, it is not whether I am satisfied that it is more likely
6 than not, but that there is a real likelihood of significant harm. The House of
7 Lords in *RH and Others (Child Sexual Abuse: Standard of Proof)* [1996] 1 FLR
8 80 defined “likely” to mean:

9
10
11 “a real possibility, a possibility that cannot sensibly be ignored
12 having regard to the nature and gravity of the feared harm in the
13 particular case.”

14 10. When considering the meaning of “is likely to suffer” Lady Hale stated in *Re S-B*
15 (*Children*) [2009] UKSC 17, [2010] 1 FLR 1161 at para. 8:

16 “The leading case on the interpretation of these conditions is the
17 decision of the House of Lords in *Re H (Minors) (Sexual Abuse:*
18 *Standard of Proof)* [1996] AC 563, [1996] 2 WLR 8, [1996] 1 FLR
19 80. Three propositions were established which have not been
20 questioned since. First, it is not enough that the court suspects that
21 a child may have suffered significant harm or that there was a real
22 possibility that he did. If the case is based on actual harm, the
23 court must be satisfied on the balance of probabilities that the
24 child was actually harmed. Second, if the case is based on the
25 likelihood of future harm, the court must be satisfied on the
26 balance of probabilities that the facts upon which that prediction
27 was based did actually happen. It is not enough that they may have
28 done so or that there was a real possibility that they did. Third,
however, if the case is based on the likelihood of future harm, the

1 court does not have to be satisfied that such harm is more likely
2 than not to happen. It is enough that there is:

3 'a real possibility, a possibility that cannot sensibly be
4 ignored having regard to the nature and gravity of the
5 feared harm in the particular case' (per Lord Nicholls of
6 Birkenhead, at 585F, 23 and 95 respectively)."
7

8 11. Lady Hale in **RE B (A Child)** [2013] UKSC 33 (para. 192) helpfully stated that
9 the definition of harm:

10 "is wide, but it is not infinite. The focus is upon the child suffering
11 that harm, so upon the child suffering ill-treatment or suffering the
12 impairment of her health or development. Ill-treatment will
13 generally involve some active conduct, whether physical or sexual
14 abuse, bullying or other forms of active emotional abuse.
15 Impairment may also be the result of active conduct towards the
16 child, but it could also be the result of neglecting the child's needs,
17 for food, for warmth, for shelter, for love, for education, for health
18 care. Generally speaking, however, the harm is likely to be the
19 result of some abusive or neglectful behaviour towards the child.
20 But this is not invariably the case, as is shown by the inclusion, by
21 way of example, "impairment suffered from seeing or hearing the
22 ill-treatment of another". We now know that serious harm may be
23 done to the development of children who see or hear domestic
24 violence between their parents.²"
25

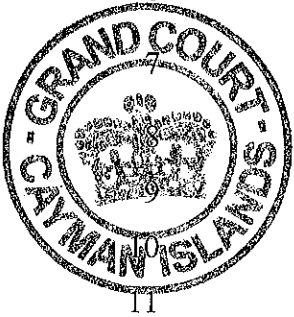
26 12. In **Re B (Care Proceedings: Standard of Proof)** [2008] 2 FLR 141 Lady Hale
27 spelt out at paragraph 70 that:

² My emphasis by underlining.
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1 *"The standard of proof in finding the facts necessary to establish*
2 *the threshold under section 31(2)³ or the welfare considerations in*
3 *section 1 of the 1989 Act, is the simple balance of probabilities,*
4 *neither more nor less."*

5
6 This was echoed by Lord Hoffmann in the same case when he stated at paragraph
13:

"I think that the time has come to say, once and for all, that there
 is only one civil standard of proof and that is the proof that the fact
 in issue more probably occurred than not."



12 13. If I agree with the parties that the threshold criteria has been met in relation to the
13 children, I must follow the approach set out in s.3 of the Law when determining
14 what orders I should then make. I must consider each child separately. Pursuant to
15 s.3(1) the child's welfare shall be the Court's paramount consideration when
16 determining any question with respect to the upbringing of that child. When
17 determining what is in that child's best welfare interests, I must have regard to
18 each of the factors set out in the s.3(3) welfare checklist. Pursuant to s.3(5) when I
19 am considering whether or not to make an order under the Law with respect to the
20 child, I should not make an order unless I consider that doing so would be better
21 for the child than making no order at all.

22

23 **The Parties' Positions and the Orders Now Made by this Court**

24 14. Mr. Fee helpfully summarised in his written closing submissions the issues for the
25 Court's determination and consideration in this judgment as being:

³ Equivalent provision to s.33(2) of the Law.
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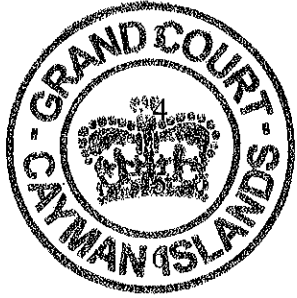
- What arrangements, if any, should be put in place for T to have contact with her mother;
- Should a residence order in relation to J be made in favour of the mother or father;
- What contact arrangements should be put in place for J with the non-resident parent;
- What conditions, if any should be placed upon the mother regarding her interaction with AE when the children are in her care; and
- What orders can or should be made in respect of T regarding future psychological or psychiatric assistance/treatment?

15. Mrs. McCormac, the Guardian ad Litem ("the Guardian"), put it more succinctly at the outset of her evidence in chief when she said:

"At the heart of this dispute is the extent of contact between T and J and the mother and the main residence for J, so my evidence will focus on these aspects."

In Relation to H

16. At the outset of the hearing the parties informed the Court that the DCFS' application for a one-year supervision order for H and for a residence order in relation to H in favour of the father was unopposed by the mother, supported by the father and recommended by the Guardian. No orders for contact were sought, all the parties agreeing that any contact would resume with the mother whenever H wished it to commence.



1 17. Accordingly during the hearing, on 4 August 2015, finding that the threshold
2 criteria was satisfied, recognising H's welfare as being paramount and having
regard to the no order principle at s.3(5) of the Law and the matters set out in the
statutory welfare checklist at s.3(3) of the Law, I made a 12 month supervision
order in relation to H naming the DCFS, with its consent⁴, as the supervisor and a
residence order in favour of the father. When I made the orders I recognised that a
supervision order is compatible with any s.10 order and it can only be made
before H's seventeenth birthday⁵ and expires when she reaches eighteen.

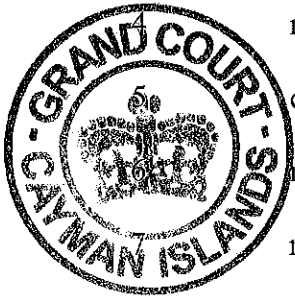
10 **In Relation to T**

11 18. At the outset of the final hearing all the parties took the same position concerning
12 the making of a final supervision order in relation to T as they had done with H.
13 There appeared to be a difference of opinion in relation to the length of that order.
14 Ordinarily a supervision order is made for up to one year, but it can be extended
15 upon application (Schedule 3, para. 6 of the Law). Having considered all of the
16 factors set out in paragraph 5 above I now make a supervision order for one year
17 in relation to T naming, with its consent, the DCFS as the supervisor.

18
19 19. By the hearing on 4 August 2015 all of the parties had agreed that a residence
20 order could be made in favour of the father. The disagreement was in relation to
21 T's contact with the mother. The mother sought a continuation of a flexible
22 staying contact regime based around T's wishes including a Friday to Sunday
23 arrangement. The Guardian's recommendations were adopted by the father, and

⁴ Schedule 3 para.8 (1) of the Law.

⁵ S.33(3) of the Law.



1 she forcefully contended that any contact between T and her mother should be
2 supervised. Ms. Dominique Orakwue, the current social worker, stated in her
3 report of 16 February 2015 that T and J should have supervised contact with the
mother which should transition into unsupervised contact. Mr. Fee submits that, in
discussions held outside of the courtroom during the hearing, the social worker's
recommendation changed to one of unsupervised contact between T and her
mother. Then, during her oral evidence, Ms. Orakwue again recommended
8 supervised contact for a period of two months, three hours on Saturday and
9 Sundays. The Guardian and the DCFS appeared to disagree over the time frame
10 for contact supervision, the latter indicating that it may only be for two months.

11
12 20. At the hearing on 4 August 2015 the Court considered the belated disclosure that
13 the mother was pregnant with the child of AE, her boyfriend. In addition the
14 Court was made aware that T had again harmed herself by taking a further
15 overdose and that upon release from hospital she was residing with her paternal
16 aunt, AM. As a consequence, directions were given about the filing of evidence
17 and further submissions. In the meantime all the parties agreed that T should
18 remain with AM, and that an interim residence order be made in favour of AM.
19 AM attended Court and I was able to determine that she was an appropriate
20 person to offer this respite care. I note that she has a Bachelors' Degree in
21 Psychology and that she was the former Director of Social Services for eleven
22 years. The father's residence order was suspended and the interim supervision
23 order extended.

24

1 21. On 4 August 2015 all of the parties, save for the mother, agreed that for the time
2 being any contact between T and her parents should be supervised. The mother
3 contended that her contact should remain as it was before. On 4 August 2015 I
4 ordered that the contact would be supervised, but that could be varied if the
5 DCFS, in consultation with the Guardian, felt it appropriate. Both the DCFS and
6 the Guardian supported this approach to the interim contact.

7
8 22. In her affidavit sworn on 10 August 2015 the mother did not comment upon or
9 express any different view about the orders she felt should be made in relation to
10 T. The Guardian and the DCFS, in their written submissions filed subsequent to 4
11 August 2015, did not change the position about the interim arrangements for T.
12 The Guardian stated that:

13 *“T needs considerable care in order to safeguard her emotional,*
14 *physical and mental development and health. The current*
15 *arrangement provides the safest environment for T that she has*
16 *had in a considerable time, but it is not yet possible to anticipate*
17 *how long that will need to continue.”*
18

19 My view on the evidence placed before me during the hearing and, without
20 consideration of any subsequent events, has not changed since 4 August 2015 and
21 I am satisfied that the arrangements put in place on that date should remain until
22 further order.⁶
23



⁶ This is subject to the contents of paragraph 25 below.
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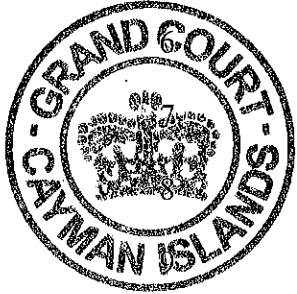
1 23. In their latest submissions both the DCFS and the Guardian contend that the Court
2 should not, at this time, make orders requiring T to attend for assessment with a
3 psychiatrist and a psychologist as it may be counter-productive for her welfare if
4 forced upon her. I agree with their contention and although I recommend that a
psychological and psychiatric evaluation take place, I leave it at the discretion of
the DCFS in consultation with the Guardian to work with T to get her to
voluntarily attend.⁷ As set out in his counsel's written submissions filed on 26
August 2015, the father does not oppose such an approach.

9

10 24. It has recently been brought to my attention that, following the presentation of all
11 of the evidence and of the parties' submissions, there have been further
12 concerning developments in relation to T. I have been informed that the DCFS
13 now intend to make an application for a care order in relation to T. Due to my
14 absence from the jurisdiction for most of September and the Chief Justice's view
15 that the hearing of the application for a care order should be delayed so that I be
16 the judge to hear it, the Guardian's absence from the jurisdiction until mid-
17 October, the personal circumstances of the mother's Counsel who understandably
18 has been unable to attend court and due to the fact that the mother now appears in
19 person as her attorneys were granted leave to come off the record by McMillan J.
20 (Actg.) on 24 September 2015, the parties have had difficulty finding a mutually
21 convenient date to list the application.

22

⁷ This is subject to the contents of paragraph 25 below.
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1 25. I have considered whether I should further delay the completion of this judgment
2 pending the proposed hearing. However, due to the need for this overdue decision
3 to be given and the uncertainty of the hearing date, I deem it appropriate to give
4 this judgment. The parties should be aware that the orders I make herein,
5 especially those relating to T, are based on the evidence currently before me and
do not take into account the events which I may be told have followed and which
may have resulted in any change of circumstances. Therefore, any order I make
herein is subject to any changed arrangements that the DCFS, apparently with the
consent of the parties, has put in place since the hearing. The status quo that has
emerged from such recent arrangements should remain until the proposed
upcoming hearing.

12
13 **In Relation to J**

14 26. All of the parties take the same position in relation to making of a supervision
15 order in relation to J as they did with T. I am satisfied that a one-year supervision
16 order, naming the DCFS as the supervisor, should be made and I make that order.

17
18 27. The dispute is about residence and contact orders. The father, supported by the
19 Guardian and DCFS, seeks a residence order in his favour. The mother seeks a
20 residence order in her favour. If a residence order is granted to the father the
21 mother seeks staying contact. If a residence order is granted to the mother she
22 contends that J should have contact with his father from Tuesday after school
23 until Friday morning. At the hearing on 4 August 2015 the Guardian and the
24 DCFS contended that any contact between the mother and J should be supervised.

1 The Guardian did not agree with the DCFS that the period of supervision should
2 end after two months.

3

4 28. In the written submissions submitted by the DCFS and the Guardian after 4
5 August 2015, they commented upon the mother's pregnancy and how this may
6 impact J. The submissions highlighted the Guardian's troubling concerns about
7 J's deteriorating behaviour, the renewed relationship between the mother and AE,
8 and the fact that neither H or T are around when J is at either of his parents'
9 homes. The Guardian states:



10 *"I remain very concerned about J. There is a risk that his needs*
11 *will be to some extent overlooked by all the time that has had to be*
12 *invested into T (and, to a lesser extent, H) and I would recommend*
13 *that there be a further review of J's situation specifically, perhaps*
14 *once he has returned to normal schooling for a few weeks."*

14

15

16 I fully endorse the Guardian's recommendation for there to be an ongoing review
17 of J's situation, especially upon his return to school this term. It may be that an
18 update about J could be given at the proposed hearing concerning the recent
19 developments concerning T and remarked upon in paragraph 25 above.

20

21 29. The DCFS, in its latest submissions, indicates that if AE will not be residing with
22 the mother but living elsewhere and will not be on the property when J is there or
23 have any contact with him, it is content for J to continue his visits with the
24 mother. If such a contact arrangement were put in place the Court has been told
25 that the social worker would conduct unannounced home visits to ensure that AE

1 is not present during the periods that J is there. This seems to be a different view
2 to that expressed at the hearing, as it appears that the DCFS is no longer
3 recommending that J's contact be supervised.

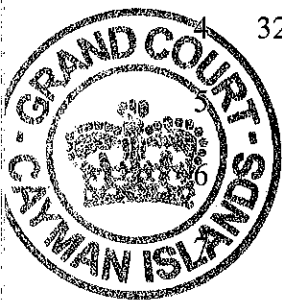
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5 30. The mother stated in her 10 August 2015 affidavit that AE will not be coming to
6 live with her after the baby is born. The mother confirms that they are in a
7 relationship and that after the baby is born he will want to come and help look
after the baby, spend time with the baby, but will not be moving into the house.
She says that AE coming to the house "*will have to happen*" after the baby is
born. She went on to say that if the Court remains of the view that she and AE
should not be together when J and/or T are with her, then she will abide by such a
requirement.

12

13

14 31. Although, I share the Guardian's concerns about the mother's relationship with
15 AE arising out of the contents of the mother's affidavit in support of her
16 application for a protection injunction, the breaches of that injunction and her
17 unsatisfactory explanations for the same and about why J has come into contact
18 with AE, I am not satisfied that it would be in J's best interest for contact to be
19 restricted to supervised at this time. The frequency of the contact would be too
20 greatly reduced. However, having regard to the mother's pregnancy and her
21 apparent need for even greater support from AE due to the pregnancy, I am of the
22 view that the current arrangements should be varied. A residence order should be
23 made in favour of the father where J is more settled. J should have contact with
24 his mother from Friday after school until Sunday evening. This should happen on



1 three weekends out of every four, so that the children can have at least one
2 weekend per month all together at the father's property.

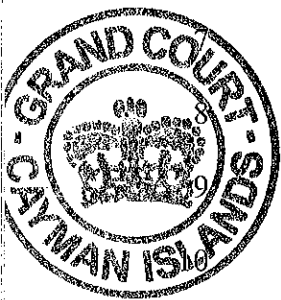
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4 32. When making this residence and this contact order I also have regard to J's poor
5 behaviour at school after his visits with the mother. I am satisfied that he is more
6 settled at his father's house and there will be less disruption if J is with the father
7 and siblings during the week.

8
9 33. The mother should take notice that if J's conduct at school remains poor on the
10 Monday after a contact weekend or AE comes into contact with him whilst he is
11 in the mother's care, then the arrangements I have now ordered will change, even
12 to the level of supervised contact.

13
14 34. All of the parties recognise the importance of maintaining inter-sibling contact if
15 the children are not placed within the same household. Although the parties did
16 not outline the specifics of this contact during the hearing, I have addressed this
17 important consideration when making the order set out in paragraph 31 above.

18
19 **In Relation to any Ancillary Orders**

20 35. AE has been a significant, yet not positive, figure in these proceedings. I will
21 address his involvement more fully later on herein. On 26 March 2015 AE gave
22 an undertaking not to contact any of the children. He was bound by the terms of
23 the undertaking until the final determination of these proceedings. As the



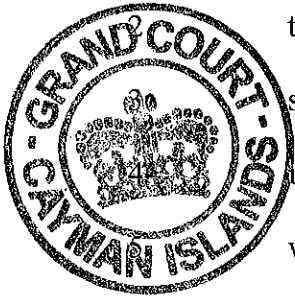
1 proceedings in relation to H came to an end on 4 August, it is arguable that the
2 undertaking that he gave in relation to her came to an end at the same time.

3
4 36. With this in mind I considered the English Court of Appeal decision in *Re H*
5 (*Prohibited Steps Order*) [1995] 1 FLR 638 where it was held that a person
6 referred to in the definition of a prohibited steps order included a person who was
not a party. Having considered the welfare checklist and the incidents of violence
in the household involving AE and the mother witnessed by the children⁸ and the
likelihood that he would be attending more frequently at the mother's property
due to her pregnancy, I made an interim prohibited steps order preventing AE
11 from having any contact with the children. I felt and still feel that such an order to
12 be in the children's best interests to facilitate the framework of contact be put in
13 place for J and his mother and to ensure that AE does not come into contact with J
14 and T. This is a binding court order and if breached by AE, or if a breach of it is
15 encouraged by the mother, then the mother's contact arrangements will J will be
16 promptly varied.

17
18 37. Although I had heard from AE during the hearing about the incidents and given
19 him the opportunity to address the Court about whether or not he should come
20 into contact with the children, because I had not afforded him the opportunity to
21 specifically address the making of a prohibited steps order, the orders made on 4
22 August 2015 were only interim orders.

23

⁸ See paragraph 9 Agreed Statement of Facts.
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1 38. As AE was called as a witness for the mother and as he is in regular contact with
the mother, I invited Mr. Fee to inform AE of his right to attend at Court to make
submissions concerning the continuation of the prohibited steps order. I note that
in his closing submissions Mr. Fee stated that the mother was willing to abide by
whatever condition the Court believed to be necessary in respect to AE.

6

7 **Procedural Background**

8 39. To put the current proceedings into context, it is necessary to outline the
9 procedural background and it is therefore convenient to repeat some of the detail
10 set out in the May 2014 judgment.

11

12 **DE and NE's Marriage**

13 40. The mother and father have been married to each other twice. Their first marriage
14 was dissolved in March 2004. They remarried in August 2009, but on 24
15 September the following year NE petitioned for divorce. The Petition was proved
16 on 23 October 2010. They remain married pending determination of the children
17 issues and the ancillary relief proceedings. Following the mother and father's
18 separation, and prior to the protective measures taken by the DCFS on 17 April
19 2014, all three of the children lived with the mother.

20

21 **Private Law Children Proceedings**

22 41. On 26 January 2011, in private law and pre-Children Law proceedings, Quin J.
23 granted interim care control⁹ to the mother with interim staying access for T and J

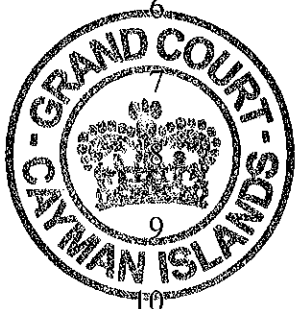
⁹ Order made prior to enacted of Children Law.
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1 with the father. It appears that Quin J. was not asked to make any orders in
2 relation to H.

3
4 42. At the hearing on 29 March 2012 the Chief Justice primarily dealt with financial
5 ancillary relief matters, but he also referred to children issues in his judgment. He
6 noted that the care and control of the children had been vested in the mother by
7 consent and that the terms of access had "*been agreed and defined for expression*
8 *in the written order to follow.*" The final order contained a comprehensive access
9 order. T and J were to have alternate weekend contact with the father from
10 10:00AM on Saturday until Monday morning and some midweek contact. The
11 parties agreed half of all school holidays, Christmas arrangements, the sharing of
12 the children's birthdays and arrangements for the mother and father's birthdays
13 and Mother's Day and Father's Day. The final order reflected that the parents also
14 agreed joint custody.

15
16 43. On 30 November 2012 the Chief Justice approved the draft final order with a
17 slight amendment in relation to the midweek access. Although the financial orders
18 made by the Chief Justice were appealed, it is evident that the children issues had
19 been fully resolved.

20
21 44. The private law proceedings only returned to Court after the Court of Appeal had
22 ruled on the disputed financial matters. On 25 February 2014 the mother filed a
23 summons seeking leave to take the children on holiday to Honduras and orders
24 relating to the renewal of H's passport. The application was opposed. On 27





March 2014 directions were given for the parties to contact the Listing Officer and to fix a hearing in relation to the temporary removal application and a hearing for the outstanding ancillary relief financial issues. The removal application was the only outstanding issue in the private law proceedings in relation to the children.

6

7 PUBLIC LAW PROCEEDINGS

8 Background Leading Up to the Making of the Ex Parte Emergency Protection 9 Orders on 17 April 2014

10

11 45. The DCFS applied for emergency protection orders ("EPO") in relation to all
12 three children on 17 April 2014. The Form C11 Supplement was completed by
13 Ms. Carla Court, the then allocated social worker. In the form the DCFS set out
14 the ground for the application as being that there was reasonable cause to believe
15 that the children are likely to suffer significant harm if they are not removed to
16 accommodation provided by or on behalf of the DCFS. At paragraph 2B in the
17 Form C11, the DCFS indicated that enquiries were being made about the welfare
18 of the children under s. 50(1)(b) of the Law and those enquiries were being
19 frustrated by access to the children being unreasonably refused to someone who
20 was authorised to seek access and there was reasonable cause to believe that
21 access to the children was required as a matter of urgency.

22

23 46. The reasons for the application were set out in paragraph 5 of Form C11. To
24 summarise, the reasons were the nature of the relationship between H and the
25 mother which included physical confrontation between them and resultant injury



to H. In addition there were concerns that the children had witnessed incidents of domestic violence between the mother and AE and that H had been drawn into one such incident.

47. On 17 April 2014, an eight day emergency protection order was granted in the Summary Court. The DCFS was authorised to remove the children to accommodation provided by or on behalf of them and to prevent the children from being removed from that accommodation.

Background - The Summary Court Following the Making of the Ex Parte Emergency Protection Orders on 17 April 2014

48. The EPOs were served on the mother on 17 April 2014. At that time all three children were removed from her care and placed with father, where they remained until the matter came before the Grand Court on 1 May 2014.

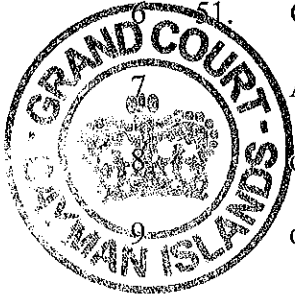
49. At the next hearing, which came before Magistrate Foldats on 25 April 2014, the DCFS sought an extension of the EPOs. The Learned Magistrate, with the consent of the parties, extended the EPOs for a further seven days. It appears the Learned Magistrate may have been misinformed by those in attendance at the hearing that there were pending private law residence order proceedings in the Grand Court. As a consequence, the Magistrate decided that the public law proceedings should, following the making of the extended EPOs, be transferred to the Grand Court.

1 **Background Following Transfer to the Grand Court**

2 50. When I became seized of the matter, I immediately put in place enquiries to locate
3 a Guardian ad Litem for the children. Mrs. M. McCormac was available and she
4 was appointed on 1 May 2014.

5

6 51. On 29 April 2014 the DCFS's Form C2 Application was filed and issued.
7 Although the face of the document continually referred to interim supervision
8 orders, all of the parties accept that the Application Form was filed in pursuance
9 of an application for full supervision orders.
10



10

11 52. The threshold criteria and the making of supervision orders were not opposed at
12 the hearing before me on 1 May 2014. Despite this, I was still required to consider
13 the evidence placed before me. When I then considered that evidence, and when I
14 go on to consider the additional evidence now before me, I note that in the
15 Children Act 1989 Guidance and Regulations, Volume 1, Court Orders, para. 3.37
16 issued by the Department of Health in 1991 the following is stated:

17 *"The child's version of events may form an integral part of*
18 *"reasonable grounds for believing" as could, for example, medical*
19 *evidence that certain symptoms were consistent with abuse. After*
20 *further assessment this may be rejected at the full hearing. Court*
21 *findings of fact leading to the making of interim orders should*
22 *therefore not be binding on the court at the final hearing, and*
23 *should not be regarded as prejudicial to any of the parties to the*
24 *proceedings."*

25



1 53. I also note the following helpful guidance, drawn to my attention by the Guardian,
2 given by Lady Hale at paragraph 20 in *Re W (Children)* [2010] 1 FLR 1485:

3 *"It is, of course, not unknown for children to make false*
4 *allegations of abuse. But it is also not unknown, indeed it is*
5 *believed to be more common, for children to conceal or deny the*
6 *abuse which is happening to them. They may have been 'groomed'*
7 *to believe it normal and natural. They may have been threatened*
8 *with dire consequences if they tell the secret. They may be perfectly*
9 *capable of working out for themselves that making a complaint will*
10 *lead to pain and distress for all concerned and probably to the*
11 *breakup of the whole family. These are powerful deterrents to*
12 *coming forward or persisting in complaints. It is as much for this*
13 *reason as for any other that the family justice system has sought to*
14 *minimise the deterrent effect of its own processes. Were requests*
15 *for children to give evidence to become routine, the uncertainties*
16 *which this would generate would add to the deterrent effect both in*
17 *individual cases and in general.*

18

19 **Factual Background Leading Up to the Making of the Interim Supervision Orders**
20 **and Ancillary Interim Orders Made in May 2014**

21

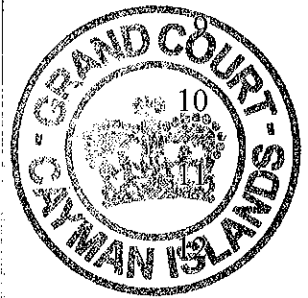
22 54. Upon reviewing the evidence I was satisfied that there were reasonable grounds
23 for believing that each child's circumstances fulfilled the criteria for the making
24 of full supervision orders. The reasons for my decision to make interim
25 supervision orders and ancillary interim orders were set out in my detailed
26 judgment dated 27 May 2014. As it is relevant to the current determination, for
27 convenience, I herein repeat significant portions of my review of the evidence set
28 out in that judgment.

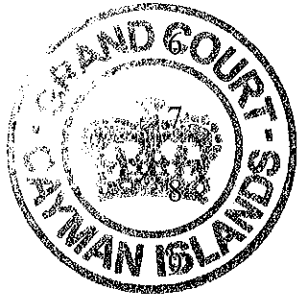
29

1 55. On 11 December 2013 a referral was made from T's school that a teacher had
2 witnessed AE inappropriately kissing T on the mouth. This allegation does not
3 seem to have formed a part of Ms. Court's ongoing investigation, nor has it ever
4 been put forward as a reason for making a supervision order.

5
6 56. On 14 January 2014 a referral was received by the DCFS from a counselor at H's
7 school stating that H had disclosed that she and her mother fought often and that
8 her mother became aggressive both verbally and physically towards her. When
Ms. Court met with H and T on the same day to discuss the report, she gained the
impression that they sought to minimise DE's behaviour. H indicated that DE had
got angry during a row arising out of her refusal to let H attend a party. H said
that they had been arguing and that her mother pushed her on the couch, putting
her hands on her throat for a few seconds. T did not give great detail about the
argument at the time, but did say that her mother went out with AE and that she
could smell alcohol on her breath on her return. It is clear that the mother and
AE's damaged and violent relationship was often fueled by them drinking
alcohol.

13
14
15
16
17
18
19 57. On 12 February 2014 the DCFS received a further referral from a counselor at H's
20 school. The DCFS was informed that the counselor had seen her with a "*busted*
21 *lip*" and that H had told him it had been caused during a confrontation with her
22 mother during which her mother had pushed her from behind causing her to fall
23 and hit her lip. The counselor stated that H had asked him not to inform her
24 mother of her report to the school.





1 58. On 17 March 2014 a further referral from H's school was made. It concerned a
2 physical altercation between the mother and AE in which the counselor had been
3 informed by H that the mother had an injury and "*blood was spilt.*" H had told the
4 counselor that she had to get involved, by stepping in between the two adults
5 during the fracas. She told the counselor that she had had to use a beer bottle to hit
AE on the head and the shoulder, which caused him to stop and leave the
property. The counselor was aware that, despite this incident, AE had returned to
the property a week later. The mother in her affidavit said that she was not cut and
there was no blood on the scene. The mother also said that H did not get
physically involved in the argument, but simply shouted at AE.

11

12 59. Towards the end of March 2014 the counselor at H's school reported to the DCFS
13 that there had been a kitchen fire at the home whilst the mother was working. H
14 had called 911 and sent a text message to AE to ask him to contact her mother
15 because she did not have credit on her phone. The counselor was concerned that
16 the children did not have emergency access to their mother. It is also concerning
17 that the children did not have appropriate adult supervision at the home at that
18 time.

19

20 60. On 17 April 2014 the counselor at H's school reported to the Department that H
21 had told him about another major altercation between her mother and AE in the
22 early hours of the morning. The counselor was told that H was the only child at
23 the home. She told the counselor that the adults were drinking alcohol and a very
24 violent fight occurred. H reported that AE pushed and hit the mother in the face

1 and her mother was throwing glass items at the floor in front of him and hitting
2 him with a broom. H said that AE had started hitting her mother in the face in the
3 yard and, yet again, she had had to intervene to break up the fight, this time using
4 a broom. H said that the police arrived at the scene.
5

6 61. The police incident report records that AE had told them that there had been an
7 argument with the mother during which glass had been smashed and that both
parties had got physical. The mother told the police officers that she had seen AE
when she was at a bar in George Town. She said that they had been drinking and
that he took her to her home. The mother said that he had asked her for sex and
she refused. She told the police that he then became abusive and grabbed her,
12 punching her in the face and that he then left the location. The police took
13 photographs of her injuries.
14

15 62. At the interim supervision hearing Ms. Court stated that, when she met with the
16 mother and AE at the Department Office in West Bay to talk about the various
17 incidents, both of them "*emphatically denied*" that any of the children had
18 witnessed domestic violence or that either of them drank to excess. I accept that
19 this most troubling denial took place and it is not the only time during these
20 proceedings that the mother has wrongly denied events or her actions, only
21 changing her position when the available evidence makes such a position no
22 longer tenable.
23

1 63. On 28 April 2014 Ms. Court interviewed H and T separately to try and obtain
2 further information regarding all of these incidents. She felt that on this occasion
3 the girls were more forthcoming with information.

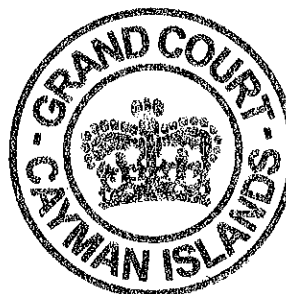
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5
6 64. Ms. Court rightly contended that the nature of H's relationship with her mother is
7 unhealthy, relying upon the evidence of a number of violent disagreements
between them within a relatively short period of time, during which the mother
has caused physical harm to H. Ms. Court highlighted the mother's inability to
properly care for the children due to evidence leading her to believe that the
mother was drinking excessive amounts of alcohol which in turn led to violent
altercations and H having to take on some of the parenting roles in the household.
12
13 Ms. Court also rightly contended that the children had suffered emotional harm
14 due to the mother's threats to them, and they were fearful of what she may do.

15
16 65. The counselor had highlighted that the children had become wary about
17 discussing with him what was happening in the family home, because they had
18 come to realise that he would pass the information on and as a consequence the
19 adults would have to be questioned about it. Ms. Court indicated the children
20 refused to speak with her for two and a half weeks. She said she became aware
21 that the children were fearful that, if they continued to discuss these matters, their
22 mother would find out and there would be consequences for them. This highlights
23 one of the understandable concerns of the Guardian that H and, in particular, T
24 have on a number of occasions been obligated, at the request of the mother, to

1 withhold information and even to lie to the professionals involved in this case. In
2 my May 2014 Judgment I was rightly concerned that if H and T were to reside in
3 the mother's property this might hinder the investigation then being carried out by
4 the Department and the Guardian.
5

6 66. In her affidavit evidence before the Court at the interim supervision hearing, the
7 mother accepted that she and H had arguments, but said these were caused due to
8 her trying to appropriately discipline and protect her. The mother denied in the
9 affidavit evidence that she had ever been physically aggressive or violent to H in
10 the way that is described in the application.
11

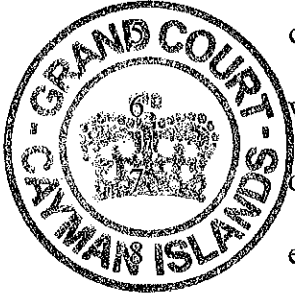
12 67. At the 1 May 2014 hearing I found the mother's denial about the nature of her
13 altercations with H to be concerning. I noted the mother's denial about H getting
14 physically involved in the fracas on 17 March, because in her affidavit, the
15 mother related that she and the children were "*very close and have a loving*
16 *relationship*" and that they "*get on great*" together and "*have lots of fun together.*"
17 She said they have a "*normal family life.*" The mother's expressed views were
18 and remain highly inconsistent with the worrying reports which had been made by
19 H to the school counselor and to Ms. Court. She wrongly attempted to minimise
20 the seriousness of their exchanges, and exhibited an inability to recognise how
21 fractured her relationship with H is and the risk to the children from her unhealthy
22 relationship with AE.
23





1 68. In relation to the 11 January 2014 incident, H told the social worker that she and
2 her mother had a row concerning her being able to go to a party. As the argument
3 progressed the mother made disparaging remarks about H's biological father. She
4 said that her mother "*got in her face*" and was yelling and calling her names. H
5 admitted that she rolled her eyes towards DE, following which she said her
6 mother slapped her in the face really hard. H said that she responded by swinging
7 a plastic ketchup bottle at her mother, which hit her. H told Ms. Court that her
8 mother grabbed her hair and proceeded to hit her in the face several times with
9 her fist. H said that T ran from the kitchen to get AE to help because she was
10 scared about how bad the fight had become. H said that she tried to back off by
11 moving back towards the living room, as her mother was being so physical with
12 her, but she fell back onto the couch and her mother then came at her and started
13 choking her. She said that she started hitting her mother in the face and tried to
14 push away and that, in the end, AE had pulled her mother off her. H said that she
15 then went up to her bedroom at which time the mother came up to the room and
16 started hitting her in the head on more than one occasion. H told Ms. Court that
17 this was the last time that her mother had hit her so many times and so severely.

18
19 69. During the 28 April 2014 interview, H told Ms. Court about the 12 February
20 incident. Initially H had said that she and her mother had an argument, and when
21 she turned away from her mother, her mother had pushed her from behind causing
22 her to fall on the floor and bust her lip. However, during the April interview H
23 told Ms. Court that she did not fall from a push by the mother, but that the injury
24 had been caused by the mother punching her in the face. Troublingly the mother



1 was asked by the social worker about how H received the injury and initially said
2 she was unaware about how this could have happened. I noted at the May hearing
3 that the mother stated that H's injured lip was caused by her swinging the back of
4 a hand towards H and catching her on her lip. The mother said that the lip was not
cut and did not swell up. However, both the school counselor and the social
worker noted the injury on the lip. During cross-examination by Mrs. Bothwell
during the current hearing, although confused about which of the heated
exchanges it was with H, the mother said that she had hit her in the mouth when
she was disrespectful to her.

10
11 70. During the current hearing, the mother still disagreed with H's reports concerning
12 this and other incidents stating:

13 *"The majority of what (H) says is untruthful, majority she is a*
14 *liar."* Interestingly she also went to say *"greater part of what (T)*
15 *says means that she is a liar in some things, I not say in all."*

16
17 When considering these statements in the context of the reported nature of her
18 relationship with both of these children, they highlight how dysfunctional it is.

19 The mother even said similar in relation to J during the hearing, namely:

20 *"When he say he was hit on the bottom (by AE) he not tell the*
21 *truth, as he never around, when he say he kicked him in the head*
22 *that not true, when he said (AE) taking to the beach."*

23
24 Apart from the concern this raises about J coming into contact with AE, this also
25 illustrates a similar unhealthy trait developing in her relationship with J.



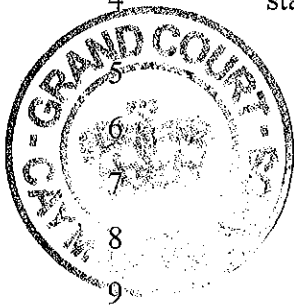
1 71. During the hearing I informed the mother that I was firstly concerned about the
2 detail of the incident and secondly by the fact, that if the mother was right, both H
3 and T were telling such significant and serious lies. The mother, in answer,
4 explained that she felt that they were both lying so that they could live at their
5 father's because they would be given more liberty there than at her house. I found
6 this to be a very concerning reply, because it showed no insight about the
7 seriousness of the situation and emotional harm that the children were suffering
8 due to her continual blaming of them and not accepting that she herself was, at the
9 very least, partly at fault.

10

11 72. I do not share the alarming view which the mother expressed in May that the
12 incidents reported to the Court could be viewed as being a very small number of
13 isolated incidents. A number of serious and unacceptable incidents occurred
14 within a short period of time and the mother has given inconsistent accounts as to
15 what happened.

16

17 73. At the 1 May 2014 hearing Ms. Court rightly stated that she was worried that the
18 mother was placing her own emotional needs before the needs of the children. She
19 reached this conclusion as she then correctly believed that the mother had a
20 history of allowing AE back into the household despite the violent altercations
21 between them, some of which H has had to intervene in. She said this has put not
22 only H at particular risk of physical harm, but placed all of the children who may
23 witness an incident or who may be drawn into the same, at risk of both physical
24 and emotional harm.



1 74. This is a serious concern that still exists, especially as I am satisfied that, despite
2 the injunction being obtained by her, the mother clearly failed to break her ties
3 with AE, continuing to rely upon him for financial and emotional support. She
4 stated in cross examination that AE is:

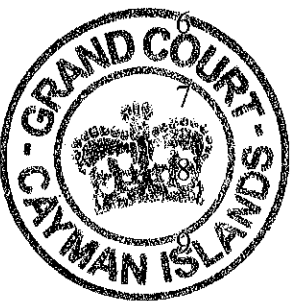
5 *"loving and understanding – (AE) helped me a lot – groceries,*
6 *money the car. Sentimentally he help me, (he) filled the vacuum*
7 *for my children for all 3 of them. ...If I say I without food, he go*
8 *buy it. If I need cash and if he has it I will get it."* She then went
9 on to say that AE is *"a good influence on my children, very loving*
10 *and very responsible."*

11

12 75. The mother, in her affidavit sworn on 30 April 2014, agreed that the details of the
13 17 April incident were generally accurate. Importantly, she told the Court in May
14 2014 that her relationship with AE had ended and that she wanted nothing more to
15 do with him. Despite this, the mother had still not applied for an injunction to
16 restrain him from coming to the property. At the hearing Ms. Court indicated that
17 there had been more than one incident with AE and yet, until the child protective
18 actions were taken by the DCFS, the mother always allowed him back into the
19 property. Ms. Court was at the interim supervision hearing insightfully concerned
20 that this pattern would continue.

21

22 76. In her affidavit evidence before the Court on 1 May 2014, the mother said that she
23 had not spoken to AE since the children had moved to the father's property.
24 However, on the first day of the hearing the DCFS informed the Court that they
25 had received information that the mother and AE had very recently been seen



1 together in public. At the hearing I felt that this situation required careful
2 monitoring as I was concerned that, if the mother was maintaining this unstable
3 and physically harmful relationship, she was prioritising her own emotional needs
4 over the children's safety. Events since the interim hearing have shown my and
5 Ms. Court's concerns to be well-founded. The mother is incapable of ending her
6 relationship with AE or fully comprehending how her inability to do so negatively
7 impacts the children. This leads to my inevitable finding that the mother, although
8 she may say the opposite and tries for a short time after each hearing to create the
9 impression that she had separated, frequently prioritises her own emotional needs
10 over the children's welfare.

11
12 **Findings and the Threshold Criteria Set Out in 27 May 2014 Judgment**

13 77. Having regard to the evidence about the violent and "*disturbing*" incidents in the
14 home witnessed by and involving H, I was satisfied there were reasonable
15 grounds to believe that the circumstances, in respect to H, set out in s.33(2) were
16 made out. I found that there were reasonable grounds to believe that the harm was
17 both physical and emotional. I noted at paragraph 80 of my judgment that:

18 *"The mother characterises the incidents as being a very small*
19 *number of isolated incidents. However, I do not share the view*
20 *that they are either a very small number or isolated. The*
21 *allegations are of a number of incidents within a short period of*
22 *time and are most concerning in nature. It does appear that the*
23 *mother in her affidavit seeks to minimise the serious nature of the*
24 *reports."*
25

1 78. In relation to T, the fact that AE had been permitted by the mother to return to the
2 property after incidents of violence satisfies me that the reasonable grounds for
3 believing are also made out in relation to likely physical and emotional significant
4 harm. I was concerned that health issue and violent nightmares being experienced
5 by T were likely as a result of her experiences within the mother's home.

6
7 79. In relation to J importantly, and as it has now turned out insightfully, I stated that:

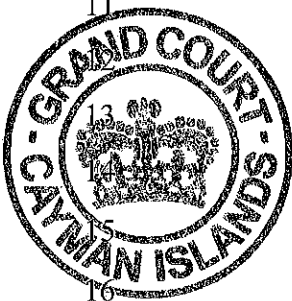
8 *"I am concerned, until there is greater clarification concerning*
9 *the mother's ability to keep the boyfriend away from the property,*
10 *from herself and from the children that there are reasonable*
11 *grounds for believing there is a likelihood of J suffering physical*
12 *and emotional harm. I require her to seek a protection order*
13 *preventing her boyfriend from coming to the property or having*
14 *any contact with her wherever she may be. If this is done and*
15 *thereafter she ensures that she does not facilitate any breaches of*
16 *the terms of the order, she will be better placed to have J return to*
17 *live with her."*

18
19 It is important to remember that, prior to the hearing on 1 May 2014, the DCFS
20 had recommended that a residence order be made in relation to J in favour of the
21 mother, but this changed at the start of the hearing due to information received
22 about AE's continued interaction with the family.

23
24 80. I concluded that that the harm was attributable to the lack of care given to the
25 children by the mother, which fell below what it would be reasonable to expect a
26 parent to give.



1 81. I considered the welfare checklist at the 1 May 2014 hearing. I found that T and H
2 wished to reside with each other and they had concerns about possible
3 repercussions against them from the mother as a consequence of the disclosure
4 about events that occurred in the household. I had concerns about the mother's
5 ability to meet each child's physical and emotional needs and elevate them above
6 her own. I was satisfied that the children had coped well with the move to the
7 father's home. When deciding what orders to make I had regard to each child's
8 age, sex and religious persuasion. It is significant, and I had hoped that the mother
9 would have carefully noted this and acted upon it, I stated the following in
10 relation to J:



11 "It is likely that having regard to his age and his bond with the
12 mother, if the mother is able to satisfy the Court that she will
13 ensure that her boyfriend will no longer be returning to the
14 property or having any contact with her and/or the children, he
15 could return to her care." I also added that "J, subject to the
16 mother excluding the boyfriend for the property, it may be that
17 she will be better able to meet J's needs."
18

19 Alas for reasons already touched on herein and to be further addressed, I find that
20 the mother has failed and is simply unable to heed this clear indication given to
21 her.
22

23 **Interim Supervision, Residence and Contact Orders Made in May 2015**

24 82. I was satisfied that supervision orders were required to ensure the safety of each
25 child, as they would enable the DCFS to actively intervene and assist the family.

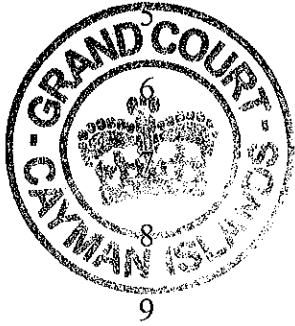
26 On 1 May 2014 I made a three-week supervision order for J and eight-week
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1 supervision orders for T and H. I note, on a review of the file, that on 16 May
2 2014 there was a further hearing to deal with issues concerning J. On 16 May
3 2014 I ordered that the interim supervision order made in relation to J be extended
4 for a further 4 weeks and when it expired, if then further extended, it should be
5 made to expire on the same date as T & H's orders. My reserved judgment
6 circulated on 27 May 2014 relates to the three week supervision order made on 1
7 May 2014.

8
9 83. On 1 May 2014, as reflected in my reserved judgment of 27 May 2014, I found
10 that it was in each child's best interests for an interim residence order to be made
11 in favour of the father. I ordered that J should have week day contact with his
12 mother after school between 3:00PM to 5:30PM and, if possible, on at least one
13 day over the weekend. I felt that contact should be reviewed and this is why the
14 interim supervision order for J was made for only three weeks.

15
16 84. On 16 May 2014 I extended J's interim supervision order and, following the
17 Court being informed that the mother had applied for a non-molestation and
18 exclusion order against AE, I acceded to the DCFS' recommendation that J
19 should reside with the mother and have regular contact with his siblings and his
20 father, usually from Tuesday afternoon until Friday morning. When agreeing, I
21 accepted the social worker's assurance that the DCFS would closely monitor J in
22 that placement.



1 85. As Ms. Court offered, at the hearing on 16 May 2015, to facilitate supervised
2 contact on a voluntary basis in relation to T, I ordered supervised contact to take
3 place at least twice a week. I added that, if all the parties agreed, the Guardian
4 being well placed to share the wishes of T about contact with the parties, the
frequency and nature of the contact could be varied. The contact soon after the
hearing developed into T regularly staying with her mother on the weekends, for
extended periods during school vacations and that this is partly driven by T's
wishes to see her mother.

9
10 **Procedural Background Following the 16 May 2014 Hearing**

11 86. Following the 16 May 2014 hearing interim supervision orders were in force in
12 relation to all three children. There was a residence order made in the mother's
13 favour for J. There were residence orders made in the father's favour in relation to
14 H and T. The DCFS was directed to prepare letters of instruction for a
15 psychological assessment for T and H, which were to be perfected with the other
16 parties. The Court, when shown the perfected letters, would then consider whether
17 to make an order giving leave for T and H to be seen by the psychologist. A report
18 dated 10 October 2014 was filed by Diane Shultz, educational psychologist, in
19 relation to T.

20
21 87. On 20 June 2014, 18 July 2014 and 25 August 2014 the interim supervision
22 orders were extended.

23



1 88. Although the papers in the injunction file are confusing and incomplete, it appears
2 that on 13 May 2014 Quin J. made a non-molestation order, a no contact order, an
3 order prohibiting AE from coming within 150 feet of the mother and an order
4 excluding AE from entering or coming within 100 yards of the mother's property.
5 When the return date came on before me on 31 October 2014 the order,
6 unopposed by AE, was extended until 31 October 2015.

7

8 89. On 2 January 2015 Ms. Orakwue took over from Ms. Court as the allocated social
9 worker to this family.

10

11 90. At the hearing before me on 9 January 2015 the parties agreed that there should
12 be a residence order made in favour of the father in relation to H and T and that
13 the threshold criteria had been made out so a supervision order should be made to
14 the DCFS in relation to all three children. There remained a dispute between the
15 mother and all the other parties about whether a final residence order in relation to
16 J should be made to her or the father. There was no agreement about the level and
17 type of contact for the mother to the children, especially due to concerns held by
18 the Guardian. As it appeared that the issues had narrowed and that the parties
19 would present their case focused on the limited issues, directions were then given
20 to only a two to three-day final hearing.

21

22 91. The hearing commenced on 19 February 2015. Thereafter the Court received 16
23 days of evidence which, due to the full court lists, was spread over four months.

24 During the hearing, on 26 March 2015 AE gave the above-mentioned undertaking

1 not to contact any of the three children. At the close of the evidence on the 5 May
2 2015 the parties were directed to file their written submissions by or on 8 June
3 2015. Unfortunately, the written submissions from the father were not received
4 until 22 July.

5
6 92. As outlined in paragraph 12 above, the Court of its own motion requested the
7 parties to attend on 4 August 2015 to address the issues resulting from the late and
8 very recent disclosure of the mother's pregnancy with AE's child, and from
9 intervening events concerning T which the Guardian wished the Court to be made
10 aware of. The mother was directed to file her affidavit dealing with her pregnancy
11 by or on 10 August 2015 and the other parties were given leave to file written
12 submissions concerning the developments by or on 17 August 2015, thereby
13 putting the Court in a position to complete this judgment.
14

15 93. The mother's affidavit was filed on 10 August 2015. She informed the Court that
16 the baby was due on 21 November 2015 and confirmed that AE is the father. She
17 also confirmed that she had been in a relationship with him since December 2014
18 and stated that the relationship had been very good since then as the past
19 difficulties no longer existed. The mother stated that there had been no incidents
20 since April 2014. She confirmed that she first became aware of the pregnancy in
21 April/May 2015.
22

23 94. In her affidavit the mother stated that there will be no change in her living
24 arrangements when the child is born. She said that the children were her first





1 priority and that she would not do anything that would prejudice her relationship
2 with them or them spending extended periods of time with her. She stated that she
3 understood why the Court had put restrictions in place that is why she said she is
taking things slowly in her relationship with AE. Having regard to events over the
past year the mother surprisingly says that she believes that she and AE have
shown that they will comply with court orders concerning him coming into
contact with the children. She reiterated that she would abide by any requirements
the Court deems to be necessary as the children of a priority. Although saying she
would comply with any order of the court, the mother during her evidence in
chief on 16 March 2015 said that she felt that the injunction should be removed,
that AE should see the children because she did not think he would harm them as
he had "*changed a lot*". The mother stated that she had learned a lot from her
counseling and the program she had attended at the Family Resource Centre. I
note that the Centre commended her and gave her an award for successfully
completing the program. She said that AE had also attended courses and that she
felt that he also had benefited from them.

17
18 95. The written submissions prepared on behalf of the Guardian were filed on 14
19 August 2015 and those for the DCFS were filed on 17 August 2015. The
20 submissions prepared on behalf of the father were belatedly filed on 26 August
21 2015.

1 **Additional Review of the Evidence**

2 96. Although the mother's pregnancy and in particular T's recent incident of self-
3 harm have added a further dimension to the case which will require further review
4 and assessment after this judgment, I am satisfied that it is appropriate to make
5 the orders outlined earlier in this judgment, although they should be read in light
6 of my comments in paragraph 25 above. Although the outcome of this hearing
7 may not have the finality that was hoped for due to recent events, I am of the view
8 that it is appropriate for the past evidence to be reviewed and dealt in this
9 judgment. Any relevant findings will then be on the record for future hearings and
10 will therefore not need to be re-argued at a later date.



11

12 97. As I stated earlier in this judgment, and as it appears acknowledged by the parties
13 by the nature of their written submissions I need not make findings on every
14 factual issue placed before me. When reviewing the evidence I have recognised
15 the importance of focusing on the concerns that led to the DCFS involvement.

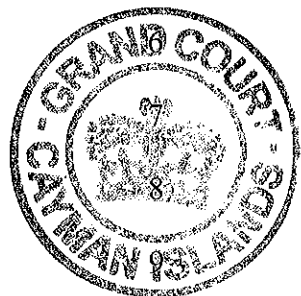
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17 98. A significant concern is the mother's inability to detach and/or, as illustrated by
18 her actively encouraging the breach of an exclusion order made to keep AE away,
19 recognise the need for her to detach herself from an abusive relationship and the
20 resulting risk for the children. There are also concerns emanating from T and H's
21 unsettled childhood again primarily due to frequent moves caused by the mother
22 facilitating her then relationships. There are also concerns about the mother's
23 parenting ability as exhibited by the nature of her fractious and sometimes violent
24 relationship with H, her using the children to tell lies to professionals and report

1 back to her the events in the father's house, the over mature behaviour and
2 appearance of T and the troubling behaviour of J at school after he spends time
3 with his mother and the troubling behaviour of J after he has been staying with
4 her.

5
6 99. Although I have already commented on her relationship with AE, it requires
7 further analysis. The mother relied upon the contents of her affidavit sworn on 14
8 July 2014 during both injunction hearings. AE during his oral evidence submitted
9 that there was an incident involving him, the mother and H, that he did not agree
10 that all the things in the mother's affidavit was true, saying that it was a one-off
11 incident. I am concerned that he fails to recognise how violent and damaging their
12 relationship had become. He felt that the mother had painted a bad picture of him
13 in the affidavit as she was hurt because the children had been taken away from
14 her. He said that he did not see their relationship as a risk to the children. Sadly,
15 this shows a lack of insight in relation into the nature of their relationship and the
16 effect of what happened between them on the children.

17
18 100. In her affidavit the mother indicated that she and AE had separated after the
19 incident on 17 April 2014 when he was "*violent towards her.*" The mother stated
20 that AE had been "*aggressive and physically abusive to her on a number of*
21 "*occasions over the last few months*" and it was getting "*progressively worse*" and
22 she was "*afraid*" that she would end up "*getting seriously hurt*". She mentioned
23 the incident in November 2013 when, during an argument at the home, he was
24 "*pushing and shoving*" her around the house during which she felt very afraid of



1 him and that he would really hurt her. She stated that he was *"getting more*
2 *aggressive and angry"* and that he grabbed a large cooking pot and swung it at the
3 door damaging the door. The mother said that she telephoned the police and made
4 a report. In the affidavit she stated that after that incident she *"noticed a change in*
5 *him"* and he was *"becoming more aggressive and would argue more often"*. She
stated that there had been *"a number of arguments in 2013"* where he became
"very angry" and that she was afraid for her safety. She highlighted that many of
the incidents occurred after AE had been drinking are and that it was *"impossible*
to reason with him or calm him down" and that she had felt *"extremely vulnerable*
10 *and frightened at what he could do."*

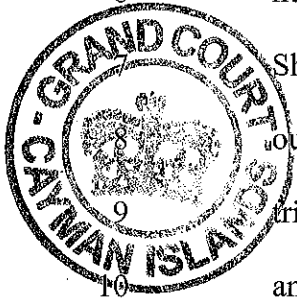
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12 101. In the affidavit she stated that *"usually"* the incidents had taken place when the
13 children were not at home but *"occasionally"* it happened when *"they"¹⁰ have been*
14 *there, in particular H."* She said that H had *"seen him become aggressive and*
15 *physical"* with her and that she had even *"tried to intervene to help her on a*
16 *couple of occasions by shouting at him and telling him to leave."* She recalled this
17 happening in one particular argument on around 17 March 2014. She said that *"I*
18 *was very upset that (AE) had once again become violent with me, but also that*
19 *(H) had seen this and felt she needed to try to protect me. I want to make sure that*
20 *the children are never exposed to this again."¹¹*

21
22 102. In her affidavit the mother went on to say that this happened again on 17 April
23 2014 and that this was *"the most serious incident."* She stated that she had been

¹⁰ My emphasis.

¹¹ My emphasis.

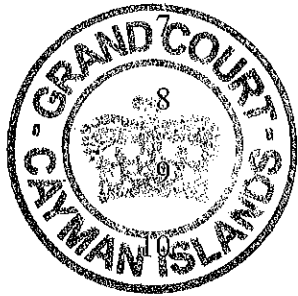
1 out and returned to the home with AE and he started telling her that he wanted to
2 have sex. She said no and he kept saying that he wanted it and as she continued to
3 refuse he began pushing her, grabbing her and the hit her in the face. She said she
4 tried to defend herself and grabbed a glass photo frame and tried to use it to hit
5 him to get him away from her. She said it fell onto the floor and smashed and that
6 he kept coming at her so she grabbed a broom and tried to use it to defend herself.



7 She said he continued hitting and grabbing her and they ended up in the yard
8 outside. She said that H was there and saw this and that H grabbed a broom and
9 tried to use it to help her get AE off her. She said that she was hurt in the incident
10 and her eye was cut and swollen. She said that after the incident AE had attended
11 the property knocked on the window at night and that she was very afraid of what
12 he might do that is why she was seeking the injunction.

13
14 103. In the police report exhibited to the affidavit, the mother stated that she been at
15 the Havana Bar and that is when she saw AE. She said that they both drank before
16 he took her home.

17
18 104. She acknowledged that it was made clear to her at the hearing on 1 May 2014 that
19 she needed to obtain protection for herself and that she must do so to be able to
20 demonstrate that her relationship with AE was finally over. She also
21 acknowledged that AE's behaviour towards her was one of the concerns that the
22 DCFS had about returning the children to her care.



1 105. During cross-examination on 16 March 2015 she spoke about the April incident
2 and informed the Court that, when they went home in the early hours of the
3 morning, she refused to have sex with him. She recalled that he hit her causing
4 her to fall to the floor and leaving her with black and blue eyes. He grabbed her so
5 hard that she was left with fingerprint marks on her arms and it was at this stage
6 that H stepped in, telling him to leave the home. She said that he laid hands on her
again and that she picked up a broom to try and defend herself, but he managed to
hit her again in the face, at which time H tried to get in between them. She said
she defended herself with a glass frame and that the glass broke. Even on the
mother's version of events evidence, which is not consistent with H's, this was a
very disturbing incident and clearly resulted in significant harm, particularly
emotional and most fortunately in the circumstances not physical, to H.

11
12
13
14 106. During her evidence on 24 March 2015 she said that she viewed the relationship
15 between her and AE as being a lasting relationship. She stated that she "*sees her*
16 *future*" with AE, but not at the cost of her children. She still failed to recognise
17 the nature of her abusive relationship, because she reiterated that she wished the
18 injunction to be withdrawn and she saw "*no reason why AE should be prevented*
19 *from seeing the children.*" AE also stated his concerns about the injunction
20 remaining in force.¹²

21
22 107. Despite the highly troubling content of her affidavit and oral evidence outlining
23 what the mother said happened to her at the hands of AE, and therein clearly

¹² Paragraph 13 AE's affidavit sworn in February 2015.
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1 stating that she recognised the concerns of the DCFS and the importance of
2 protecting herself and the children from AE all being relied upon as late as
3 injunction hearing on 31 October 2014, it is disturbing that even on her own
4 evidence by December 2014, less than two months after the filing of the affidavit,
5 she and AE state¹³ that she was back in a relationship with him and that shortly
6 thereafter, sometime in February 2105, she became pregnant with his child. My
7 view has not changed since the substantive interim supervision hearing, in fact it
8 has been vindicated by her actions, it is abundantly clear that she is unable to
9 prioritise the children over and above her need to remain in this historically
10 abusive relationship. The Guardian in her oral evidence with some conviction
11 firmly stated that:



"When it comes to making a difficult decision, the evidence shows that (the mother) will decide on what she wants and not what is best for the children. It has been shown that she is willing to disregard court orders and in effect allowed things to happen that will conceal what she really intends to do."

12
13
14
15
16
17
18 108. When I reach my conclusion about her failing to prioritise the children's needs, I
19 have regard to the fact that the mother knew about her pregnancy in April/May
20 2015. This hearing came before the Court in May 2015, but she chose not to relay
21 this highly significant information to the Court. The first she mentioned it was,
22 when really she had no other option but to do so, via her attorney in June 2015, at
23 least 8 weeks later. Having regard to the fact that she could have been in no doubt
24 about the real concerns about her interaction with AE, it was unacceptable for her

¹³ Paragraph 8 AE's affidavit sworn in February 2015.
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1 to fail to disclose this to the Court, the Guardian and the DCFS far sooner. This is
2 on the background of her saying "*as previously explained, I was pregnant in*
3 *2014.*" It seems that it was her second pregnancy the father having become aware
4 of the first in December 2014 when J told him about the first baby being lost
before birth. Therefore, even during the final hearing she has still withheld
information and made belated disclosures, which unfortunately characterises her
approach with the professionals and the Court. When that is put in context with
her inconsistent and sometimes selective disclosure it affects the reliability of her
evidence as well as the Court's confidence when considering her stated promises
to prioritise the children and not expose them to risk of harm, especially if they are
with her for extended periods of time.

12
13 109. I also have regard to the fact that the mother travelled with AE to Honduras. On
14 the balance of probabilities, I find the mother's evidence about this to be
15 implausible and her failure to admit and disguise the ongoing relationship to be
16 most concerning. On the night before the flight she says she attended at AE's
17 father's house as she happened to be in the area as she was up at Rum Point with
18 friends. During cross examination by the Guardian, the mother stated that she was
19 able to go to Rum Point that weekend as she had cancelled her weekend visit
20 with T and J because she was unwell and knew she was travelling on the Monday.
21 Putting aside the fact that the mother was in effect saying that she felt well
22 enough to travel up to and socialise at Rum Point rather than prioritising T and J,
23 she said she went to the house to hand AE his employee's pass to the Airport car
24 park which she had kept in her travel bag for two years. She then sought to



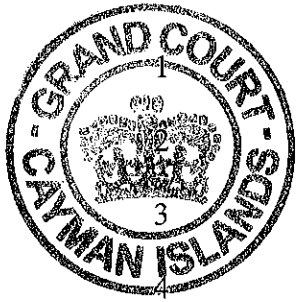
1 convince the Court that, by coincidence, on the next day they both happened to be
2 on the same flight to Honduras and that, when she went to the house to leave the
3 card for him, she had no idea he was then travelling. The mother further said
4 during cross examination that when she spoke to AE he did not tell her he was
5 travelling the next day. The mother said she first knew AE was on any flight was
6 when she heard his name read out on the PA system at the Airport. She said she
7 was flying with a friend called OS who was not called as a witness. I note the
8 mother also says that AE's father is lying when he told the social worker that he
9 had seen her on two previous occasions at his house when AE was also there, as
10 this she says was the first time she had been there.

11
12 110. The mother only belatedly confirmed that she had been seeing AE in breach of the
13 order when she was informed that she had been seen in his company. In her
14 evidence in chief, she said that she did not have any contact with him after she got
15 the injunction until he started to communicate with her by sending her flowers in
16 November 2015. Ms. Court said that she had seen her with him on 3 occasions,
17 the mother only agreed to there being two. She accepted that she told the social
18 worker that he had never been there when the children were there. She then said
19 that he had seen J outside of her home and that was only because she could not
20 get to an appointment at the psychologist as her car had broken down. She said
21 that she called AE, that he came and that she and J went in the car. She talked of
22 another occasion when AE picked her up to enable her to do some shopping, but
23 she dropped him at his office and then she drove alone to the shop. She said that
24 both of these occasions were in January 2015. The mother said that the father was



1 lying as he had not seen J and her in AE's car coming out of her driveway in
2 August 2014. The father gave a vivid description of what he had seen when he
3 was driving past and I prefer his evidence to the mother's. The Guardian also put
4 to the mother that J had told her that AE had been fishing with him and that she
5 joined him in that and was cooking the fish. The mother's reply was that J was
6 lying.

7
8 111. The mother was also asked in cross-examination about Christmas 2014 when she
9 stayed with AE. The mother said that she went there only after he had called her
10 on Christmas morning. She was asked why this was, as she had told Ms. Court
11 that they had been seeing each other from early December. She replied that they
12 were not together from early December but only that he had sent her flowers. It
13 was then put to the mother by the Guardian that AE's children had said that she
14 had been the one who went out to buy the presents which AE had given to them
15 and she was asked how would that be if AE called her out of the blue on
16 Christmas morning and they were by then still not together. The mother replied
17 that she had purchased the presents little by little when AE told her that the
18 children were going to be there and that they were presents from her and not from
19 the husband. This of course is concerning, because before relaying this she had
20 just told the Court that she and AE were not seeing each other and it was only on
21 Christmas Day morning that he invited her to come to his house for Christmas.
22 She said she was surprised to hear that Alyssa, one of AE's children, had told the
23 Guardian that she and AE never intended to end their relationship and pretended
24 to not be together. That passage of the evidence also satisfied me that she was still



in a relationship with AE before Christmas day. When this evidence is considered along with the father's evidence that he saw her and J in AE's car, on the balance of probabilities, leads me to find that their relationship continued, albeit in a surreptitious manner, even though she had obtained the injunction.

5

6 112. The mother's evidence concerning the interaction with AE following the making
7 of the interim supervision order was not convincing. It is clear to the Court that
8 she obtained the injunction because she felt it would help her in these proceedings
9 to have been seen to have done so, rather than to protect her and the children. I am
10 satisfied that she has facilitated AE in breaching the injunction on a number of
11 occasions and has not been forthright about her interaction with him in her written
12 and oral evidence. Her evidence concerning her interaction with AE has not been
13 consistent and her demeanor when being cross examined on the subject was
14 awkward. It is her expressed view that he has changed, he is a good influence on
15 the children and that his coming into contact with her or them would not place
16 them at any risk. I accept that she has told the Court that, if the Court ordered the
17 children not to come into contact with AE, she would abide with that direction.
18 Although following this hearing I am willing to accept that she might be able to
19 do so, with the Court's prohibited steps order in place, if the children were with
20 her for fairly short periods of time, I am not satisfied that she would be able to do
21 so if they stayed with her for extended periods of time due to her need to interact
22 with AE, especially after the birth of their child.

23



1 113. It is evident that the mother has had an unsettled life from a young age and sadly
2 this has impacted on H and T. Although the mother still recommends the maternal
3 grandmother as being a suitable carer for T, there is evidence to show that her
4 mother and family members were unable to protect her and provide her with the
5 stable home when she was a teenager. Although her evidence was confusing and
not as frank as it should have been, it is evident that she became pregnant with her
son, R, when she was aged only 16. She stated in her evidence that R's father was
her first boyfriend and he was aged 17. Rather oddly the grandmother registered
the birth of R in Roatan under her name and the name of her son. This misleading
and inaccurate registration has still not been amended.

11

12 114. When H was born her biological father ("NE") was aged about 40 and her mother
13 was aged about 18/19. NE was stationed with the US Army in Honduras. The
14 mother moved 6 months after they had met from La Ceiba to be with him in
15 Comayagua. The mother became pregnant and H was born after her biological
16 father had left Honduras. The mother stated that following a hurricane she was
17 unable to locate him. H's biological father has still not been located and he has
18 not played any role in these proceedings. The mother said she worked in Roatan
19 until she married the NE when she was aged about 20/21. T was born in April
20 2003 and, after they divorced in the same year, the mother returned to Roatan
21 with both girls.

22

23 115. Thereafter she met D, and she said had a relationship between 2004 and 2008. She
24 said they had a number of separations during that time, something that would

1 have been unsettling for H and T. D was a police officer and they left to St. Pedro
2 where they stayed for a few months before he and they had to move on extremely
3 short notice to Cortes due to threats made to D from criminals due to police
4 activities. She was, as is a manner of her evidence at this hearing on a number of
5 matters, initially less than frank about this as in her earlier affidavit from April
6 2014 in which she was seeking leave to take the children to Honduras for a
7 holiday. There she simply said:



13 *"We moved to St Pedro/Cortez and stayed there for around 2*
14 *years. The Petitioner alleges in his affidavit that I had to leave San*
15 *Pedro in the middle of the night, and he implies that it was because*
16 *(D) had killed someone. This is absolute nonsense. D and I had*
17 *separated and I was living independently in San Pedro/Cortez*
18 *when the Petitioner contacted me and told me he wanted to see*
19 *me...."*¹⁴
20

21 In the same affidavit the mother is actually misleading and partly inconsistent
22 with her oral evidence given at this hearing when she said at paragraph 33:

23 *"D and I had separated sometime before all of this and he was still*
24 *working in St Pedro when I left. There was no killing or fleeing in*
25 *St. Pedro as the Petitioner alleges. I don't know why he has said*
this other than to try to help his case about it being dangerous."

During cross-examination by Mrs. Thompson she said that the words in the affidavit were not her words and that they had moved within the same night to Cortes as:

¹⁴ During cross-examination she said that she and D had finally separated after a fight. She said the father contacted her about a month after the final separation.
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1 *"Person D had arrested, family of that person wanted to kill him,*
2 *as he had had killed one of them."* She later said during cross
3 *examination: "They capture someone in drugs and his relative*
4 *wanted to kill him. I not know if he killed or injured him. I told the*
5 *children that he killed him in self defence."*

6 The father's evidence is that the children told him precisely that.
7
8

9 116. D left her in Cortes and she had to provide for the children without his support.
10 Although there are inferences that she worked as a prostitute in Cortes, there is
11 insufficient evidence for me to make such a finding. It is clear that, whilst there,
12 she and the children lived in inadequate accommodation and that at times the
13 children were not cared for appropriately when she went out to work or to
14 socialise.
15

16 117. I am satisfied that it is that unsatisfactory state of affairs for H and T that resulted
17 in the father contacting the mother and proposing marriage to her, so that she, H
18 and T could return to a more stable and safer life in the Cayman Islands. The
19 mother does not accept that T told the father horrific stories of her life in
20 Honduras, but she did accept that she herself told the father that she wanted a new
21 life and was afraid for the children.
22

23 118. Some insight into this period of time in Honduras is gained from the letter written
24 by H on 16 November 2014 and exhibited to the affidavit of the paternal aunt,
25 AM. It is not contended by any party that this letter was not freely written by H,

1 nor that the words therein are not her own. Although I am cautious when I review
2 it, I also have regard to her disclosure to the Guardian and to Ms. Court.

3
4 119. In the letter H stated that her mother is a "*party girl*" and has "*dated many guys*",
5 not keeping from H and T details of what she did with her boyfriends. H disclosed
6 that in Cortes they, including the mother's boyfriend, would often all share the
7 same bed and that on one occasion she woke up to see the mother having sex with
her boyfriend. H said that when the mother went out partying in Cortes that she
would leave them in the care of a 16 year old boy who sexually assaulted her. H
said that she informed the mother of this, but the mother took no action. H said
that, when she was aged 9, the mother and some of her friends slept over after a
night out. H said she woke up to find one of the mother's male friends touching
her leg and "*feeling her up*". H stated that she been exposed to many things
throughout her life when she lived with the mother and these were harmful things
which left her very angry.

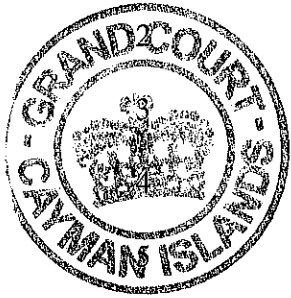
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17 120. When the content of the letter was put to the mother during cross examination she
18 said that she could not speak for the child, that she was ashamed when reading it,
19 but stated that she never put H in any situations of the nature described. She later
20 said that the majority of what H has said about this and the incidents involving
21 AE were "*untruthful*" and that H "*is a liar.*" Although I am not in a position, on
22 the written evidence before me, to make findings about the alleged assaults on H,
23 I am satisfied that the mother when in Honduras elevated her personal emotional
24 needs in her relationships with men to such an extent that the stability in the day-



1 to-day lives of H and T was detrimentally affected. I am also satisfied that the
2 children were not properly supervised thus leaving them at risk from others. This
is alarming, as history is repeating itself with her need to keep in a defective
relationship with AE, which has caused harm to the children, in particular H. Over
the years, save for the move back to Cayman with NE, the children were uprooted
and moved not for their benefit but for the benefit of the mother's various
relationships.

8
9 121. The mother herself acknowledged in her oral evidence that the disclosure in the
10 letter by H "*raises serious concerns.*" The Mother was asked by Mrs. Thompson
11 during cross examination whether the letter went to her "*ability to care and level*
12 *of protection mentally, physically and emotionally for H*" and she answered, "*I*
13 *agree.*" The fact that H freely wrote a letter with this content, in itself shows that
14 this girl's relationship with the mother is seriously fractured and is an indication
15 that she has suffered emotional harm from that relationship.

16
17 122. A great deal of time during the hearing was spent dissecting the various incidents
18 involving the mother and AE and the mother and H. Having received that
19 evidence, my concerns expressed in the interim supervision judgment remain. As
20 I have already mentioned, the mother's oral and written evidence setting out her
21 versions to these incidents is itself troubling and establishes that the children have
22 suffered harm by witnessing incidents of violence, and that there is a likelihood of
23 substantial harm if they are in the household at the same time as AE and the
24 mother. The concerns are exasperated by the fact that she, so soon after the return



1 date of the injunction, granted on the basis of her disturbing evidence in her
supporting affidavit in which she set out serious allegations, concerns about the
resultant harm to all of the children and stating her goal that she never wanted the
children to be exposed to it again, still felt it appropriate to return to relationship
with AE.

6

7 123. She felt it appropriate to facilitate AE's breach of the order whilst her public law
8 case involving the safety of her children was under intense review and troublingly
9 could not see why her actions would trouble the Court and the professionals.

10

11 124. The concern of the Court is also exasperated by the fact that she permitted AE to
12 come into contact with J and that she sought to initially disguise the fact, only
13 giving unsatisfactory reasons when she realised they had been seen by more than
14 one person. The mother contends that this was only on two occasions when she
15 had to use AE's vehicle, but even if that is the true reason, that is not an
16 acceptable excuse when it was made plainly clear to her by the Court, by the
17 DCFS and by the Guardian that none of the children must not come into contact
18 with him. If she genuinely felt that AE had "*changed a lot*" due to professional
19 help he had obtained, was no longer a violent or jealous man, and was now a good
20 influence on the children's lives she should have stood behind her convictions and
21 applied to the Court to persuade the Court to dismiss the injunction. It is simply
22 not acceptable, and it is an indicator of future risk to the children, especially in
23 light of the clear indications this Court gave in the interim supervision judgment
24 and in light of the well-founded concerns of the supervising social worker and the

1 children's Guardian for the mother to have deceived the professionals by carrying
2 on a relationship with AE behind their backs.

3
4 125. It is important to note the Guardian's expressed concerns in her oral evidence,
which I share:



*"That whilst much is made of physical risk I am more concerned
with risk to the emotional development of T and J."*

9 The Guardian when reaching this conclusion refers to the psychological report in
10 relation to T, prepared by Diane Schultz dated 10 October 2014. She noted that
11 there were reports of T having difficulty sleeping and having frequent nightmares.
12 She also noted that there were reports of her being verbally aggressive, being non-
13 compliant with adult requests and having a difficulty paying attention. She noted
14 that T:

15 *"expressed some reluctance to be "honest" with her and that she*
16 *"admitted feelings of fear."*

17
18 She continued by recording that:

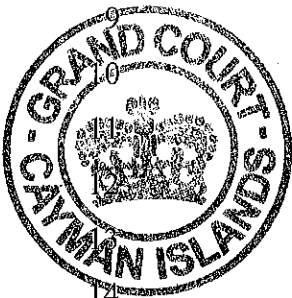
19 *"Trust was difficult to build with T. She understands the concept of*
20 *a "lie" and reports being coached at times to tell "lies" by her*
21 *mother. For example the family missed a scheduled appointment*
22 *and T was told to say "the car broke down." T indicated in reality*
23 *her mother overslept and there was no issue with the vehicle."*

24
25 I note that her vehicle was also used by the mother as an excuse as to why she and
26 J had come into contact with AE, despite the protection order injunction being in
27 place.

1 126. Mrs. Shultz went on to report that T gave her other examples of lies and stated
2 that she felt conflicted when *"forced to lie"* or witnessing her mother lie.
3 Importantly one example that T gave was her:

4 *"being coached to tell Social Services that her mother's boyfriend*
5 *was not residing with the mother, when in fact he was cohabiting*
6 *with her mother."*
7

8 127. Mrs. Shultz stated that T:



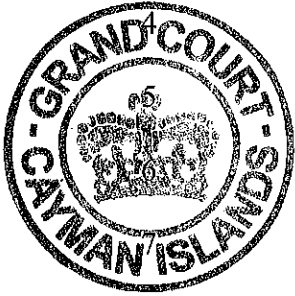
9 *"appears to be scared of her mother, expressing fear that I would*
10 *repeat things to her mother"* which led her to the opinion that: *"T*
11 *is fearful of the repercussions associated with being totally honest*
12 *about our own perceptions and feelings of the family dynamics and*
13 *relationships."* She went on to say that T appeared: *"to be*
14 *experiencing significant struggles with the family relationships"*
15

16 and stated that H had strong emotional ties with her as she was viewed as being
17 like a parent. T also expressed *"worry"* and *"fear"* about receiving the same
18 treatment from her mother that H had received during her adolescent years,
19 informing the psychologist that H had received beatings resulting in marks with a
20 belt from the mother as punishment. This was something which H confirmed with
21 the psychologist. Mrs. Shultz felt that T had been:

22 *"deeply impacted by incidents, discipline procedures and domestic*
23 *violence"* within the mother's house.
24

25 She went on to say that it was probable:

26 *"the family dynamics have contributed to aggressive behaviour*
27 *and sleep disturbances",*
28



1 noting that T says her difficulties with sleep are less pronounced at her father's
2 house at which she reports feeling safe and where there are fewer interpersonal
3 conflicts. In her recommendations, she sets out her opinion that domestic events
and discipline procedures have impacted T negatively. Mother and T should have
supervised contact and counselling sessions together for relationship building and
to enable trust to be rebuilt. In my opinion the mother-daughter relationship is
fractured.¹⁵ She recommended that T have a proper routine between Monday and
8 Friday and this should not include moves between properties.

9
10 128. In light of events that have occurred since the report, it is evident that Mrs.
11 Schultz had therein shown showed great insight and understanding of the
12 situation, for example when she highlighted how critical it was for the parents to
13 be consistent with T concerning rewards and consequences, and that the parents
14 should not undermine one another but collaborate to give consistent care. I note
15 that the Guardian highlighted in a report dated 13 June 2014 how T was "*very*
16 *worried*" as she had nothing to report to her mother following her mother's
17 request on the telephone for her "*to tell her everything that was going on in the*
18 *father's household.*" It is evident that the relationship between H and T has been
19 detrimentally affected by T seeking to gain favour with the mother by reporting to
20 know what has been happening in the father's household and because she has
21 been required by the mother to take things from H or the father's home without
22 permission. Mrs. Shultz conclusions have sadly also been shown to be accurate
23 when she stated:

¹⁵ Emphasis by underlining is mine.
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1 *"T struggles to regulate her emotional responses by bringing*
2 *rational thoughts to bear on feelings. T needs to prepare for*
3 *emotional situations by knowing her triggers. She should have an*
4 *"escape" plan should she need to leave a challenging situation.*
5 *Providing her with the designated "take a break spot" may assist*
6 *her in getting away from a difficult situation before she becomes*
 overwhelmed. This spot should ideally be away from siblings or
 family members and might include specific items which could calm
 her. She will likely run away and/or avoid conflict, this is a result
 of her poor problem-solving skills. When she is forced to deal with
 conflict she may lash out or become very aggressive. She requires
12 *support and guidance on problem solving and conflict resolution*
13 *skills."*
14

15 129. When I have regard to this conclusion, coupled with the mother's inability to act
16 collaboratively with the father and T's concern about having to see her mother, set
17 out in the second report of the Guardian, the instances of running away and self-
18 harm¹⁶ were predicted. I note that there are times when T said she wanted to be
19 with her mother, but it is highlighted in the Guardian's first report that this is
20 coupled with her expressions of guilt when she blames herself when she has seen
21 her mother crying. The Guardian highlighted in the second report that the
22 "running away" incidents came at a time when T was very strongly expressing a
23 desire to be with her mother and, as a consequence, she had set about making life
24 very difficult for H and NE. The Guardian highlighted that T has again expressed
25 the wish to be with the father and was able to recognise that she was being used
26 by her mother. The Guardian also highlighted that, when T has been with her

¹⁶ Paragraph 20 of 1st report of the Guardian.
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1 mother, there have been reports from the school counselor that her behaviour had
2 deteriorated and was too adult, whereas when she has come from her father's
3 home she behaved in the manner expected of a student of her age. The Guardian
4 highlights that T could only live with the mother if the mother was able to
5 demonstrate:

*"that she can fully care for the emotional needs of a girl who has
clearly suffered badly from recent events rather than conducting
herself in a way that makes T's behaviour worse."*

9
10 130. A pattern of concerns for the children within the family can be seen when
11 comparing the October report to that prepared by Mrs. Shultz in relation to H in
12 March 2015. She formed a view that the domestic violence within the mother's
13 household had:

14 *"appeared to impact H emotionally and undermined the trust*
15 *between mother and daughter."*
16

17 She noted that H felt confident enough to inform the psychologist about the
18 mother's relationship with AE which she portrayed as being physically violent
19 and she gave details about the mother being marked with bruises. Mrs. Schultz:

20 *"felt that a theme emerged relating to (H's) Mom and (AE) that I*
21 *would have perceived as a safety risk to (H)."*
22

23 She went on to say that what appeared:

24 *"Most damaging to (H) emotionally was mother's tendency to*
25 *minimise all about the domestic events."*



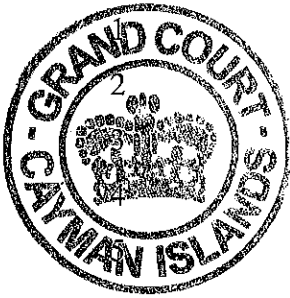
1 She noted that H could not understand why her mother was lying to the social
2 agencies about AE, that she was concerned about the mother's safety. I find it
3 significant that H informed the psychologist that:

4 *"She felt her mother chose AE over her."*

7 131. Mrs. Schultz commented upon the concerning nature of H's relationship with her
8 mother, and the physical punishment that that she received. She noted that H
9 informed her that her mother had hit her in the face with a closed fist and that T
10 had independently collaborated that with her. She indicated that H said that she
11 loved her mother but was fearful of her.

12
13 132. In her conclusion Mrs. Schultz said that she was able to easily establish a rapport
14 with H, who she found to have symptoms of depression and anxiety. As she had
15 found in her report about T concerning T's fractured relationship with the mother,
16 she similarly found that in her:

17 *"opinion the relationship between mother and (H) appeared*
18 *fractured."* She stated that *"H endorsed questions that suggested a*
19 *high level of anxiety, fearful preoccupations, nightmares and*
20 *memories of negative events that took place in her mother's home.*
21 *She reported spending a lot of time recollecting and re-*
22 *experiencing the physical violence between AE and mother. She*
23 *also reported a fear of physical altercations between herself and*
24 *mother. She indicated a desire to suppress or eliminate painful*
25 *thoughts and may have developed maladaptive coping*
26 *mechanisms, which at one point included self-harm such as cutting*
27 *herself on the forearm. She went on to say that she: "had concerns*



6

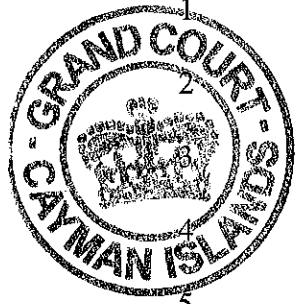
about H's overall emotional well-being and felt she presented as anxious regarding her family dynamics..... In my opinion, H's recollection of physical violence appears reliable. I believe H is emotionally vulnerable and the trust between daughter and mother has been damaged."

7 133. Although I have not had the benefit of hearing from Mrs. Shultz in Court, and am
8 conscious that no party has had the opportunity to examine her, the content of her
9 report is relevant and important. It gives expert insight into the emotional harm
10 that has been caused when in the mother's home and would likely be caused to H
11 and T if they were to reside in the mother's home. I accept that concerns for T
12 have also arisen during that time residing with the father. Despite the submissions
13 made on behalf of the mother, I am not satisfied that these are caused by her
14 living with the father, they are rooted in her fractured relationship with her
15 mother, an issue which is still to be properly addressed and the professional
16 intervention recommendations of Mrs. Shultz in her report have not been
17 actioned.

18

19 134. As I recognised earlier in this judgment, in relation to J, there is a need to conduct
20 an ongoing review. The warning signs have been reported by his school in
21 relation to his behaviour there when he is staying at his mother's home. Examples
22 of inappropriate behaviour include him being involved in fights, trying to choke a
23 child, shouting back at teachers, disrupting class and using bad language.¹⁷ It is
24 concerning to hear that the assistant teacher dreads Mondays when J attends

¹⁷ Filler detail provided in the second report of the Guardian paragraph 68 to 74.
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1 school from his mother's property whereas by Thursday when he has been staying
2 with and settled down by his father it is "like a new boy comes in." I note that the
3 school had provided a behaviour log for the parents to complete, which the father
4 always filled out while the mother had to be persuaded to as she initially failed to
5 do so.

6

7 135. In her report the Guardian highlights the emotional damage to a child of
8 witnessing violent behaviour. She states that she is very concerned about the
9 effect on J of being for long periods with his mother. She has concerns about his
10 behaviour and lack of stimulus which he receives from his mother. The Guardian
11 feels that it is important to keep the link between him and his mother, but that it is
12 in J's best interest to live with his sisters and father.

13

14 136. It is important to note that the Guardian has carefully considered whether the
15 father is able to care for the children. In her second report she states that he has:

16

17

18

19

20

21

22

23

24

*"been doing an incredibly good job supporting and caring for the
children. He is very keen to do the best for all three. He believes
their best interests are served by all three children living with him.
Wisely, he recognises that the demands of bringing up three
children with this age range are considerable and it will be
important that he receives ongoing support (if the court accepts my
recommendation they should all live with him) to enable him to
fully meet their physical and emotional needs. This will be
especially important in relation to the support of T."*



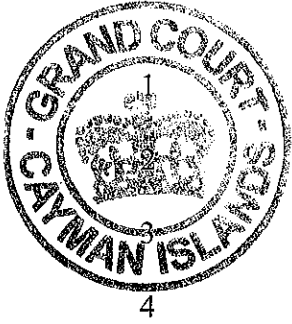
1 Although I may not fully agree with the recommendations for supervised contact,
2 I accept the Guardian's above observations. It is extremely important that her
3 view expressed at paragraph 7 of the second report is acted upon where she stated:

4 *"..... it is very important that DCFS recognises that this family will*
5 *need considerable support over the next years. At age 66, (the*
father) will (if my recommendation is accepted) have responsibility
for two teenage girls who have had some very difficult life
experiences and an active five-year-old boy. He also has to
manage his own business in challenging times. NE is very willing
to undertake that responsibility, it will be imperative for the
welfare of the children that he receives support in meeting their
emotional needs in particular."

11
12
13
14 137. The mother has made some concerns about lack of information and interaction
15 with social services. Since the change in social worker in January, it is evident
16 that there has not been a significant amount of interaction. I expect that, following
17 the making of a final supervision orders, the social worker, who now has had
18 more than enough time to fully familiarise herself with the case, will ensure that
19 there is appropriate exchange of information with both the mother and the father
20

21 **Conclusion**

22 138. Although all the parties accepted that the s.33(2) threshold is made out in relation
23 to all of the children, I remind myself that I may only make a supervision order if
24 I am satisfied that each child with whom I am concerned is suffering, or is likely
25 to suffer, significant harm which is attributable to the care given to the child, or
26 likely to be given to him if the order were not made, not being what it would be



reasonable to expect a parent to give him. This is an objective test and I have considered with each child what care it would have been reasonable to expect the parents to have given to that child.

139. I remind myself that the burden of proof is on the DCFS who bring the case and the standard of proof is the balance of probabilities. So when considering the threshold criteria I consider whether the facts that the DCFS seek to prove more likely to have occurred and not on the evidence that has been put before the Court.

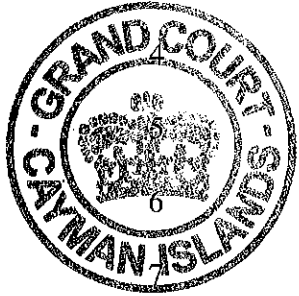
140. There is an abundance of evidence that H and T have suffered significant harm as a result of the care provided to them. There is some evidence that J has also suffered harm. I have highlighted this already in this judgment but some examples are the fact that H witnessed and been was drawn into physical altercations between the mother and AE. It is also accepted by the parties, and borne out by the evidence, that all of the children have witnessed some of the physical altercations between these two adults in the home.¹⁸ Lady Hale's observations in *Re B*¹⁹ that serious harm may be done to the development of children who see or hear domestic violence between their parents is applicable to these children.

141. A further example is that H has been subject to excessive chastisement during physical altercations, resulting in physical injury, at the hands of the mother.

¹⁸ Paragraphs 9 and 17 of the Agreed Statement of Facts.

¹⁹ See paragraph 11 above.

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1 142. In relation to the mother's parenting of H and T there is evidence, which I accept,
2 of lack of routines and unsettling house moves dictated by her relationships.
3 There is evidence of placing too much responsibility on H. I accept the evidence
of the mother influencing the girls so that they are not forthright with
professionals in this case and influencing T to remove items from the father's
property and report to her about what is happening there. This has caused
emotional harm to the children.

8
9 143. Regrettably, the mother has again prioritised her needs to be in a relationship with
10 AE. She has done so despite there being an injunction in place and she maintained
11 that relationship in a surreptitious manner despite the Court's clear expressions of
12 concern when the interim supervision order was made. I am concerned that she
13 has remained so long with an abusive partner, and reared the children in this
14 abusive environment, and I cannot be confident that she would keep a child in her
15 full time care safe. I am not satisfied that in the future, if the children are in her
16 property for extended periods of time, that she will be able to protect them from
17 the type of incidents they witnessed previously. The mother is unable to recognise
18 the real risk factors that exist for the children and even for herself. There is a real
19 likelihood of the children suffering harm in these circumstances.

20

21 144. The mother, unlike the father, is unable to heed the advice given by Mrs. Shultz
22 that each parent should not undermine the other parent, but seek to collaborate. As
23 already highlighted, the mother has tried to undermine the placement at the
24 father's by continually questioning T. The mother's mindset is vividly illustrated

1 when during cross examination by Mrs Bothwell she stated that his motivation for
2 looking after the children "*was not out of love or concern*" but because "*he knows*
3 *that I love my daughter and (it is) to hurt me. I think he is doing this to hurt me.*"
4 This shows a total lack of insight about why the father has stepped into the
breach, especially when one has regard to the Guardian's forceful commendation
for him doing so. These are a few of the examples which have been earlier
addressed in this judgment, and I am not satisfied the mother has any real insight
into any of the concerns.

9

10 145. As the threshold criteria is accepted by all of the parties I need not carry out the
11 more thorough review advocated by Lady Hale in Re B paragraph 193 of *Re B*
12 where the criteria is a live issue between the parties. In relation to all three
13 children I am satisfied that the s.33(2) threshold is met not only on the basis of the
14 agreed statement of facts, but also because of my additional findings set out
15 herein which I have made after a full review of the evidence.

16

17 146. When I consider the welfare issues I note that all of the parties agree that there
18 should be a final supervision order in relation to all of the children. As highlighted
19 by the Guardian, this family will need substantial assistance moving forward and
20 the supervision order is an important part of that support of infrastructure.

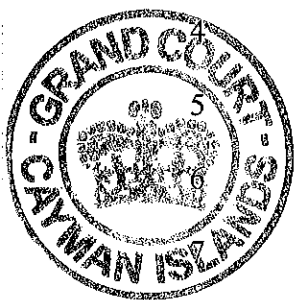
21

22 147. H forcefully expressed her wish to reside with the father. All the parties agree
23 that, in light of her age and understanding, the Court should have regard to her
24 wishes. It is accepted that her physical and emotional needs are best met by living



1 with the father and that it would be damaging to her to force her to change the
2 status quo. When I made a residence order I had regard to her age and the fact that
she is a female residing with her father. I am satisfied that a residence order is
appropriate having regard to the harm that she has suffered and would be at risk
of suffering if she were to reside with the mother. I am satisfied that the father is
capable of meeting her needs, and I am fortified in reaching this conclusion by the
7 Guardian's view, expressed at paragraph 83 of her second report, that the father
8 has "*done an incredibly good job supporting and caring for the children*". I am
9 not satisfied that the mother is capable of meeting H's needs. Her relationship
10 with the mother is so fractured, that at this time when considering the welfare
11 checklist, I am not able to make an order for contact between her and the mother.
12 It is important that under the supervision order, which may soon expire due to her
13 age, that therapeutic work is undertaken to see if that can be some form of
14 relationship between the two of them.

15
16 148. In relation to T's welfare I am conscious that there have been potentially
17 substantial developments since the hearing and that there is soon to be a hearing.
18 Due to the still changing circumstances, when I consider the welfare checklist in
19 relation to T I limit myself in this judgment as to whether the making of a
20 supervision order is in her best interests. I am satisfied that the input of the DCFS
21 under a supervision order is required having regard to T's physical and emotional
22 needs, her age and the harm which she has suffered and is at risk of suffering. I
23 am satisfied that such an order is necessary when considering the capability of the
24 parents to best meet her needs.



1 149. During the course of these proceedings T expressed differing views to the
2 professionals about where she wished to live. Despite this, all the parties agreed
3 prior to 4 August 2015 that a residence order should be made in the father's
4 favour as that better reflected T's wishes. Although things may have changed since
5 the August hearing, due to events at the time I endorsed an agreed interim
6 placement with T's aunt with the consent of all of the parties which apparently
7 reflected T's then current wishes. I also ordered, with all the parties consent, that
8 there be supervised contact for both parents. I do not believe it appropriate for me
9 to further address the welfare checklist in relation to s. 10 orders for T due to the
10 upcoming hearing.

11

12 150. It is agreed, following the Guardian's forceful suggestion, that there should be a
13 more substantial review of J's circumstances. When I consider his welfare at this
14 time, due to his tender age I do not place great weight on any wishes or feelings.
15 However, I am satisfied that he is well cared for at the father's property and that
16 he is happy residing there, especially when his sisters are also there. Having
17 regard to the level of care at the father's home and the reports about his behaviour
18 at school when he is staying at his mother's property I am satisfied that his
19 physical, educational and emotional needs are best met this time at the father's
20 property. However, I do feel that his emotional needs require him to have the
21 ordered meaningful contact with the mother and it should not be limited to
22 supervised contact. When I reach this conclusion I have carefully considered the
23 concerns of the Guardian recommended supervised contact. When I make the
24 order set out in this judgment I have regard to his age and the fact that he is a

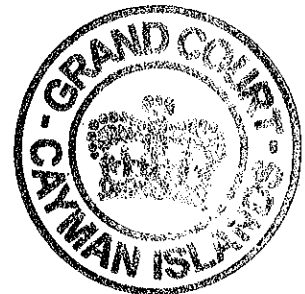
1 male as well as the harm that he has suffered and is at risk of suffering if he were
2 spending extended periods of time under his mother's care. I am satisfied that the
3 father is best capable of meeting his needs at this time.

4
5 151. It is in all of the children's best interests that they do not come into contact with
6 the AE. I have considered the welfare checklist and in particular the harm that
7 they have suffered or are at risk of suffering that it is appropriate to make a
8 prohibited steps order preventing him coming into contact with them.

9
10 152. I wish to take this opportunity to thank the attorneys and the Guardian for the
11 commendable amount of work that they have put into this case and for the
12 assistance that they have given to the Court. I would like to place on record my
13 gratitude to Mr. Fee, who due to the cap on the level of the mother's Legal Aid,
14 continued to represent her pro bono for a considerable number of days right up to
15 the conclusion of the hearing.

16
17 

18 **THE HONOURABLE MR. JUSTICE RICHARD WILLIAMS**
19 **JUDGE OF THE GRAND COURT**



20
21 The judgment in this matter is being distributed on a strict understanding that in any report no person other
22 than the attorneys (and any other person identified by name in the judgment itself) may be identified by
23 name or location and in particular the anonymity of the child and the adult members of their family must be
24 strictly preserved.

25
26
27 This matter is not one of the cases in which the orders made within the public law proceedings will result
28 with a child being removed from person(s) who have parental responsibility and being placed outside of the
29 family.