



This Judgment was delivered in private, but the Judge hereby gives leave for it to be published.

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

Neutral Citation Number: [2026] CIGC (Fam) 7

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

CAUSE NO. FAM 29 OF 2021

BETWEEN: T APPLICANT/RESPONDENT

AND R RESPONDENT/PROPOSED APPELLANT

Appearances: The Applicant represented by Ms. Cherry Bridges of Ritch & Connolly LLP
The Respondent in Person
Ms. Laura Clemens (Guardian ad Litem) instructed by Ms. Lynne McDonagh of KSG to represent the children

Before: Hon. Justice Richard Williams

Heard: On the papers

Judgment circulated: 27 May 2026

*Children Act (2012 Revision) - Application for leave to appeal children orders - Application for stay of execution of the Orders made in a Judgment pending appeal - Principles involved in appeals relating to children orders where their welfare is paramount - Test for granting leave to appeal and granting a stay - Guidance of the Court of Appeal in **KN v MN CICA No 14 of 2015**.*

JUDGMENT

Background

1. I have considered this application for leave to appeal and for a stay of my Orders on the papers. I refer to the Proposed Appellant as R. I refer to the Respondent as T. The children, referred to as RI and RA, are also parties to the proceedings via their Guardian ad Litem and are legally represented.
2. On 25 May 2026, I delivered a reserved 191 page judgment (“the Judgment”) following: (i) a long hearing held on various dates up to 8 January 2026; (ii) the receipt of Written Closing Submissions

2026 CIGC (Fam) 7 T v R Judgment - Leave to Appeal and for a Stay of Execution

up to 6 February 2026; (iii) a related mention hearing held on 2 March 2026; and (iv) the receipt of further affidavits up to 12 March 2026.

3. The detailed background in this matter is set out very fully in the Judgment as well as in two previous judgments, one delivered on 12 June 2024 (“the 2024 Judgment”) after a lengthy protracted hearing and one emanating from T’s unsuccessful leave to appeal application of that decision delivered on 24 October 2024 (“the Appeal Judgment”). These comprehensive Judgments were required to provide sources for the parties and any future tribunal of the relevant findings made up to their delivery dates.
4. On 26 May 2026, R filed her Summons for a hearing of an application for leave to appeal and a stay pending appeal of the Judgment and in particular: (i) the order discharging the shared residence orders made therein which meant that her parental responsibility in relation to the child RI came to an end; (ii) the sole residence orders made; (iii) any provisions materially constraining or limiting the restoration or development of direct contact between R and the two children; and (iv) the termination of the Guardian ad Litem’s role with the family. Accompanying the Summons, R filed a 19-page document containing her submission concerning her leave and stay applications.
5. On 26 May 2026, at my direction, my Personal Assistant wrote, R and the attorneys for R and for the Guardian. They were informed of the following comment from me:
“Having regard to my Court list and the material supplied by (R), I will be dealing with this application on the papers and on the material presently before me.”

Procedure – Application for Leave to Appeal and for a Stay

6. Grand Court Rule 11(5) Court of Appeal Rules (2014 Revision) (“the Rules”) states that:
“In any case in which leave to appeal is required, an application for leave shall be¹ made to the Court below.”

Importantly, Rule 11(5) then goes on to provide how that application must be made. In this case, the first application option at Rule 11(5)(a) did not take place, as the Judgment was circulated and not handed down in Chambers. Therefore, pursuant to Rule 11(5)(b), the application made to the Grand Court must be made by Summons or motion issued within fourteen days of the date upon

¹ My emphasis by underlining in this sentence.

which the Judgment or order is filed. R has complied with this requirement and therefore I proceed to review the merits of the leave to appeal and stay applications.

The Basis of R's Leave to Appeal Application

7. The 'grounds of appeal' relied upon by T are set out in her Summons and in written submissions. Most of the grounds relate to my findings of fact and the manner in which I have exercised my discretion when applying those facts, although some are labeled as being "*errors in law*". With that in mind, I will not address them in detail herein, although I have carefully considered them to see if they cross the required threshold for leave and/or for a stay order.
8. R contends that there has been "*an error of law*" in relation to RI's parental responsibility coming to an end as a result of the extinguishment of the shared residence order as she says that the Court did not consider making a freestanding order for parental responsibility. Although no application was made to the Court by R that the Court should make such a freestanding parental responsibility order for RI, if it discharged the "*artificial*" Shared Residence Order, I recognised at paragraphs 92 and 340 in the Judgment that R's parental responsibility (which she only acquired due to a Consent Shared Residence Order being agreed when RI was aged 8 in 2022), would come to an end. I mentioned at various parts in the Judgment and in my conclusions at paragraph 341-343, the different nature of each child's relationship with R as well as the very different parental responsibility considerations for RA and RI. At paragraphs 93-94 in the Judgment, I considered the law in relation to an application for discharge of parental responsibility. Although I was not making a specific order to discharge parental responsibility, at paragraph 95 in the Judgment, I stated that I had regard to the principles set out in paragraphs 93-94 where they were relevant to the consequences that flow from a discharge of the shared residence order.
9. In relation to the ground of "*inadequacy of reasons for departing from the express contrary recommendations of the Guardian and the risk analysis of the jointly instructed expert,*" Dr. Basson rightly did not make a recommendation about whether there should be relocation or no relocation. At various parts in the Judgment, I noted Dr. Basson's risk concerns and in particular her recommendations about therapeutic input required for the parents and children. The potential problems concerning the organisation and provision of any therapeutic input that may occur if the children and T were in the US were also considered at various parts in the Judgment. I specifically addressed the Guardian's recommendation that leave to relocate should not be granted and why I departed from her view. For example, I highlighted that when reaching her recommendation, the

Guardian had failed to consider or address T's immigration and predicament and the effect of that on the welfare and stability of the children if they were compelled to remain in Cayman. Another example is that I also provided my reasons for departing from the Guardian's recommendation about the schedule for the development of contact for both children and, due to the actual circumstances of the family, I preferred the observations of Dr. Basson in that regard. The Guardian placed great emphasis on her contact schedule as a reason for opposing the relocation. Whether the reasons provided by me were wrong is not an error in law but is a consideration of how I exercised my discretion when considering the facts of the case.

The ground of "*inadequacy of reasons and implementation architecture*" again is not an error of law; it is a consideration of how I exercised my discretion when considering and applying the facts. The Proposed Appellant readily accepts that I "*clearly, forcefully and in detail*" recognised the risks when reaching my decision.

10. The ground of "*internal coherence*" again is not an error in law, it is a consideration of how I exercised my discretion when considering and applying the facts. In the judgment this was addressed. One example being T's evidence about how the content in Dr. Basson's report had impacted her and had opened her eyes to what was required of her to enable the risk to the family's welfare to be addressed, which included the required therapeutic input.
11. The ground headed "*serious and properly arguable issue*" is clearly not an error in law, it is a consideration of how I exercised my discretion when considering and applying the facts.
12. I note the ground headed "*error in principle*" alleging a failure to apply the welfare-neutral principles applicable within same-sex marriage jurisprudence with sufficient rigour. When reading R's supporting submissions, it is unclear what the basis of the ground is. It is clearly accepted that the Court acknowledged (and in fact informed the parties about initially in the 2024 Judgment) the principles in *Re G (children) (residence: Same-Sex Partner)* [2006] UKHL 43. The ground does not acknowledge the very thorough analysis of parental status for same-sex marriage conducted concerning R's parental responsibility for RA. When I read the submissions made it is, in reality, not a ground based on an error of law but instead it relates to how the Court exercised its discretion when considering and applying the facts.

13. I have noted the ground of “*procedural fairness*” pleaded. It seems to be a “*protective*” ground pending further clarification from T’s attorneys. Accordingly, due to its current vagueness, it would not be a sufficient ground for granting leave to appeal or for a stay.

Leave to Appeal Application - The Law

14. In the Appeal Judgment delivered in 2024 in relation to the 2024 Judgment, I conducted a review of the relevant law. That analysis applies to the circumstances of this leave to appeal application and therefore to save time and to be able to promptly circulate this judgment, which is replicated below.

15. The Court of Appeal has provided guidance when expressing concern about the granting of leave to appeal by the Grand Court Judges against their own findings of fact and against the manner in which the Judges weigh the evidence. My Judgment in *DT v MP* Fam 276 of 2017 applied a number of cases which I referred to. I extract the below from my *DT* Judgment. In *KN v MN* CICA No 14 of 2015, an appeal brought to challenge the findings of fact made by a judge in relation to child sexual abuse allegations made by the mother, Chadwick P. stated the following:

“10.it is I think, desirable that judges sitting in the Family Court in this type of case should be slow to give leave to appeal against their own findings of fact. If there is a point of principle which needs to be determined by the Court of Appeal, then that would be a reason for leave to appeal to be given. But, if on analysis it can be seen that the challenge to the judge’s findings of fact is that the judge weighed the evidence wrongly, then the administration of justice may be better served if judge has confidence in his or her own judgment and leaves it to the Court of Appeal to decide whether to entertain an appeal against those findings of fact.”

*11. In that context, I draw attention to the observations made in this Court in the appeal of *B v B* (2014) 2 CILR, 234 at paragraph [66]. The issue in that case was whether a child should be relocated out of the jurisdiction. At the end of its judgment this Court observed:*

*“This appeal was brought with the leave of the judge. I should not be taken to criticise the judge for his decision to grant leave; it may be that he thought there was a perceived tension between observations in *Payne* - which had been consistently applied by the courts in this jurisdiction - and the more recent guidance given by the Court of Appeal in *Re F* which required consideration or resolution by this court. But if there were a need for this court to address a point of principle, it was unfortunate that that need arose in a case where litigation costs - which the parties could ill-afford - had already had an effect on the father’s ability to meet maintenance orders which had been made against him. In my view, judges should be slow to grant leave to appeal in cases of this nature.”*

I take this opportunity of reminding the profession and the Family Courts of those observations. Fact-finding hearings are intended to achieve finality in relation to the facts on which decisions as to the child's welfare should be based. That objective is going to be seriously undermined if leave is given to appeal against findings of fact as a matter of course; particularly in circumstances where there is, under the present practice, no transcript of the evidence which was before the judge. If there is a point of principle, then the position may be different. But again judges should have in mind that litigating points of principle is an expensive exercise; and that that expense should not lightly be thrown on parties whose means are better expended in providing for the welfare of the child in circumstances where the marriage has come to an end or broken up. There needs to be finality in these matters without undue expense and without undue delay. Granting leave to appeal in this sort of case is not easily reconciled with that need." [My emphasis by underlining].

16. In *JC v IC* CICA (Civil) Appeal No.14 of 2020, in the Written Reasons for a Ruling, the Court refused leave to appeal in contested residence order proceedings. It is evident that Goldring P felt that an appeal was not an appropriate avenue for rearguing the facts. This is consistent with the observations of Chadwick P set out above. The President did not accept that the principle of a fair trial and natural justice had been breached. The President found that there was no error in law and that there was no prospect of any appeal succeeding. Having refused leave to appeal, the President stated that in such circumstances no question of granting a stay arises.
17. Chadwick P's observations are consistent with a recognition that a party's ability to appeal against any Children Law order believed to be unfair is limited by a number of legal principles laid down in *G v G* [1985] UKHL 13, [1985] FLR 894. Lord Fraser noted in *G v G* that:

"...the mother appealed to the Court of Appeal (1984) 6 F.L.R. 70. Sir J Arnold P. gave the first judgment and, before dealing fully with the facts of the case, he referred generally to the method of trying appeals in cases concerning the custody of children. After referring to some recent reported cases on the subject, the learned President said, at p.72.

"Those cases exhibit some degree of homogeneity, of course; but they also seem, at first sight, to exhibit a degree of semantic dichotomy. It is a discernible thread running through, I think, every one of those cases and the cases cited in them, that it is not decisive of an appeal in this court from the decision of the court below, exercising the particular discretionary jurisdiction of deciding the custody of children (but also, I think, any discretionary jurisdiction), that the result of the exercise of discretion would, or might, have been different if the members of the Court of Appeal had themselves been exercising the discretion. There has to be

more than that before the discretionary decision can be overturned. The question, if there be one, is: How much more?"

He stated his conclusion in the following passage, at p.73:

"I believe that there is a way of reconciling these cases. I believe that if the court comes to the conclusion, when examining the decision at first instance, that there is so blatant an error in the conclusion that it could only have been reached if the judge below had erred in his method of decision - sometimes called the balancing exercise - then the court is at liberty to interfere; but that, if the observation of the appellate court extends no further than that the decision in terms of the result of the balancing exercise was one with which, they might, or do, disagree as a matter of result, then that by itself is not enough, and that falls short of the conclusion, which is essential, that the judge has erred in his method. I cannot think of any case in which this particular issue has had to be faced, in which that method of determination is not intellectually satisfactory, logically supportable or consistent with the result of any of the cases in the appellate courts; and I shall approach this case on the footing that what this court should seek to do is to answer the question whether the court discerns a wrongness in the result of so striking a character as to make it a legitimate conclusion that there must have been an error of method - apart, of course, from a disclosed inclusion of irrelevant or exclusion of relevant matters."

18. Fraser J then later, when commenting about appeals in custody cases and other cases concerned with children, said:

"The jurisdiction in such cases is one of great difficulty, as every judge who has had to exercise it must be aware. The main reason is that in most of these cases there is no right answer. All practicable answers are to some extent unsatisfactory and therefore to some extent wrong, and the best that can be done is to find an answer that is reasonably satisfactory. It is comparatively seldom that the Court of Appeal, even if it would itself have preferred a different answer, can say that the judge's decision was wrong, and unless it can say so, it will leave his decision undisturbed. The limited role of the Court of Appeal in such cases was explained by Cumming-Bruce L.J. in Clarke-Hunt v. Newcombe (1982) 4 F.L.R. 482, where he said, at p. 486:

"There was not really a right solution; there were two alternative wrong solutions. The problem of the judge was to appreciate the factors pointing in each direction and to decide which of the two bad solutions was the least dangerous, having regard to the long-term interests of the children, and so he decided the latter. Whether I would have decided it the same way if I had been in the position -of the trial judge I do not know. I might have taken the same course as the judge and I might not, but I was never in that situation. I am sitting in the Court of Appeal deciding a quite different question: has it been shown that the judge to whom Parliament has confided the exercise of discretion, plainly got the wrong answer? I emphasise the word 'plainly.' In spite of the efforts of [counsel] the answer to that question clearly must be that the judge has not been shown plainly to have got it wrong."

That passage, with which I respectfully agree, seems to me exactly in line with the conclusion of Sir Arnold P. in the present case, which I have already quoted. The reason for the limited role of the Court of Appeal in custody cases is not that appeals in such cases are subject to any special rules, but that there are often two or more possible decisions, any one of which might reasonably be thought to be the best, and any one of which therefore a judge may make without being held to be wrong. In such cases therefore the judge has a discretion and they are cases to which the observations of Asquith L.J., as he then was, in Bellenden (formerly Satterthwaite) v. Satterthwaite [1948] 1 All E.R. 343, apply. My attention was called to that case by my noble and learned friend Lord Bridge of Harwich, after the hearing in this appeal. That was an appeal against an order for maintenance payable to a divorced wife. Asquith L.J. said, at p.345:

“It is, of course, not enough for the wife to establish that this court might, or would, have made a different order. We are here concerned with a judicial discretion, and it is of the essence of such a discretion that on the same evidence two different minds might reach widely different decisions without either being appealable. It is only where the decision exceeds the generous ambit within which reasonable disagreement is possible, and is, in fact, plainly wrong, that an appellate body is entitled to interfere.”

I would only add that, in cases dealing with the custody of children, the desirability of putting an end to litigation, which applies to all classes of case, is particularly strong because the longer legal proceedings last, the more are the children, whose welfare is at stake, likely to be disturbed by the uncertainty.”

19. Leave to appeal will only be granted where there is a real prospect of an appeal succeeding, or there is some other compelling reason for the appeal to proceed. Henderson J rightly remarked in the family ancillary relief matter of ***Maria-Cotanza Lindsay Fear v Richard David Fear & Sharon Hollowell*** D129/2005 (Ruling 25 May 2010):

“Leave to appeal is granted where the proposed appeal has a real prospect of success: Telesystem International Wireless Inc. and another v CDC/Opportunity Equity Partners LP & three others 2001 CILR note 21 (Grand Court). Leave may also be granted in an exceptional case because the point at issue is a question of public interest.”

Henderson J went on to say that the latter did not apply in that case. I find in the circumstances of the matter before me, as I did in the ***DT*** case, that it does not apply to this case.

20. In **CS v SR** [2013] EWHC 1155 (Fam), permission to appeal was given to a husband appealing a district judge's financial remedy order. In that case, Mr. Justice Moylan indicated that he felt compelled to follow the guidance below which was given by Brooke LJ at paragraph 21 in **Tanfern Limited v Cameron Macdonald & Anor** (2000) 1 WLR 1311:

“Permission to appeal will only be given where the court considers that an appeal would have a real prospect of success or there is some other compelling reason why the appeal should be heard. Lord Woolf MR has explained that the use of the word of ‘real’ means that the prospect of success must be realistic rather than fanciful [see Swain v Hillman, The Times, 4 November 1999; Court of Appeal (Civil Division) Transcript No. 1732 of 1999].”

Conclusions - Leave to Appeal Application

21. Having regard to Chadwick P's observations in **KN v MN** and in **B v B** concerning the approach to be taken by the Grand Court Family Division in the Cayman Islands, I have regard to the principles outlined in **G v G** when determining whether the proposed appeal has a real prospect of success.

22. I am of the view that this appeal does not have a real prospect of success. I remind myself of Chadwick P's guidance given to Grand Court Judges in **KN v MN** that in family proceedings, where the challenges are to a judge's findings of fact and to his or her weighing the evidence wrongly:

“The administration of justice may be better served if the judge has confidence in his or her own judgement and leaves it to the Court of Appeal to decide whether to entertain an appeal against those findings of fact.”

I adopt the approach commended by the Former President.

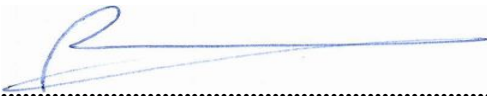
23. Accordingly, leave to appeal is refused.

Application for a stay

24. In **NB v LB of Haringey** [2011] EWHC 3544 (Fam) Mr. Justice Mostyn set out principles to be applied in any application for a stay in children family cases. These are the principles:
- (i) the court must take into account all the circumstances of the case;
 - (ii) a stay is the exception rather than the general rule;
 - (iii) the party seeking a stay should provide cogent evidence that the appeal will be stifled or rendered nugatory unless a stay is granted;

- (iv) exercising its discretion the court applies what is in effect a balance of harm test in which the likely prejudice to the successful party must be carefully considered; and
- (v) the court should take into account the prospects of the appeal succeeding and only where strong grounds of appeal, or a strong likelihood of success is shown, should a stay be considered.

I have also noted paragraph 48 in the case of *Trina Solar Limited* where Birt JA (CICA unreported judgment delivered on 4 August 2023) also set out the principles for granting a stay of execution from a judgment in the Grand Court. I am also mindful, -when considering the balancing exercise to be applied when deciding whether to grant a stay in children proceedings, of the delay principle set out at s.3(2) Children Act (2012 Revision). I have considered all of the above principles and carried out the balancing exercise. As I have refused leave to appeal on the basis that there is not a good arguable case, I do not feel that there are strong grounds of appeal or a strong likelihood of success and accordingly I do not grant a stay of the orders made in the Judgment.



.....
The Honourable Mr. Justice Richard Williams
JUDGE OF THE GRAND COURT