

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

CAUSE NO. FAM 110 of 2014

BETWEEN:	KD		Applicant
AND	PD		Respondent
AND	DM & WM		Interested Parties

Appearances: **Ms. Sarah Dobbyn of Sinclairs for the Applicant**
 Mr. David Holland of KSG for the Respondent
 Ms. Laura Clemens of Chapmans for the Interested Parties

Before: **Hon. Justice Richard Williams**

Heard: **5-8, 11 & 12 September 2017**

Draft Judgment

Circulated: **5 October 2017**

Date of Judgment: 30 October 2017

HEADNOTE

Family Law – Children Law – application for variation of consent contact order - Supervisors for supervised contact – effect of alcohol dependency on contact order - application for contact order by maternal grandparents – human rights considerations and s.10 Children Law applications - s.13(7) of the Children Law attaching directions as to how a contact order is to be carried out and imposing conditions to a contact order.

JUDGMENT

Preamble

1. *"Childhood, precious days, Alas, how few they were. I will remember them as if in a fog. Only in dreams at night can I identify days long gone....."*¹ These words are a reminder of how important each day is in childhood, a time of life when memories and influences from events and relationships experienced, even for short periods of time, may have a crucial bearing on the rest of that individual's life. A child cannot, to its detriment, keep on waiting at this vital developmental stage of its life for those with the responsibility for its upbringing to put themselves in a position to be able to meet the same.

2. Time and how it is occupied is not the same for a young child as it is for an adult. Any experiences, whether detrimental or good for a child, constitute a larger part of the child's life than a similar period compared to an adult's life. For example if a 5 year old has a two-month vacation during the summer, then that two months is 1/30th of that child's life. A 50 year old adult on the same two month vacation would perceive it as only 1/300th of their life experience. For the adult to feel the same impact from the vacation as the child, it would arguably require a 20 month long vacation. A quote from the United Kingdom



Government's 2000 White Paper "Adoption: a new approach" stated:

"Too often adults forget how things look to children. They think about systems, what is logical, and what are acceptable timescales

Words of an unknown girl from the Lodz Ghetto in World War II - Anonymous Diary , 0.33/1032, Yad Vashem Archives.

from an adult's point of view. Adults forget how time appears to pass more slowly to children. Adults tend no longer to remember the confusion of entirely new issues and the worry of questioning those who are grown up and knowledgeable."

Introduction

3. This matter concerns B, a 5 year old boy born on 5 August 2012. KD, the father, filed an application by Amended Summons² and C1 Form on 24 March 2017 seeking a variation of paragraphs 2-4 (*"the Contact orders"*) and paragraph 7 (*"the Parental Responsibility Order"*) contained in the Consent Order dated 15 May 2015. At paragraph 7 in the Children Law Application Form C1 (*"Form C1"*), the father gives the following reasons for making the application:

"As set out in the affidavits of (KD) sworn on 20 February 2017 and (TK) 2017 the current terms of a consent order dated 15 May 2015 are unworkable / not in (B's) best interests, in light of the respondent's apparent inability to recover(y) from her alcohol addiction and mental health problems. The contact order made in the Respondent's favour has been assumed by the maternal grandparents who were not parties to the proceedings, or intended to have the benefit of a contact order or any shared residency order."



In support of his application KD has filed: (i) affidavits sworn by him on 20 February 2017 and 29 August 2017; (ii) affidavits sworn by his common-law wife

² Initial Summons was filed on 20 February 2017.

("TK") on 2 February 2017 and 28 August 2017; and (iii) an affidavit sworn by AP, a child carer employed by KD, sworn on 28 August 2017.

4. PD, the mother, opposes the father's applications. PD has filed affidavits sworn by her on 28 April 2017 and 28 August 2017.
5. The maternal grandfather (WM) and the maternal grandmother (DM) applied by Children Law Application Form C3 ("Form C3") filed on 21 March 2017 to be joined as parties to these proceedings. At paragraph 4 in the C3 they gave their reasons for making their application as:

"We, ... , are the maternal grandparents of (B). We have recently been served with the Petitioner's Summons dated 20th February 2017 seeking a variation of the Consent Order dated 15th May 2015 which has been scheduled for hearing on 27th March 2017. We have also been served with a copy of the Affidavit of (KD) sworn 20th February and the affidavit of (TK) sworn on 2nd February 2017.

We make this application to be joined as parties to these proceedings. The Petitioner has requested in his Summons that we have contact with (B) on an "ad hoc" basis and the ability to take (B) on short vacations twice per year. We would like to be heard on the Petitioner's Summons and we intend to seek directions from the Court in relation to being permitted to make an application for contact with (B) under Section 10 of the Children's Law (2012 Revision)."



6. DM and WM also oppose the father's applications. DM has filed affidavits sworn by her in April 2017³ and 24 August 2017. WM has filed an affidavit sworn by him on 28 April 2017.
7. On 27 March 2017 this Court granted leave to DM and WM to intervene in these proceedings. Although no formal application had been filed, an unopposed Order was made granting leave to DM and WM to make an application for contact. Pursuant to the directions given at that hearing, DM and WM filed their application for contact by Form C1.
8. Hereafter, for convenience, I will refer to the parties as the father, the mother and the maternal grandparents.

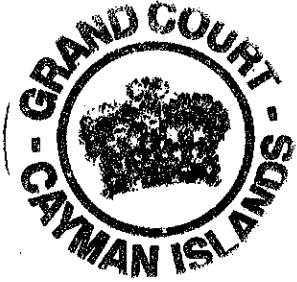


General Comments

9. When considering the background in this case, the written and oral evidence and the submissions relating to the issue of contact I have regard to the following description given by Wall J. in *Re O (A Child) (Contact: Withdrawal of Application)* [2003] EWHC 3031 (Fam), [2004] 1 FLR 1258, Wall J. as to the general approach of the Courts as follows:

"Disputes between separated parents over contact to their children are amongst the most difficult and sensitive cases which judges and magistrates have to hear. Nobody should pretend that they are

³ Affidavit does not have date of swearing properly entered.



easy, or that there is any one-size-fits-all solution ... The courts recognise the critical importance of the role of both parents in the lives of their children. The courts are not anti-father and pro-mother or vice versa. The court's task, imposed by Parliament in s 1 of the Children Act 1989, in every case is to treat the welfare of the child or children concerned as paramount, and to safeguard and promote the welfare of every child to the best of its ability ... Unless there are cogent reasons against it, the children of separated parents are entitled to know and have the love and society of both their parents. In particular the courts recognise the vital importance of the role of non-resident fathers in the lives of their children, and only make orders terminating contact when there is no alternative."

Procedural and General Background

10. The mother and father, who are both Caymanian, were married on 21 May 2011. Only three years later, on 11 June 2014, the father filed his Petition for divorce on the ground of unreasonable behaviour due to the mother's illness of alcoholism which Dr. Lockhart, Consultant Psychiatrist, has since characterised as being an abusive dependence on alcohol. Dr. Lockhart informed the Court that the mother's alcohol dependency is likely genetic with a previous disposition and that is coupled with depression and a mood disorder. His conclusions and observations echo the UK National Institute for Health and Care Excellence's 2010 definition for alcohol dependence namely:

"A cluster of behavioural, cognitive and psychological factors that typically includes a strong desire to drink alcohol and difficulties

in controlling its use. Someone who is alcohol-dependent may persist in drinking despite harmful consequences. They will also give alcohol a higher priority than other activities and obligations."

11. Following the first mention hearing held on 19 March 2015, the parties, with the assistance of their then attorneys, reached agreement on all financial and children issues. On 15 May 2015 this Court approved the Ancillary Relief Consent Order and the Decree of Dissolution was granted. The agreed and relevant child arrangement Orders were as follows:

- (i) Residence order in favour of the father;
- (ii) Reasonable and flexible contact between B and the mother, to include overnight contact on Tuesdays and Thursday nights after school and at any other times mutually agreed between the father, the mother, and the maternal grandparents including but not limited to during the days when the father is at work and the mother and the maternal grandparents or available – all such contact to be supervised by the maternal grandparents;
- (iii) Contact between B and the mother in the presence of the maternal grandparents on alternate weekends from Friday 4:00 PM to Monday 5:30 PM;
- (iv) Defined provisions in relation to special occasions to include New Year's Day, Mother's Day, Father's Day, Easter, parents' birthdays, B's birthday and Christmas;





- (v) Prohibited Steps Order, preventing B's removal from the jurisdiction for any period in excess of two consecutive weeks without written consent of the other party or order of the Court; and
- (vi) Reaffirmation that both parents have parental responsibility and that the decisions relating to which school he will attend, which practitioner will provide his medical, dental and optical services are to be mutually agreed or failing that made by order of the Court.

12. The Court was satisfied when approving the Consent Order that, pursuant to its duty under s.19 of the Matrimonial Causes Law (2005 Revision), the arrangements for substantial supervised contact were in B's best interests at his then pre-school age as they were made with due regard being paid to the importance of retaining and fostering a relationship between B with his mother, coupled with the safety requirements due to her alcohol dependency. B was and remains most fortunate that the maternal grandparents were and are willing and able to supervise the contact. Despite the incidents of June 2017, they remain best suited to undertake that important role, thereby providing the mother and B with the mechanism and opportunity to maintain a relationship in very trying circumstances.

13. However, the Supervised Contact Order was not approved with the intention of granting shared custody or any independent contact to the maternal grandparents

or for them to acquire any form of parental responsibility. It was made with the expectation that the mother would take the opportunity to maintain her relationship with B, whilst at the same time addressing her alcohol issues. The goal was that she could thereafter move on to unsupervised contact and that B would not have to indefinitely interact with his mother as a person with an alcohol illness. There may be a tendency for delays to occur in making long-term normal decisions for a child's arrangements once a temporary solution has been found and the pressure to resolve the difficulty in the short-term has been relaxed. This is the position in this case where the grandparents became primarily involved with the intention that they be supervisors to foster B's frequent contact with his mother at a time when she was unable to care for B, even for short periods of time, without such supervision.

14. With the potentially stressful divorce proceedings behind her and the mother's frequent contact with B secured by the Consent Order, with the best interests of B in mind and with 'one eye' on the changes that would come when he reached school attendance age, the father could reasonably have expected the mother to have thereafter done all she feasibly could to address her alcohol dependency if she sought contact to continue at the same frequency or become unsupervised. Unfortunately, the mother has not been able to move forward with addressing her illness in a time frame that meets B's best interests and welfare.



15. I am satisfied that Dr. Lockhart complied with the duties and responsibilities of an expert witness as set out in *Ikarian Reefer* ([1993] 2 Lloyd's Rep. 68). Regrettably from the parties' and the consultant psychiatrist's most helpful evidence, I accept and am greatly guided by the latter., it is clear that the mother has not been able to adequately combat her alcohol dependency and as a consequence, at times, she has struggled to prioritise the needs of B above her own. If she seeks an equal-time child arrangement, there seems little prospect of her changing within the time frame required for this five year old boy who has recently started primary school, especially as Dr. Lockhart feels that her prognosis is at best "*fair*" and that she has an "*elevated status of relapse*".



16. Dr. Lockhart indicated that the only solution would be complete abstinence and that to try to reach this goal she needed help and guidance to identify and address the triggers and stresses that turn her to alcohol. Dr. Lockhart forcefully advised that she would need an intensive type of therapy which should include attending Alcohol Anonymous on a daily basis, counselling, a follow-up psychiatric assessment which would all need to be preceded by another admission for her to a dedicated rehabilitation facility for a period of time. I have concerns about the prospect of the success of this, having regard to the mother's failure to properly take up the assistance hitherto offered by Dr. Lockhart. When the mother last saw him on 13 March 2017 a further appointment was scheduled for two weeks later to continue the work to consolidate and encourage her attendance with Alcoholic

Anonymous and the protection of her sobriety. The mother was later reminded of the appointment, yet she failed to attend the same and to make any further contact with Dr. Lockhart. In her affidavit the mother stated that:



"I have made significant progress since 2015. I regularly attended Alcoholic Anonymous meetings. I have had ongoing counselling and treatment with Dr. Lockhart."

Regrettably the mother provided no independent evidence to support her contention about Alcoholics Anonymous and she was inaccurate concerning her treatment with Dr. Lockhart. The mother also wrongly stated that the grandparents had *"not needed to take steps to prevent me from seeing (B) in recent times"* and in her affidavit evidence she also gave the wrong impression that she was currently in full-time employment as an office manager.

17. The mother has been unable to take up the opportunity afforded by the generous and non-prejudicial consent order to show that she is or may be able to care for B as a co-carer. Sadly, despite the passage of time, the mother is also not in a position to have unsupervised contact with B. Accordingly, the time has come for the Court, in the absence of agreement between the parties, to conduct a thorough review of the relevant evidence and then determine what arrangements are, not only for now but in the longer term, in B's best interests, in circumstances where the father is the only parent who has shown that he is able to consistently provide the requisite standard of care. The time has come for establishing a more settled

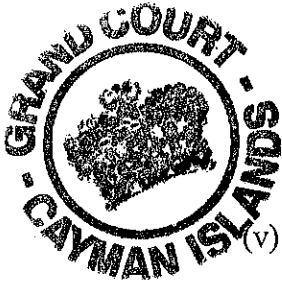
routine for B in what may be regarded as a normal family setting where B has a primary home with the able parent, while endeavouring to provide the opportunity for B to maintain a meaningful relationship with his mother and also recognising the nature of B's close and loving relationship with the maternal grandparents. In such circumstances it is understandable that the father has made an application to vary the present governing child Contact Order.

18. By his Amended Summons now before me, the father seeks to vary the Consent Order by removing the above paragraphs (ii), (iii), (iv) and (vi)⁴ and replacing them with the following orders:

- (i) Contact between B and the mother once per week from 3:00 PM to 5:00 PM on a day between Monday and Friday to be mutually agreed between the parties on at least 24 hours' notice, such contact to be in the presence of a Social Worker or Mental Health Professional (the "Supervising Professional");
- (ii) The parties are to mutually agree on who should be the Supervising Professional;
- (iii) If the Supervising Professional is previously unknown to the father, that person shall establish their identity and prove his/her professional credentials to the father so that he may consent to him assuming responsibility for the child during the contact;

⁴ Respectively numbered 2, 3, 4 and 7 in the Consent Order.





- (iv) The Supervising Professional is to ascertain whether the mother is mentally and physically fit to have contact with B and shall orally confirm to the father or his authorised representative at the start of each contact visit that the mother is not under the influence of intoxicating liquor;

If the sobriety and fitness requirements are satisfied the mother shall be entitled to have contact with B once per week as above on a weekday save for any weeks outside school time during which B is on vacation with the father outside of Grand Cayman; and

- (vi) The mother shall pay the reasonable fees of the Supervising Professional at that person's standard hourly rate.

19. On 27 March 2017 all of the parties attended the First Appointment hearing. The maternal grandparents were given leave to intervene and to make an application for contact. Being conscious that B was now at primary school⁵, I also made an Interim Contact Order, giving brief Ex-Tempore Reasons for my decision, slightly varying the arrangements under the 2015 Consent Order. I ordered that in week one (the week before the weekend where there will be no contact) the mother will have overnight contact with B on either the Wednesday or Thursday night with collection being at school until the drop-off the next morning at school. I ordered that in week two (when there was to be weekend contact) there would be visiting

⁵ As B was starting school, at the father's request, in September 2016 the parents agreed a variation to the midweek contact arrangements in the Consent Order, but that agreement broke down in February 2017 and, as a consequence, they reverted to the terms of the Consent Order.

contact on a Wednesday evening with collection at school and drop-off back at the father's property at a suitable time which should be no later than 7:00 PM. I ordered that the alternate weekend contact would remain, as would the Orders relating to special occasion contact (save for over Easter 2017).

20. At the hearing on 27 March 2017 a number of directions were made timetabling to a final hearing to be fixed on the first available open date after the 30 July 2017. Pursuant to s.9 of the Children Law (2012 Revision) ("the Law"), a Written Referral was made to the Department of Children and Family Services for a Court Welfare Officer's report to be prepared and filed by 27 June 2017 on the issues of contact between B and the mother, supervised contact and contact between B and the maternal grandparents. The Court Welfare Officer was asked to investigate the issue of the mother's alcohol abuse and how that impinges on her ability to care for B during contact and whether it puts B at risk of harm during contact.

21. My note from the hearing on 27 March 2017 records that the mother then informed the Court that she was obtaining a Psychiatric Report from Dr. Marc Lockhart, the Consultant Psychiatrist who had first seen her in November 2011 and whose offices she had attended on 30 January 2017⁶ as a consequence of the father's request to change the arrangements for B.⁷ The Court and all of the parties recognised that this report was required, as a core issue in this case was the

⁶ Followed up by her attendances on 13 February 2017, 24 February 2017 and 13 March 2017.

⁷ Oral evidence of Dr. Lockhart when examined by the father's Counsel.

mother's alcoholism and how that affected her interaction with and ability to care for B. Therefore, by consent, Dr. Lockhart was directed, on a joint instruction, to file a Psychiatric Report relating to the status of the mother's alcohol abuse and how that might impinge on her ability to care for P during supervised and/or unsupervised contact for consideration in the court proceedings by or on 19 May 2017. The letter of instruction, drafted by all the parties, was sent to Dr. Lockhart on 13 April 2017.

22. Issues later arose as to who should pay for this report which cost C\$9,540. At the hearing on 22 June 2017 the impression was given to the Court that Dr. Lockhart was refusing to release his report until he had been paid. With that in mind, I ordered that the mother and father would equally bear the costs of the report, but I also noted that the mother could only use her best endeavours to do so, as only the Director of Legal Aid could authorise that payment. I indicated that I would not be requiring the grandparents to pay towards the cost of the report⁸ and therefore any later refusal by them to contribute to the cost of the report does not amount to a valid reason for the father to refuse to disclose the report in a timely manner once he had received it after he had commendably paid in full for the same.

23. In light of the impression the Court was then left with that Dr. Lockhart was refusing to release the report to the parties, it is now troubling to find out that

⁸ My emphasis by underlining.



Counsel for the father had, by the 22 June 2017 hearing, already received the report. I accept that in June 2017 Counsel was overseas dealing with a family medical emergency which prevented her from being able to read the report until the day of the 22 June 2017 hearing.⁹ It is also troubling that in a communication dated 6 July 2017 the father's Counsel acknowledged that the report was relevant to the discussion about summer contact and, wrongly asserting that the Court had directed "*the parties*" to share the costs of such report equally, failed to disclose that she already had been provided with a copy of the report or that it had already been paid for in full by the father. It is troubling that, in communications from the father's attorney on 24 August 2017 and 25 August 2017, the impression given was that the report was still to be obtained and that it was requested that it be "*obtained as a matter of utmost urgency.*" From the correspondence it is clear that the mother was trying, despite the sentiments expressed by the mother's attorney in an email sent on 24 August 2017, and until the approval given by the Director in August, to have the 50% cost paid by Legal Aid. It is also clear that the father was refusing to provide the other parties with a copy of a report in his possession which his attorney stated in an email transmitted on 24 August 2017 was "*key evidence*" for the proceedings and which "must¹⁰ be made available to the Court for the hearing." It is troubling that this report, which the Court initially directed¹¹ to be filed by or on 19 May 2017, was first made available to the Court in the trial

⁹ The report having been provided to the father on or around 16 June 2017.

¹⁰ Emphasis is by the father's attorney.

¹¹ On 27 March 2017.



bundle filed at 4:10 PM on 31 August 2017 and to the other parties on 28 August 2017. It is troubling because it meant that the father and his attorney have had a considerable period of time to prepare for the hearing with knowledge of the content of that “key” piece of evidence concerning the mother’s condition since at least 22 June 2017 (over 11 weeks prior to the hearing) and that the other parties were not afforded the same opportunity until 8 days prior to the hearing. It is also troubling that the Court was invited to extend time for the filing of affidavits with the impression being given that the delay was due to the non-release of the report by Dr. Lockhart. In fact, the Court, at the request of the parties, wrongly believing that the report had still not been released by Dr. Lockhart, on 22 June 2017 extended the time for the filing and serving of affidavits to 18 August 2017 and on 18 August 2017 granted a further extension until 25 August 2017. The latter direction could not be complied with as the mother and the grandparents were not provided with a copy of the report until 28 August 2017.

24. Although I give significant credit to the father for paying for the report in June 2017, for which it has been confirmed he will now receive a 50% reimbursement from Legal Aid when the cheque is produced by that Department, the failure to share the report until 28 August 2017 on the basis that if the Legal Aid contribution was not approved or processed, the grandparents, who the Court had not required to contribute, should meet the 50% payment¹², is an unmeritorious

¹² See email from the father's Counsel to the Court dated 12 September 2017.

reason. Any statement by counsel for the maternal grandparents made in correspondence prior to receiving the report that the report was "*not relevant*" or made by counsel for the mother in correspondence prior to receiving the report that it would be of "*limited utility*" would clearly be seen as being wrong to anyone who had, like the father and his counsel, been afforded the opportunity to read the report. The father could have had no doubt that the content of the report was highly relevant and that it needed to be disclosed in a timely fashion even if he had not received the payment from the legal aid fund on behalf of the mother. Apart from the knock-on detrimental effect to the structured case management of the case caused by the late sharing of the report, it was not appropriate in proceedings where the welfare of the child is paramount, to fail to give timely full and frank disclosure about the status of the release of the report from Dr. Lockhart. All of the parties were content for this hearing to proceed, but if the late sharing of the report had resulted in an adjournment of the proceedings then there may well have been costs implications for the father, who appears to have instructed his counsel to adopt the approach taken in relation to the report motivated by the hope of receiving some reimbursement for its costs from the other parties' financial resources.

25. On 24 April 2017 a Notice of Hearing was issued, setting down this final hearing to commence on 5 September 2017.



26. On 22 June 2017 the matter came before the Court on a mention hearing. Apart from the aforementioned directions given about the funding for the report of Dr. Lockhart and extension of time for filing of affidavits, an extension of time was given to the welfare officer to file her report by or on 21 July 2017.

27. On 14 July 2017 Ms. Sherine Barnes, the Court Welfare Officer, filed her Written Report. In her report it is unclear what recommendation she was making about contact for the mother, but she stated at paragraph 157 therein, based on her view that the mother was still abusing alcohol, that:

"It is clear that (the mother) is not fulfilling her role of mother in (B's) life nor can she be a role model for him; also, she has 'being' rendered incapable of parenting him due to her overconsumption of alcohol."

She then made the following recommendations:

- (i) Continued Residence Order to the father (medical and school decisions to be made by him; and
- (ii) Contact Order to the maternal grandparents in relation to B on (i) alternate weekends Friday after school until Monday drop-off at school; (ii) two weeks during the summer school holidays (one week in July, one week in August); and (iii) any other time at the discretion of the father who she said had agreed to consider the same at Easter, Christmas and family events.



28. At the outset of her oral evidence, without any prior indication to the parties, the Court Welfare Officer fundamentally changed her recommendations. The reason for the change is that she said she had read the affidavits filed shortly before the hearing. Due to the content of the affidavits, coupled with the grandparents not giving her access to the property when she attended for an unarranged visit, she stated that she could no longer recommend the grandparents as suitable supervisors for the mother's contact with B, as she felt that they minimised the mother's alcoholism, were covering up her "*out-of-control drinking*" and they allowed her to be around B when she had been drinking. She indicated that there should be an independent supervisor and the only suggestion that she could offer in that regard was that it could be supervised at her office for two hours on one day per week. She accepted that she had not investigated whether any other family member could supervise and that she had not read the first affidavits filed by the parties because she did not have time to do so due to her other work commitments. She said that she felt that the case was "*quite unique*" as the grandparents were applying for contact in their own right and said that the contact with a grandparent should not be determined by a court order, but be left to be determined by "*the parent.*" Rather surprisingly, having regard to the ethos behind the Children Law recognising the importance of wider family members, the Court Welfare Officer stated that applications are only made by grandparents when a parent dies or the other parent is totally incapacitated. It appears that the



Court Welfare Officer is now recommending that any contact between B and his grandparents should take place at the discretion of the father.

29. As already mentioned, on 16 June 2017, Dr. Lockhart provided the father with the Psychiatric Report dated 19 May 2017 in relation to the mother. In that report he correctly reproduced the background set out in the joint letter of instruction on behalf of all three parties. At the beginning of the report he commendably highlighted that his primary duty was to the Court and that the requested scope of his instructions, to assist the Court to determine the care arrangements for B, was to prepare a report on the following issues:



- I. (the mother's) current status as it relates to alcohol abuse;*
- II. (the mother's) current mental health, generally;*
- III. any perceived improvement or deterioration in (the mother) based on the historical treatment of her; and*
- IV. how (if at all) do (the mother's) issues with alcohol and/or her mental health generally impinge on her ability to care for the child in either supervised or unsupervised setting?"*

30. Dr. Lockhart, under the heading "Writer's Response" made the following concluding statements in his report:

"..., (the mother) does have a robust and loving relationship with her son. This is her only child and she demonstrates in her psychiatric visits an empathetic, warm and established attachment to her son. The complexity of her illness at times complicates her relationships and damages trust. She requires continued structured

monitoring to enhance her accountability with treatment. Once she is sober and compliant she is able to interact competently with her son.

It is therefore this writer's recommendation that a supervised setting would be optimal for the protection of both (the mother) and her child. It is important to clarify that this supervised type setting does not necessarily require a social worker and/or a mental health professional. This is based on this writer's contact and interaction through the years with (the mother's) parents. It is this writer's opinion that the general patterns of interaction between (the mother), B, and her parents, i.e. (B's) grandparents have confirmed their ability to supervise and monitor interactions when (B) is in the care of (the mother). Once given medical and clinical direction, this dynamic can be enhanced."



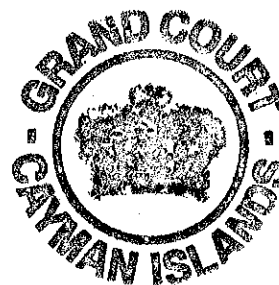
I prefer his recommendation to the one proffered by the Court Welfare Officer on the issue of supervision of the mother's contact with B.

31. This hearing commenced on 5 September 2017 and the parties gave their closing oral submissions on 12 September 2017. At that hearing all of the parties gave oral evidence. TK and AP gave oral evidence on behalf of the father. Oral evidence was also given by Ms. Sherine Barnes and Dr. Lockhart. When reaching my decision, I have carefully considered all of the oral and written evidence as well as the written and oral submissions made by counsel.

The Parties' Positions at the Hearing in Relation to the Orders Sought

32. The father's position has changed somewhat since the issuing of his Amended Summons. When it was explained to him by the Court that the grandparents did not have parental responsibility and therefore were not in a position to make decisions without his consent concerning B's health and education and that he was responsible for making the day-to-day decisions for B whilst he was in his care and that he could make minor decisions concerning health and education without consultation with the mother, the father commendably indicated that he no longer sought an order to terminate the mother's parental responsibility. He also made it clear that he was content for the contact between B and his mother to be supervised by the maternal grandparents. This narrowed the issues between the parties and the father seeks the following orders:

- (i) During school term time B have contact with his mother supervised at all times by the maternal grandparents on one weekend out of every four weekends. Contact be from Friday after school until Monday at school – B's contact with the mother will take place at the same time, but if the mother fails to attend contact, the contact over that weekend may then be exclusively for the maternal grandparents;
- (ii) During school term time there may be additional contact on dates and times agreed by the father;



(iii) During school holidays the schedule for contact during the school term will not apply. Instead there will be the following contact between B and his mother and the maternal grandparents:



- (a) During the Christmas vacation –from 4 PM on New Year’s Eve to 6:00 PM on New Year’s Day, to be alternated from year to year between the parties- B shall be with the mother/maternal grandparents or with the father from 4:00 PM on Christmas Eve until 4:00 PM on Christmas Day, and then with the other party from 4:00 PM on Christmas Day until 6 PM on Boxing Day, with the pattern alternating each year. These contact arrangements may vary if the father seeks to travel with B for an overseas holiday during the Christmas vacation. There will be such further contact between B and the mother and maternal grandparents on dates and times agreed by the father;
- (b) During the Easter vacation - Good Friday and Easter Monday contact is to be reasonably agreed between the father and the mother/maternal grandparents. There will be such further contact between B and the mother and maternal grandparents on dates and times agreed by the father; and
- (c) During the Summer vacation B will have contact with the mother/maternal grandparents for a two-week block period on a date to be agreed by the parties – B will have contact with the father for a three-week block period on a date to be agreed by the parties. There will be such further contact between B and the mother/maternal grandparents on dates and times agreed by the father.

(iv) On special occasions the contact arrangements will be as follows:



- (a) Mother's Day –If B would normally be with the father on the Mother's Day weekend then he shall be returned to the mother by 4 PM on Saturday to allow B to be with the mother on Mother's Day – such contact is to be supervised by the maternal grandparents and it is intended to take place only if the mother is in attendance;
- (b) Father's Day - if B would normally be with the mother/maternal grandparents on the Father's Day weekend then he shall be returned to the father by 4 PM on Saturday to allow for B to be with the father on Father's Day;
- (c) Parents' birthdays – on the mother and the father's respective birthdays, B shall spend time with that parent, details to be agreed by the parents. The contact for being with his mother is to be supervised by the maternal grandparents and it is intended to take place only if the mother is in attendance; and
- (d) B's birthdays – both parents shall spend time with B on his birthday – details to be agreed. The contact for B with his mother is to be supervised by the maternal grandparents.
- (v) In addition to the supervision condition, the father seeks the condition that the supervisors do not allow there to be contact between B and his mother if the mother has been drinking on the day of contact or is drinking alcohol. The father now also seeks a condition that the grandparents acquire a breathalyzer or alcohol detection strips to enable them to determine whether or not the mother has been drinking.

33. Apart from the father's proposal that there be a cessation during the school holidays of the contact arrangements put in place during the school term time, the mother agrees with the father's proposals for the Summer, Easter and the Christmas school holidays. The mother agrees with the block periods of contact proposed by the father for the summer holidays. The mother seeks orders for contact on public holidays and during school half terms. The mother also agrees with the father's proposals in relation to the contact on special occasions and with the conditions that he seeks to be added to the contact order. However, the mother also seeks the following orders in relation to contact during both school term and school vacation time:

- (i) B to have contact with the mother, supervised by the maternal grandparents, on alternate weekends from Friday after school until Monday at school and, if during the school holidays, from Friday afternoon until Monday morning; and
- (ii) B have contact with the mother, supervised by the maternal grandparents, in week one (the week before the weekend when there is to be no alternative weekend contact) overnight contact either on the Wednesday night or on the Thursday night and in week two (the week when there will be contact on the upcoming weekend) visiting contact after school (or in the evening if not in school term time) on Wednesday evening with drop-off back at the father's property no later than 7:00 PM.



34. The maternal grandparents now agree with the proposals made by the mother in relation to contact, save that they seek additional contact for themselves in the absence of the mother, especially if her contact is reduced from the current level.



The maternal grandparents and the mother were not opposed to the conditions suggested by the father being attached to the contact order.

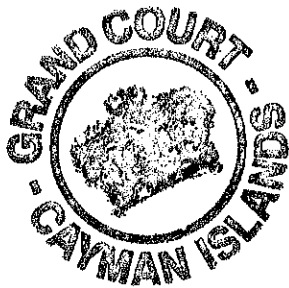
35. The approach to s.10 orders as set out in the Law means that the Court has a largely unfettered judicial discretion. When I am considering what orders to make in relation to B's contact with his mother and maternal grandparents, B's welfare shall be my paramount consideration. When determining what orders are appropriate I must consider the contents of the welfare checklist set out at s.3(3) of the Law. I will come to the welfare checklist when I review the evidence in the matter. The Court also has the power to impose conditions on any s.10 order pursuant to s.13(7) of the Law.

Parental Contact and Human Rights Considerations

36. Child contact cases engage Article 6 (right to a fair trial) and Article 9 of Part 1, Bill of Rights, Freedoms and Responsibilities, of the Cayman Islands Constitution Order 2009 ("the BOR"). The case law highlights the importance of meaningful contact and the duty to promote the same. Having reviewed the Cayman Islands case law I have not found a review of the applicability of the BOR on contact

issues, so I take this opportunity to do so, hoping that it may be of assistance at a later date to litigants and the Courts.

37. In *Sahin v Germany* Application 30943/96, the Grand Chamber of the European Court of Human Rights ("ECHR") was dealing with a matter in which the applicant alleged, in particular, that the German Court's decisions dismissing his request for a right of access to his child, born out of wedlock, amounted to a breach of his right to respect for his family life and that he was a victim of discriminatory treatment in this respect. He relied on Articles 8 and 14 of the Convention. The Grand Chamber with reference to the United Nations Convention on the Rights of the Child commented:



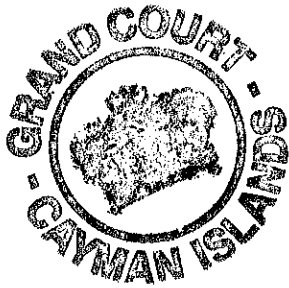
39. *The human rights of children and the standards to which all States must aspire in realising these rights for all children are set out in the United Nations Convention on the Rights of the Child. The convention entered into force on 2 September 1990 and has been ratified by 191 countries, including Germany.*

40. *The convention spells out the basic human rights that children everywhere – without discrimination – have: the right to survival; to develop to the fullest; to protection from harmful influences, abuse and exploitation; and to participate fully in family, cultural and social life. It further protects children's rights by setting standards in health care, education and legal, civil and social services.*

41. *States parties to the convention are obliged to develop and undertake all actions and policies in the light of the best interests of the child (Article 3). Moreover, States parties have to ensure*

that a child is not separated from his or her parents against their will unless such separation is necessary for the best interests of the child, and respect the right of a child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child's best interests (Article 9).¹³

38. The Grand Chamber then added:



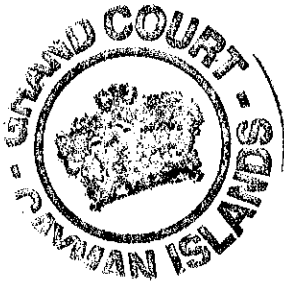
"49. The parties agreed that the decisions refusing the applicant access to his child amounted to an interference with his right to respect for his family life, as guaranteed by Article 8 § 1. The Court takes the same view.

50. Any such interference will constitute a violation of this Article unless it is "in accordance with the law", pursues an aim or aims that are legitimate under paragraph 2 of Article 8 and can be regarded as "necessary in a democratic society".

.....

64. In determining whether the refusal of access was "necessary in a democratic society", the Court has to consider whether, in the light of the case as a whole, the reasons adduced to justify this measure were relevant and sufficient for the purposes of paragraph 2 of Article 8 of the Convention. Undoubtedly, consideration of what is in the best interests of the child is of crucial importance in every case of this kind. Moreover, it must be borne in mind that the national authorities have the benefit of direct contact with all the persons concerned. It follows from these considerations that the Court's task is not to substitute itself for the

¹³ My emphasis by underlining – I accept that, unlike for example in the governing statute in Australia, this treaty provision is not replicated in the Law.



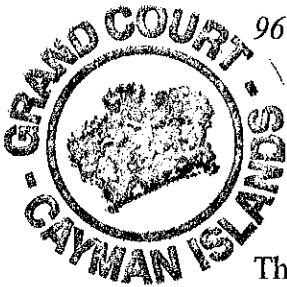
*domestic authorities in the exercise of their responsibilities regarding custody and access issues, but rather to review, in the light of the Convention, the decisions taken by those authorities in the exercise of their power of appreciation (see *Hokkanen v. Finland*, judgment of 23 September 1994, Series A no. 299-A, p. 20, § 55, and *Kutzner v. Germany*, no. 46544/99, §§ 65-66, ECHR 2002-I; see also the Convention on the Rights of the Child – paragraphs 39-41 above).*

*65. The margin of appreciation to be accorded to the competent national authorities will vary in accordance with the nature of the issues and the importance of the interests at stake. Thus, the Court has recognised that the authorities enjoy a wide margin of appreciation when deciding on custody matters. However, a stricter scrutiny is called for as regards any further limitations, such as restrictions placed by those authorities on parental rights of access, and as regards any legal safeguards designed to secure the effective protection of the right of parents and children to respect for their family life. Such further limitations entail the danger that the family relations between a young child and one or both parents would be effectively curtailed (see *Elsholz v. Germany [GC]*, no. 25735/94, § 49, ECHR 2000-VIII, and *Kutzner*, cited above, § 67).*

66. Article 8 requires that the domestic authorities should strike a fair balance between the interests of the child and those of the parents and that, in the balancing process, particular importance should be attached to the best interests of the child, which, depending on their nature and seriousness, may override those of the parents. In particular, a parent cannot be entitled under Article 8 to have such measures taken as would harm the child's health

and development (see *Elsholz*, cited above, § 50; *T.P. and K.M. v. the United Kingdom* [GC], no. 28945/95, § 71, ECHR 2001-V; *Ignaccolo-Zenide v. Romania*, no. 31679/96, § 94, ECHR 2000-I; and *Nuutinen v. Finland*, no. 32842/96, § 128, ECHR 2000-VIII).

39. The starting point in regard to the principles established in relation to contact in the Strasbourg jurisprudence is as set out in *Gnahore v France* (2002) 34 EHRR 967 at paragraph 50 namely that:



"The mutual enjoyment by parent and child of each other's company constitutes a fundamental element of family life."

This is developed in the following passage at paragraph 48 in *Gorgulu v Germany* [2004] 1 FLR 894:

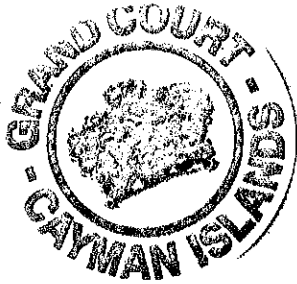
"....it is in a child's interest for its family ties to be maintained as severing such ties means cutting a child off from its roots, which can only be justified in very exceptional circumstances."

40. At paragraph 43-44 in *Kosmopoulou v Greece* [2004] 1 FLR 894 it was made clear that the principles applied to private law cases as well as public law cases, when stating that in both types of children cases:

*"Art 8 includes a right for parents to have measures taken with a view to their being reunited with their children, and an obligation for the national authorities to take such measures."*¹⁴

The Court added at paragraph 45:

¹⁴ At paragraph 44.



"However, the national authorities' obligation to take measures to facilitate reunion is not absolute, since the reunion of a parent with children who have lived for some time with the other parent may not be able to take place immediately and may require preparatory measures to be taken. The nature and extent of such preparation will depend on the circumstances of each case, but the understanding and co-operation of all concerned is always an important ingredient ...the interests as well as the rights and freedoms of all concerned must be taken into account, and more particularly the best interests of the child and his or her rights under Art 8 of the Convention. Where contact with the parent might appear to threaten those interests or interfere with those rights, it is for the national authorities to strike a fair balance between them."¹⁵

41. The settled Strasbourg jurisprudence stresses the importance of the child's welfare. At paragraph 169 in *Scozzari and Giunta v Italy* (2002) 35 EHRR 243, [2000] 2 FLR 771 the Court made clear that a parent:

"cannot be entitled under Article 8 ... to have such measures taken as would harm the child's health and development."

This was restated at paragraph 59 in *Gnahoré v France* (2002) 34 EHRR 967, as follows:

"The Court strongly emphasises that in cases of this kind the child's interest must have precedence over any other

¹⁵ My emphasis by underlining,



consideration. It must point out, however, that there is of course a double aspect to this interest.

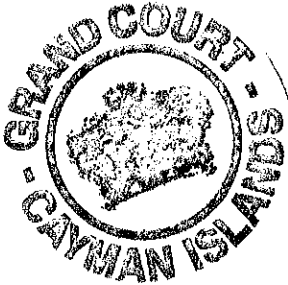
On the one hand, there is no doubt that ensuring that the child grows up in a healthy environment falls within this interest and that Article 8 cannot in any way entitle a parent to have such measures taken as would harm the child's health and development.

On the other hand, it is clear that it is nevertheless in the child's interest that the links between him and his family should be maintained except where the family is shown to be especially unworthy for that purpose; to break that link amounts to cutting the child off from his roots. It follows that the child's interest necessitates that only wholly exceptional circumstances may lead to a breaking of the family bond and that everything should be done to maintain personal relations and, where possible and when the occasion arises, to "reconstitute" the family."

42. The Strasbourg approach is further clarified in *C v Finland* (2008) 46 EHRR 485, [2006] 2 FLR 597, para [60]:

"The...authorities enjoy a wide margin of appreciation, in particular when deciding on custody. However, a stricter scrutiny is called for as regards any further limitations, such as restrictions placed by those authorities on parental rights of access, and as regards any legal safeguards designed to secure an effective protection of the right of parents and children to respect for their family life. Such further limitations entail the danger that the family relations between a young child and one or both parents would be effectively curtailed."

and by Judge Zupancic in *Scozzari and Giunta v Italy* (2002) 35 EHRR 243, [2000] 2 FLR 771, at para O-I12:

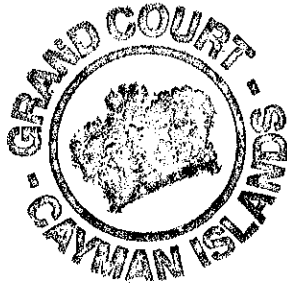


"The ultimum remedium of interference is justified if (a) it is objectively in the best interests of the child, (b) it balances the rights of the parents (and other close relatives) against the best interests of the child and (c) it demonstrably strives to re-establish the parent-child relationship."

Parental Contact

43. With the above principles in mind I turn to the observations of Dame Butler Sloss, President of the Family Division in the Court of Appeal judgment in *RE: L (A child)*, *RE: V (A child)*, *RE: M (A Child)* and *RE: H (Children)* [2000] EWCA Civ 194, [2000] 4 All ER 609, [2000] 2 FCR 404, [2000] Fam Law 603, [2001] 2 WLR 339, [2000] 2 FLR 334 – (referred to hereafter as "*RE L*"). Although all of those appeals involved fathers' applications for direct contact being refused by the circuit judge against a background of domestic violence between the spouses or partners, a number of the general observations apply to cases where, as seems to be the recommendation of the Welfare officer, direct contact may be reduced to a bare minimum level. Dame Butler Sloss indicated that:

"The court always has the duty to apply section 1 of the Children Act that the welfare of the child is paramount and, in considering that welfare, to take into account all the relevant circumstances, including the advice of the medical experts as far as it is relevant and proportionate to the decision in that case. It will also be relevant in due course to take into account the impact of Article 8



of the Convention on Human Rights on a decision to refuse direct contact.

The propositions set out above are not, in my view, in any way inconsistent with earlier decisions on contact. The fostering of a relationship between the child and the non-resident parent has always been and remains of great importance. It has equally been intended to be for the benefit of the child rather than of the parent. Over the last 40 years there has been a movement away from rights towards responsibilities of the parents and best interests of the child. In re M (Contact: Welfare Test) [1995] 1 FLR 274, Wilson J, referring to the general principles on contact laid down in re H [1992] 1 FLR 148, (and which were endorsed in re O (below)) said:

"I personally find it helpful to cast the principles into the framework of the checklist of considerations set out in section 1(3) of the Children Act 1989 and to ask whether the fundamental emotional need of every child to have an enduring relationship with both his parents (s1(3)(b) is outweighed by the depth of harm which, in the light, inter alia, of his wishes and feelings (s1(3)(a) this child would be at risk of suffering (s1(3)(e) by virtue of a contact order."

44. At paragraphs 44-47 in the *Re C (A Child) (Suspension of Contact)* [2011] EWCA Civ 521, [2011] 2 FLR 912 Lord Justice Munby in the Court of Appeal helpfully summarised the approach taken by the Courts in England and Wales by highlighting to passages in oft referred to cases as follows:

44. In *Re M (Contact: Supervision)* [1998] 1 FLR 727, Ward LJ said (at 730) that:

"Contact is almost always in the interests of a child and should not be prevented unless the order would hinder the welfare of the child ... contact should not be prevented unless there are cogent reasons for doing so."



He referred (at 733) to the observation of Sir Thomas Bingham MR in *Re O* (Contact: Imposition of Conditions) [1995] 2 FLR 124, at 129, that:

"The courts should not at all readily accept that the child's welfare will be injured by direct contact. Judging that question the court should take a medium-term and long-term view of the child's development and not accord excessive weight to what appear likely to be short-term or transient problems."

45. In *Re S* (Contact: Promoting Relationship with Absent Parent) [2004] EWCA Civ 18, [2004] 1 FLR 1279, Dame Elizabeth Butler-Sloss P quoted (para [19]) what she had said in *Re T* (A Minor) (Parental Responsibility: Contact) [1993] 2 FLR 450 at 459:

"It is the general proposition, underpinned undoubtedly by the Children Act 1989 ... that it is in the interests of a child to retain contact with the parent with whom the child does not reside. The courts generally set their face against depriving a child of such contact".

She also (para [22]) cited with approval what Wall J (as he then was) had said in *Re O* (Contact: Withdrawal of Application) [2003] EWHC 3031 (Fam), [2004] 1 FLR 1258, para [6]:

"Unless there are cogent reasons against it, the children of separated parents are entitled to know and have the love and society of both their parents. In particular, the courts recognise the vital importance of the role of non-resident [parents] in the lives of their children, and only make orders terminating contact when there is no alternative."

She continued (para [32]) that:

"It is ... most important that the attempt to promote contact between a child and the non-resident parent should not be abandoned until it is clear that the child will not benefit from continuing the attempt."

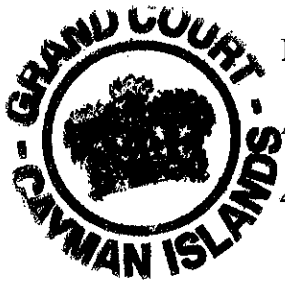
She warned (para [33]) against coming to a "premature" decision "to abandon all hope of achieving some contact."



46. *In Re P (Children)* [2008] EWCA Civ 1431, [2009] 1 FLR 1056, para [38], Ward LJ said that "contact should not be stopped unless it is the last resort for the judge" and (see para [36]) until "the judge has grappled with all the alternatives that were open to him."

47. I do not propose to add to the jurisprudence or to attempt to state in my own words what has already been so clearly said by others. All I need do is to extract from the case-law to which I have referred the propositions upon which Mr Scott-Manderson places particular reliance:

- Contact between parent and child is a fundamental element of family life and is almost always in the interests of the child.
- Contact between parent and child is to be terminated only in exceptional circumstances, where there are cogent reasons for doing so and when there is no alternative. Contact is to be terminated only if it will be detrimental to the child's welfare.
- There is a positive obligation on the State, and therefore on the judge, to take measures to maintain and to reconstitute the relationship between parent and child, in short, to maintain or restore contact. The judge has a positive duty to attempt to promote contact. The judge must grapple with all the available alternatives before abandoning hope of achieving some contact. He must be careful not to come to a premature decision, for contact is to be stopped only as a last resort and only once it has become clear that the child will not benefit from continuing the attempt.
- The court should take a medium-term and long-term view and not accord excessive weight to what appear likely to be short-term or transient problems.
- The key question, which requires "stricter scrutiny", is whether the judge has taken all necessary steps to facilitate contact as can reasonably be demanded in the circumstances of the particular case.
- All that said, at the end of the day the welfare of the child is paramount; "the child's interest must have precedence over any other consideration."



45. In *Q v Q* [2015] EWCA Civ 991 Munby L.J. reiterated that contact is almost always in the interests of the child by repeating the above principles he had outlined at paragraph 47 in *Re C (A Child) (Suspension of Contact)*. Lady Justice King at paragraph 32 in the Court of Appeal decision in *K (children), Re* [2016] EWCA Civ 99 and Lord Justice McFarlane at paragraph 42 in the Court of Appeal decision in *W (Children)* [2012] EWCA 999 both relied upon paragraph 47 in Munby L.J.'s Ruling.

46. It is also helpful to have regard to the potential detriment there may be to a child who is having no direct contact with the non-resident parent as set out in *RE L* as outlined by the two consultant psychiatrists in that case. Although Dame Butler-Sloss referred to their input as being "*extremely valuable information to assist in the difficult task faced by the family judge or family proceedings magistrates deciding whether to order contact in cases where domestic violence is proved*", I am satisfied that the guidance and principles in the above cases as well as in the following extract is also of assistance in the case before me as the Court Welfare Officer appears to recommend a drastic reduction in contact which may in reality result in no meaningful, direct contact for B with his mother. The most relevant issues concerning disadvantage emerging for the psychiatrists' evidence in *Re L* were:

- "(i) deprivation of a relationship with the biological father;*
- (ii) loss of opportunity to know the parent at first hand with the loss of information and knowledge that will go towards the child's*

formation of identity and not to know the reality of the parent which may be less worrying than the unseen, imagined villain. If the contact is positive it may help the child to have a more positive image of himself or herself and a better attitude to future parenting;

(iii) loss of opportunity to know grandparents and other relatives of that parent with the potential loss of genealogical information. Sometimes there can be successful contact with the family even if not with the non-resident parent;

(iv) loss of the parent with whom there has been a good relationship or a relationship that has given the child some sense of being cared about. Continuity can be important;

(v) if a parent is able to provide positive and supportive contact and new and different experiences, then loss of that opportunity.

(vi) Absence of opportunity for any repair to the relationships or to the harm done.

(vii) lessening of the likelihood of the child being able to get in touch and/or form a relationship at a later stage.



47. I am guided by the principles and sentiments set out in paragraphs 37-45 herein, when I reject the recommendation of the Court Welfare Officer as to the frequency and nature of the supervision of the mother's contact, and when I go on to concentrate on the frequency of contact for B to the mother.

Contact for Grandparents

48. The maternal grandparents, in light of the father's pleaded case that the Court order that they only have "*ad hoc*" contact to B, made a separate application for

contact. When I granted them leave for the application at the hearing on 27 March 2017, having the threshold test as analysed by Black LJ in *Re B (A Child)* [2012] EWCA Civ 737 in mind, I stated in my ex tempore ruling that:

"I have regard to their connection with their grandson, which is considerably greater than one often sees in leave applications because of the most important role they are playing in the child's upbringing and care. I can see no risk being caused by the proposed application for disruption to the child's life to such an extent that he could be harmed in any way by the application. I accept that they need not have made an application at all if all that the court was dealing with was about them having a role as supervisors for the mother's contact with the child, because they could have simply provided affidavits to show their suitability as supervisors and background from part of the content of the welfare report..... Due to the nature of the application and their important and hands-on relationship to the child, this is clearly an arguable application and it is not frivolous and vexatious. Having regard to the authorities, it is a case in which leave to apply should be given."



Having now considered all of the evidence before me, despite the events of June 2017, I reach the same conclusions about the commendable role the grandparents have played in B's life and in ensuring that he maintains a relationship with his mother.

49. In the case law from England and Wales it has been acknowledged that grandparents have an important role to play in the upbringing of children. Their importance and the roles that grandparents take in family life are arguably even greater in the Caribbean due to culture and family dynamics.

50. In *Re W (Contact: Application by Grandparent)* [1997] 1 FLR 793 the Court noted that contact with a grandparent may be beneficial for a child. The headnote reads:



"Grandparents play an important role in children's lives, especially young children, and their influence is extremely beneficial, provided it is exercised with care and not too frequently."

In *Re W* Hollis J. referred to the extract from *Re A (section 8 Order: Grandparent Application)* [1995] 2 FLR 153 in which Butler-Sloss LJ dealt with the distinction between applicants and other relations for contact to children. Although, unlike in the matter before me, that case was dealing with a grandmother who had not had recent contact with the child, the sentiments and general approach outlined are applicable. I am also conscious that the degree of interaction a child has had or the degree of care given to a child by a grandparent may have a bearing on the type and frequency of contact that may be ordered, but at the same time bearing in mind that a grandparent's contact should not usurp or

overly compete with the rights and obligations of an able and willing parent. At page 157 Butler-Sloss when referring to a step father stated:

“... in a sense a grandmother, who is biologically connected to the child, might be seen to be more important than a stepfather, but that does not come anywhere near the point which is raised by [counsel]. He accepts that there was a presumption, following Balcombe LJ's judgment and the decision of the Court of Appeal in Re H, that a parent should have contact unless there are cogent reasons why that natural parent should not. That has been subscribed to in a long line of cases and very recently in this court. That is not, in my judgment, the approach towards any other member of the family: grandparent, aunt, uncle, anybody else. First of all, Parliament had the opportunity, following the report of the Law Commission and the draft Bill, to put into the Children Act a special position for grandparents. It was debated and they did not. Consequently, grandparents, like any other relatives, have to ask for leave and [counsel] accepts that position, as indeed he has to. But the idea that once you surmount the hurdle of s 10(9) [that is, of the Children Act 1989] you are then in a position similar to the natural parent flies in the face of common sense and also does not represent, in my view, the current state of the law. First of all, an application for leave is almost always an application on the papers. An application for contact, which is hotly contested at the hearing, is almost always heard with oral evidence and, of course, with the court welfare officer's report.

I would be surprised if there was a court welfare officer's report at the time of the application for leave. Consequently, the judge hearing the application for contact is in a far better position to decide what is right or wrong in respect of the child than the judge





hearing the application for leave, who can only assess the prospects of success on partial information. At the end of the day the judge has to try every case with s 1 of the Children Act in the forefront of his mind. He has to go through the checklist in s 1 with the welfare of the child as the paramount consideration. But it certainly cannot be said that because an applicant has been given leave in the family court that means that the respondent to that application has to prove the case. Save in the case of the special position of the natural parent, each person who wishes to have contact with a child has to show the grounds for wishing to have that contact. That may be easy, it may be difficult. Then once they have established a case for contact it will be necessary for the mother to show, as in this case, why there should not be contact. At the end of the day these are technicalities of some importance. If there is to be a presumption, and although [counsel] tried very hard to get around the idea of presumption, effectively that is what he was saying, there cannot be a presumption that a grandmother who gets leave is entitled to contact unless it can be shown by cogent reasons that she should not have it.

Having stated that as the general proposition, every judge looks at all the facts in the case and at the end of the day does what is best for the child. This judge, exercising his discretion, thought it was not good for this child to have contact with the grandmother at this stage. Once you get over the point, which has no merit, in my view, of cogent reasons, [counsel] accepts, I think, that he cannot show anything that goes outside the general restriction upon this court imposed upon us by the House of Lords in *G v G (Minors: Custody Appeal)* [1985] FLR 894."

51. The fact that leave has been given to the grandparents to apply for contact does not mean that they have been placed in the same position as a natural parent. It does not mean that there is a presumption that there should be contact unless the father in this case shows cogent reasons why there should be no contact. When considering whether to make the order, the child's welfare is paramount and the 'welfare checklist' applies. Applicant grandparents have to show the grounds for making the order. Once they have done that then, if contact was opposed in the case before me (which it is not in principle), the father would have to show why there should not be contact.

52. Grandparents have often been called upon to assist a family in difficulty due to the addiction of a parent. In the Article "*Grandparents: their role in 21st century families*" 1254 FAM Law (October 2012) written by Louise Spitz she comments at page 1255 under the heading 'Children and Addicted Parents':

"The importance of grandparents in caring for children who are threatened by alcohol or drug abuse is illustrated by the work of a number of charities, including Mentor and Adfam. Mentor estimates that as many as half of kinship carers are looking after children because of the drug and alcohol problems of their parents. In conjunction with Adfam and Grandparents Plus, Mentor's Grandparents Project was undertaken from September 2004 to April 2007 with funding from the Department of Health. It resulted in the production of 'Mind The Gap' resources for grandparents bringing up grandchildren as well as professionals working with those grandparents. From 2009 to 2011, Mentor led





the EU Kinship Carers Project across seven European countries, including the UK. It identified a number of areas where kinship carers and the children in their care could be assisted and recommended the development of a systemic response to cater for the needs of carers and children."

This type of assistance may occur, for instance, in public or private law cases where the Court found that there was no parent at the time who was able to provide the required level of care for the child and as a consequence the grandparents have to take over the day to day care of a child, whether in the short, or long term. That is clearly different to the situation in this case where the father and his partner are capable of and do provide a high quality care for B. In the matter before me the grandparents have been called upon to assist the family to try to enable B to maintain a meaningful relationship with the mother who has an alcoholic dependency, but they were not called upon by the Court to take over the mother's parental role. It was not intended that, whether or not the mother took up the contact opportunities afforded by the order, the maternal grandparents would in their own right acquire the mantle of co-carers of B (which they submit they are) with the father, especially in the long term.

53. Despite the position now being taken by the Court Welfare Officer concerning their suitability as supervisors of contact (one which I do not adopt), in this case the maternal grandparents should play a vital role in ensuring that B maintains a meaningful relationship with the mother by acting as supervisors, which is in his



best interests. This is a view now shared by all of the parties and Dr. Lockhart, as they all agree that they should supervise any contact the mother has with B. It is clear that B has been very fortunate to have such loving and caring grandparents. It is far more beneficial for a child to have contact with a parent supervised for extended periods by a family member in a familiar family environment rather than for briefer periods of time by an unrelated third person in an unfamiliar and sterile setting.

54. Issues for determination in this case were narrowed considerably on the morning of the first day of the hearing. The Court does not have to consider any issue as to termination of or restrictions placed on the mother's exercise of her parental responsibility and the contact for the parties with B on special occasions is, in the main, agreed. There is no issue as to the mother's alcoholism and that this means that she is unable to care for B or have unsupervised contact with B. The parties agree that contact between the mother and B should remain supervised at all times by the maternal grandparents and that directions and conditions should be attached to the contact orders to assist the grandparents in ensuring that the mother has not been drinking and does not drink on the day of her contact with B.

55. Therefore, the issues remaining between the parties have been identified as being:

- (i) the frequency of supervised contact between the mother and B during school term time and the school vacations;



- (ii) whether there should be any stand-alone contact between the maternal grandparents and B; and
- (iii) what should be the frequency of any separate contact for B with the grandparents during the school term time and the school vacations.

Despite this, over five full days the parties gave evidence covering a great deal of historical background, some of which was not helpful to me in my determination, in a manner disproportionate to the remaining issues. A significant amount of evidence was received which was more relevant to the mode of contact for the mother, whether it should be supervised or not and if it was the former whether the grandparents were suitable supervisors, rather than to the frequency of contact.

56. With this in mind, I intend to analyse the evidence in a manner consistent with the approach advocated by Thorpe L.J. in *Re F (Shared Residence Order)* [2003] EWCA Civ 592, [2003] 2 FLR 397¹⁶, namely that 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. When considering what orders would be in the best interests of B, I am not required to make findings on every area or issue that has been presented to me for determination or which have become apparent during the hearing. I must

¹⁶ See also *B v B* [2013] (1) CILR 271 at paragraph 10 and *KP v JB* 2012 (2) CILR 249.

determine the factual issues that have implications for the decisions that I have to take in relation to B.



Dr. Marc Lockhart, Consultant Psychiatrist

57. The starting point is the uncontroverted evidence of Dr. Lockhart concerning the mother's alcohol dependence disorder coupled with depression and a mood disorder which are all ongoing and with a prognosis which is, at best, *"fair"*. Dr. Lockhart made it patently clear that the only solution for the mother is complete abstinence from alcohol and a requirement that she *"surrenders"* to receive the help outlined in paragraph 16 above to identify and address *"the triggers for her use and stressors that perpetuate those."* Dr. Lockhart made clear that the mother is not someone that *"lacks moral drive"* or who is *"a bad person"*, but she should be regarded as someone with a serious illness of alcoholism with other areas of concern such as depression which need to be addressed to enable her to deal with the alcoholism. He highlighted that although the mother loves B *"deeply"* and that to remove her contact would be devastating for her, she *"does not have the wherewithal to take care of B adequately."* Relying upon his experience derived from him also being a Child Psychiatrist, he shared his view that contact for B with the mother and with the maternal grandparents was *"extremely important"*. Dr. Lockhart stressed that it was very important that any close trusted family members who had a wholesome relationship with B be encouraged to facilitate

that relationship. He stated that B had a *"very close connection"* with the maternal grandparents and that he *"responds very well to them."*

58. Dr. Lockhart cautioned that there may be a detrimental impact on a child if he sees his parent intoxicated on multiple occasions. This may alarm a child who would find the situation difficult to process or understand. He added that a parent's role is to protect and guide a child, but if a child routinely sees a parent intoxicated or out of control this may result in the child having self-confidence issues as a consequence of being unsure of his environment. He stated B has an understanding that all is not well with the mother. He added that it is very important that any close trusted family member who has a wholesome relationship with him be encouraged to foster that relationship.



59. With the above in mind, Dr. Lockhart went on to recommend that contact for B with the mother remain supervised and that, from his knowledge of the maternal grandparents gleaned over a number of years, they would be suitable persons to continue in that role.

60. Dr. Lockhart understandably stated that the frequency was *"a matter for the Court."* Dr. Lockhart expressed a concern about B being in an environment in which he is exposed to a dysfunctional interaction which could potentially cause harm to him. He stated that if the Court granted the mother contact other than on

the weekend and she did not fully engage in her treatment that it may be setting up a scenario to let B down emotionally. He felt that, as a consequence, B should be in an environment where there was less upheaval and change and felt that:



"Not having a Tuesday or Thursday contact may not necessarily be disruptive to him."

61. Dr. Lockhart remarked that B has had a very close relationship with his maternal grandparents from birth and he responds very well to them. He felt that the maternal grandparents should have some time alone with B. However, he later commented that he felt that one weekend per month for B with just the grandparents would be *"very reasonable"* with the additional option of them supervising contact for B with his mother. He stated that if the mother did not take up that additional contact or failed to abstain from alcohol during the visit then the father should have the first option of having B stay in his care on those occasions or at the very least be made aware of the situation with the mother.

62. Dr. Lockhart recommended that, having regard to his assessment and having reviewed the Welfare Report, B required a pattern of stability to enable him to thrive and function adequately as a young child and that he needed a *"primary point"* which the father could offer and therefore the father's home should be his primary home. He felt that there was a requirement for B to spend the majority of

time with his father and that his interaction with the mother could be supervised and monitored by the maternal grandparents.

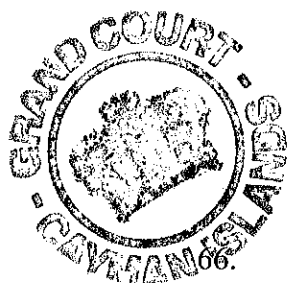
63. It is clear from the medical evidence, which every party accepts, that any contact between B and the mother must remain supervised. Despite some of the written evidence adduced by the father heavily criticising the maternal grandparents in a rather unnecessarily terse manner, all of the parties and Dr. Lockhart agree that the maternal grandparents are suitable persons to supervise B's contact with the mother.



The Court Welfare Officer, Ms. Sherine Barnes

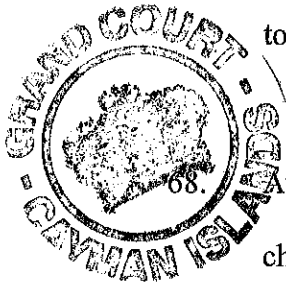
64. The Court Welfare Officer in her report said that the maternal grandparents *"presented as wonderful and kind people"* who want to maintain frequent contact with B. In the report she expressed concerns about their failure to ensure that the mother was not drinking on days in which she had contact and that they made excuses and were covering for the mother. She dealt with the unannounced visit that she made on 21 June 2017 when, although they were in their property with B and the mother, she was not granted access by the maternal grandparents. In the report she said that before that visit she *"had faith in their ability to protect (B) and keep (him) safe from exposure or anything else, however now there are some doubts"* and that the events on that day were of *"great concern"* to her.

65. On 1 June 2017 the Court Welfare Officer attended at the maternal grandparents' property for a scheduled visit and found the mother playing with B in the swimming pool although the welfare officer later noticed that she had clearly been drinking. She noted that the mother's speech was slurred and that her breath had a strong scent of alcohol on it. She also noted that the mother told her that she felt that having a few drinks did not make her incapable of taking care of B and said that she never drinks when he is around her. The maternal grandmother confirmed that the mother had consumed some alcohol, but was rather dismissive of the fact. This, coupled with the discussions she had with Dr. Lockhart, with the meeting that she had with the mother on 8 June 2017 and with the events of 21 June 2017 when she had attended to obtain proof of the mother's attendance at Alcohol Anonymous meetings, all led to her rightly concluding that the mother was *"continuing to overconsume alcohol, to the detriment of everything in her life."* She also said that she found it *"astounding"* that the mother who just had surgery was unable to restrain herself from consuming alcohol on a contact day.



Despite this, in the report Ms. Barnes still recommended that B stay with the maternal grandparents fortnightly for the full weekend during the school term time and spend two weeks with them in the Summer. From the report she did not seem to be recommending that mother could not attend during these visits and that the maternal grandparents could not supervise.

67. In her oral evidence she referred to the recommendation as being a “*package deal*” when dealing with the mother and the maternal grandparents. She also remarked during her oral evidence that, in her report when she noted that the father agreed to there being fortnightly weekend contact supervised by the maternal grandparents, it had been one of a number of proposals that she had put to him.



68. At the outset of her oral evidence the Court Welfare Officer fundamentally changed her position without putting the parties on any notice. She started her evidence by saying that, upon reading the recently filed evidence, she no longer felt that the maternal grandparents were appropriate supervisors as they had minimised the mother's conduct and have been covering up for her. She initially felt that it would therefore be in B's interest that the contact be supervised at her office for two hours per week. She conceded that, most regrettably, she had failed to enquire or make any assessment at all into whether any other family member was suitable to act as supervisor. Ms. Barnes also conceded that she failed to observe the mother and B alone during contact when carrying out her assessment. At later parts in her evidence, the Court Welfare Officer seemed to agree that contact once a month between B and the mother would meet his needs, but she did not have any position as to whether there should also be one afternoon after school until bedtime during the week.

69. The Court Welfare Officer was right to be concerned about the mother minimising her alcohol intake and failing to sufficiently recognise the effect that her drinking might have on B. What is also justified is her concern about the mother being inconsistent with her treatment compliance. Her observations and the clinical assessment of Dr. Lockhart are consistent. It is clear from the evidence of Dr. Lockhart that this is a characteristic of a person who, like the mother, suffers from alcohol dependency. The Psychiatrist expressed a view that a person with such problems would not be able to restrict herself to one drink and that ordinarily this would lead to many more than that. He also added that, although it is not based on mathematical certainty, research shows that if an alcoholic confesses to drinking on one occasion that it is likely that there have been at least four other occasions which they failed to disclose. It is for this reason that he says that the only way forward is complete abstinence.



Despite the clear need for ongoing psychiatric assistance the mother failed to see Dr. Lockhart between April 2015 and January 2017. The reason she gave to Dr. Lockhart for her attendance in January 2017 was because the father "*had made a request to the Court to vary custody of (B) and wanted to reduce her time*" with B and she wanted his "*help and assistance in monitoring.*" Dr. Lockhart said that she highlighted how better she was functioning. However, when he discussed the mother's history since April 2015 with her, she failed to inform him about her attendance at the Emergency Room at the George Town Hospital when she had



presented with a seizure and admitted to the clinician that she been ingesting *"about half a bottle of Absolute Vodka on a daily basis up to months."* Upon discharge from the hospital, the mother was recommended to contact her private psychiatrist but she failed to contact Dr. Lockhart. Dr. Lockhart only became aware of these events due to his research of her medical records at the Health Service Authority. In his oral evidence Dr. Lockhart commented that the failure to provide this information *"fits in the whole picture of illness, denial and avoidance."*

71. When having regard to the psychiatric evidence, and the evidence of the Court Welfare Officer who understandably places great weight on the same as she does not have the same expertise, and having regard to the mother's inability to remain sober on some contact days, it is important for the Court not to treat alcohol dependence as something incidental to the disputes arising in this case. The Court Welfare Officer is right to highlight her concern about the maternal grandparents' minimisation of the mother's problem and the fact they had on occasion allowed her to have contact with B under the influence of alcohol, as well as their actions on 21 June 2017. This may be partly because they have become desensitised by the frequency of the mother's drinking and/or partly to maintain the level of contact with B for themselves and their daughter. The mother's alcohol dependency is at the center of this case and is a core factor when determining that

the contact between B and his mother must be supervised and when considering the frequency of contact.

72. It is vital to appreciate what impact the drinking of a parent may have on a child. Although the stage has not been reached, it is important for the mother to understand that if she fails to address her alcohol dependency and it is shown that this is causing harm to B, the only effective approach may be to withhold contact until she does something consistently constructive to address the problem.

73. I have reviewed the wider evidence and I apply it to the 'welfare checklist'.

- (a) **The ascertainable wishes and feelings of B** - This is not a case in which B has sufficient maturity and understanding for him to give an informed view about the frequency of contact.

However, it is clear that B loves and has a bond with his parents and the maternal grandparents. He has bonded with his thirty-five year old step mother (TK), and it is evident that he regards her as a mother figure in his life, spontaneously and since February 2017 consistently referring to her as "momma" and "mummy." TK stated in her evidence *"From day one, B latched on to me, he asked to call me Mum. I have bonded with him, like mother and son."* The Court Welfare Officer's observation during an assessment home visit as to how he reacted to TK coming into the room and seeking her attention was an illustration of how B views her in his life.



B also has an important relationship with his siblings from the father's first marriage (his half-brother aged 15 and his half-sister aged 12) as well as with his maternal cousins. It is clear that he wishes to keep a meaningful relationship with all of the above persons.

- (b) **B's physical, emotional and educational needs** - I am satisfied that B's educational needs are well met by his father at this time.

B is settled at a good school found by and funded by the father. Despite the disproportionate amount of time at the hearing spent over-analysing limited concerns about parts of his educational advancement in his first year, his educational needs are being clearly met. When the concerns were brought to the father's attention they were very well addressed by both him and TK.

I have no doubt that the maternal grandparents are able to, and enjoy, providing educational support for B, but the degree of this should be commensurate with their role as grandparents and not stray into or be inconsistent with the father's exercise of his educational responsibility for B. That said, the maternal grandparents have shown a keen interest in B's education by attending school functions, receiving communications from B's school and on occasion by the maternal grandmother reading in class. It is hoped that, although they do not have parental responsibility, the father may see the benefit to B of allowing this arrangement to continue.





Regrettably there is no evidence to show that the mother is able to meet B's educational needs at this time.

The father and TK, unlike the mother, are able to well meet B's physical needs as a primary home in the short and long term. They are in an established and committed relationship and provide a secure, stable and consistent home environment for B. TK and the father recognise the importance of, and have put in place, an established routine in their home, especially now that B is at school. I was greatly impressed by TK when she gave her evidence. It is abundantly clear that she loves B and is willing and more than able to take on the joint role as his primary carer with the father. She is commendably sensitive to the family dynamics, understanding that B has an important relationship with both his biological mother and maternal grandparents and not seeking to oust either from B's life, whilst at the same time stepping in to offer important parts of the mother/child relationship lacking due to the mother's alcohol dependency. TK's role is best summarized by her own insightful words during cross-examination when she stated:

"When B is in my care, I only focus on what is best for him and what he needs..... He absolutely has a mother... I want to make this clear I never ever want to take away the natural role from (the mother). I view my position with all three children as a bonus, I cherish them and teach them right from wrong."



The maternal grandparents are able to meet B's physical needs when he is staying with them at this stage of his life. Due to the passage of time since the consent order they have had a greater input into the physical care of B than one would expect when there is an able parent available to be the primary carer. However, this is not a case in which one is balancing the standard of physical care that can be given by competing parents, care must be taken not to undermine the primary role that an able parent, in this case the father, is in a position to take on.

The father and TK are best able to meet B's emotional needs. Their home, in which there is a positive father and mother figure, is stable and secure and without the emotional instability caused by the presence of the mother when she has been drinking and the tensions this sometimes causes in the maternal grandparents' household.

On occasion the grandparents have enabled the mother to have contact with B when she has been drinking. I accept the evidence of TK when she told the Court that B is a "*very intuitive little boy*" and that she has heard B randomly state that his mother is drunk and that the maternal grandfather would "*get mad at her*" when she has been "*bad*" and she "*starts to cry*". Although I accept the maternal grandparents' evidence that they try and remove B to another room when the mother is being told off if she turns up under the influence of alcohol, this would still be unsettling for B. I accept that the maternal grandparents have found themselves in an

awkward position, balancing B's welfare, but at the same time trying to ensure that their daughter has regular contact with B whilst that and their time with B is maximized. They recognise, as was acknowledged when they issued their own separate contact application, that if the mother's time with B is reduced, so inevitably would be their own. This has resulted in them allowing B to come into contact with the mother at times when she has had a drink. Having regard to the evidence of Dr Lockhart, I am satisfied that this has likely occurred more frequently than they have disclosed in their evidence. Ms. Barnes accurately summarises the awkward situation that the maternal grandparents have found themselves in when she wrote in her report,



"They obviously love their grandson and want to maintain frequent contact with him. This writer believes that they are in a dilemma. They know the dangers of alcohol consumption and the risk to (B) but want to see their grandson, so they have resorted to making excuses and covering for (the mother)."

This dilemma led to the maternal grandparents' actions on 21 June 2017, when they failed to answer the door to admit Ms. Barnes into their property. It is troubling that the mother and the maternal grandmother chose to file misleading affidavit evidence about what happened on that



day.¹⁷ It is also concerning that the mother unashamedly repeated the same inaccuracies in her oral evidence at the hearing and that the grandmother initially did the same. Eventually the grandmother accepted that what she said in the affidavit was wrong, admitting that at the time they knew that it might have been Mrs. Barnes at the door and that was one of the reasons why they did not answer the door. She also belatedly disclosed that they were hesitant about opening the door as the mother had been drinking again and because Ms. Barnes made her uncomfortable by discussing things that she felt were private. I am satisfied, even on the maternal grandmother's evidence, that there was no justifiable reason for failing to open the door and that it was done, at least partly, because the mother had been drinking and was in the house with B at the time and they did not wish the Court Welfare Officer to see her in that condition. Although this raises concerns about their ability to prioritise B's needs and welfare, I am satisfied that they now understand the inappropriateness of their conduct as well as of the nature of their initial evidence on the events of that day, and that a similar approach must not be taken by them again. The maternal grandparents should be aware that if it does, that their role as supervisors could be terminated and the time B spends with them reduced. Unfortunately this is an indication that they may not recognise the

¹⁷ No adequate explanation was given to the Court as to why the maternal grandmother served a sworn affidavit on the father's attorney which was materially inconsistent concerning the events of 21 June 2017 when compared with the affidavit filed at Court which contained the same jurat.



emotional harm that may be caused to B by him coming into contact with the mother when she has been drinking, even if not to the level of being incapacitated.

Dr. Lockhart stressed the importance of B not being let down emotionally. He told the Court that in his clinical opinion B was well aware that the mother has an illness and he has "*an understanding that all is not well with his mother.*"

- (c) **Likely effect of any change in B's circumstances** – It is clear that B is surrounded by love from his maternal grandparents when he is at their home and that they are most attentive to him. His time there is occupied with interacting with the maternal grandparents and involvement in enjoyable activities with them. Dr. Lockhart stated that B had a very close connection with the maternal grandparents and that he responds well to them. Ms. Barnes states that they are "*wonderful and kind people*" who are "*loving grandparents.*" The maternal grandparents told Ms. Barnes about their concerns that TK and the father have done things to try and exclude them from B's life. They said that the change in the contact arrangements which reduced the midweek contact has been detrimental to B and that they have seen a "*huge difference*" in him since then and that he is sad when he has to return to his father's home.



It is evident that these grandparents have a closer relationship with B than one would ordinarily see in a family. This is due to the hands on role they have taken in his upbringing due to the mother's inability to take on the responsibility, and to the support they have given to foster B's relationship with his mother. They are wonderful grandparents. It is clear that B has a strong bond with both of them, and enjoys a special relationship with his grandfather. I have this in mind when I consider what orders to make and I accept that a change of the circumstances due to reduction of contact to the levels ordinarily enjoyed by grandparents, namely ad hoc arrangements and fairly infrequent contact which is convenient to the primary carer, would not be in B's best interests. However, I also do not feel that contact at the frequent level that impinges on the primary parent's care of B is in his best interests.

B should know that as part of his routine when he will be seeing his grandparents and young family cousins on the mother's side of the family who are important people in his life. The father should let B know that, in addition to the ordered contact, there will be other occasions when he will be able to spend time with them organised around his age and commensurate increasing school and extra-curricular activities.

In relation to the mother, rather unusually, a significant change in the order concerning the level of contact may not be as potentially upsetting as it might be in relation to the maternal grandparents. Dr Lockhart said that



the supervised visits were extremely important. However, he added that *"it must be healthy contact. (B) knows that something is wrong with his mother. Does that mean that we keep contact if she is not well or does not receive the treatment she needs? That could be more detrimental."*

Unfortunately, B occasionally still sees his mother after she has been consuming alcohol and to reduce the frequency of such experiences would not be harmful to him.

If contact is reduced at the maternal grandparents' house there may well be a period of adjustment for B. However, a change resulting in B residing in a primary home during the week during term time with an established routine based around his activities would still be in his best interests. B is very comfortable in his father's home where he enjoys a close and healthy relationship with TK. There is a more settled family structure in that household with less likelihood of stress. At this age, living in a house with positive father and mother figures who are collaborating in his care would enable him to be influenced by norms of behaviour and relationships which will be of use to him when he has his own family. The current arrangements in which the maternal grandparents play a role more akin to a parent's may cause confusion to B moving forward and this is the right age and time in his life, especially when the mother is still unable to address her difficulties adequately, for him to have a primary home with his father. B's half siblings, who live with their mother, also frequently



visit their father at his home and B is close to them. It is clear they are significant figures in B's life. However, I find that the father and TK exaggerated the effect of the current arrangements on the sibling relationship as a ground for a significant change on the contact arrangements. TK accurately stated about M and E that "*sometimes they come every other weekend, but they do have other commitments.*" One would expect this to be the reality having regard to their out of family age-commensurate interests and the difference in their ages and B's. I get the impression that they do see each other on most alternate weekends and possibly in the week when M goes horse riding. Under the order I intend to make there will be greater opportunity for them to see each other during the week if the siblings wish and are able to take up that opportunity and this will be a positive change in the circumstances.

Dr. Lockhart stated during cross examination:

"It depends on how we assess B's stability. If a few times a week he goes into an environment in which he is exposed to a dysfunctional interaction, that potentially (may) cause more harm to him. It may be best at this point in time for B to be in an environment in which there is less upheaval or change."

My notes reflect that he also stated in his evidence in chief that:

"I do not say that there will be a detrimental effect (caused by) reduced contact – severely reduced contact or no contact will



potentially have a detrimental effect. Stability and consistency are extremely important.”

I have these observations in mind when I consider the effect of any change to the present contact arrangements.

- (d) **Age, sex, background and any characteristics which the court considers relevant** - It is important for a child to be able to develop and establish a routine, especially during the school term time, in a stable household. B is a five year old male and this is the time for such a routine to be established and that should be in a primary home with his father, rather than splitting the time in a non-parents' home, albeit the other being with such loving maternal grandparents. Although the maternal grandparents' role has been and will to a degree remain, always greater than one might ordinarily expect due to how their relationship has developed under the supervisory role they have so willingly undertaken, this is the right time in B's life for the father, the able parent, to take on the role as primary carer offering a consistent approach to parenting.
- (e) **Any harm which the children have suffered or are at risk of suffering** - B has not suffered and there is no risk of harm at his father's home whilst under his and TK's care. There is a risk of harm if the mother was to have unsupervised contact and, even under supervised contact if not monitored



properly. Dr. Lockhart was clear about the requirement for the mother not to be under the influence of alcohol at contact. Having regard to the lower level of risk if contact is supervised I am satisfied that it is important for B to continue to try to foster a meaningful relationship with his mother. In the balancing exercise between the parents, it is clear that when considering the risk factor the father's home is to be preferred over the mother's.

Although Dr. Lockhart has expressed some concern about the emotional effect on B if the mother drinks in the maternal grandparents' home, when he is with them alone in the property there is no risk of harm. The risk may come when they are unable to address the dilemma highlighted by the Court Welfare Officer when balancing their own and the mother's interests against the need to ensure that B does not come into contact with his mother if she has been drinking. If there are conditions attached to the contact order to address the risk caused by the mother coming into contact with B when she has been drinking and which will assist the maternal grandparents to prevent this happening, then they should have contact, albeit at a level that does not unduly interfere with B's primary home with his able parent and TK.

When considering the issue of risk of harm I have regard to what Dr. Lockhart stated when asked, after stating that if the mother was sober B

would benefit from interaction with her, whether B would know when his mother has been drinking. He replied:



"I think he would have. I say that for multiple reasons. Number one (the mother's) illness is one where one or two drinks would become noticeable in her interactions, even subtle changes in terms of interactions and behaviours can be picked up by children. We are taught that when a parent that has this illness, it's almost as if the substance is interacting with the child with a veil on, can pick up the subtle differences."

I also have regard to his comment about the impact on a child on seeing a parent intoxicated when he answered that:

"A child seeing a parent impaired on a few or multiple occasions or if the impairment is severe it can be very alarming, and it can be something difficult for the child to process or understand."

Dr. Lockhart also added that:

*"Children who routinely see a parent intoxicated or out of control can have issues of their self-worth and confidence because they feel unsure about their environment and it can lead to insecurity."*¹⁸

(f) How capable are each of the parents of meeting the children's needs –

The father is capable of meeting B's needs. The mother is not able to meet

¹⁸ This extract is taken from my contemporaneous note in my note book.

B's physical needs primarily due to her longstanding alcohol problem. Dr.

Lockhart explained that being under the influence of alcohol



"can have significant repercussions in terms of safety for a child especially if it's a parent by themselves. They need to have their faculties intact in order to react and respond to any potential emergency and also to be able to engage with the child even in a non-emergency situation, they are to be cognitively aware of what is going on around them and in the environment the child is in."

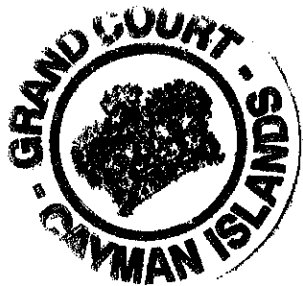
This observation is also applicable to the requirement to consider the risk of harm under the 'welfare checklist'.

- (g) **The range of powers available to the Court** – I have considered the full range of orders but, since the parties have narrowed down the issues, the Court has concentrated on what contact orders with the mother and the maternal grandparents would be in B's best interests.

Conclusions

74. **Contact with Mother** – I am satisfied that contact with the mother when sober is in B's interests and important for his development. The level of such contact is dependent upon the mother's sobriety and it should therefore be set at a realistic level. If the frequency of contact is too great the mother may be unable to attend or if she does then B may be exposed to what Dr. Lockhart termed a *"dysfunctional type interaction"* which *"would cause more harm for (B) than*

being in an environment of upheaval or change." It would be upsetting for B when he expects contact to take place with the mother, only for the mother to fail to attend or for the visit to be curtailed due to her drinking. Dr. Lockhart stressed that the mother's involvement is *"important, but it must be healthy contact."* When I have referred to Dr. Lockhart's comments related specifically to B in this judgment I caution myself that, although he is a Child Psychiatrist who has knowledge of the family, he has not met with B to carry out an assessment on him. Having regard to the fact that B's interests are paramount, the level of contact should be such to try to foster a meaningful relationship with his mother and one that may act as an incentive for the mother to address her alcohol issue for this could result in an increase in contact during term and vacation time and eventually lead to unsupervised contact.



75. It is important that B maintains a meaningful relationship with his mother and defined contact on one weekend per month, albeit with the father's discretion to give further contact, is not sufficient. During the school term, B's contact with the mother should remain fortnightly, however there will be a slight change in the length of contact. For the first weekend in a four week cycle contact will be from Saturday morning until Monday at school. This will fall on a weekend when B is having weekend contact with the maternal grandparents for the Friday, but the Friday evening will be exclusively for the maternal grandparents. If the maternal grandparents are content for the mother to join them for contact on a Friday night,



then that is a matter for them. All contact between B and his mother must be supervised by one of the maternal grandparents. There will be such further supervised contact between the mother and B as may be agreed between the father and the mother. I have considered whether one weekend should be replaced with the inherently more restrictive midweek contact, suggested as a possible alternative by the father, but I find that this would be disruptive to B's midweek routine when he was tired after school. However, the father may still agree to some midweek contact when he feels it appropriate to do so.

76. On the third weekend in the four week cycle contact between B and his mother will take place from Saturday noon until Sunday 6:00 PM. This contact must be supervised by a maternal grandparent at all times.
77. **Contact with maternal grandparents** - As highlighted by Dr. Lockhart, B has a wholesome and very close relationship with the maternal grandparents and it is extremely important that he maintains that. Ordinarily, where a parent is willing to allow contact between the child and a grandparent on dates convenient to the primary family, there is no need for a Court order. Due to the maternal grandparents' significant involvement in B's life and upbringing, there is a need to ensure that fairly regular contact occurs with them by means of a defined order rather than leaving it at the discretion of the father. However, such contact must not undermine consistency in the child's primary home with the parent, and must



not be such that it inappropriately fetters the ability of the primary parent to parent in an independent and responsible manner. Contact must allow the working father and B's siblings to enjoy time with B over the weekend and enable B to still see his maternal cousins and occasionally attend church with the maternal family.

78. During the school term time for the first weekend in the four weekly cycle, B will have contact with the maternal grandparents from Friday after school until Monday at school. The grandparents will share contact with the mother that weekend which they will supervise, save for the Friday night which will be exclusively their contact.

79. On the third weekend in the four-weekly cycle the maternal grandparents will supervise the mother's contact with B from noon on Saturday until 6:00 PM on Sunday. If the mother fails to attend to take up contact or is under the influence of alcohol the father should be notified of the same by the maternal grandparents and he has the discretion to request that B is returned to his care. However, the father may also decide that if B is settled that it may be in his best interests to remain and enjoy his time with the maternal grandparents for the remainder of that visit.

80. The schedule for term time contact is therefore:

- (i) **Weekend 1** – Friday after school until Monday at school – Contact between B and the maternal grandparents. The mother's contact to



commence with B on the Saturday morning and to be supervised at all times by one of the maternal grandparents;

- (ii) **Weekend 2** – B residing with the father;
- (iii) **Weekend 3** – Contact with the mother from noon on Saturday until 6:00 PM on Sunday. Contact to be supervised by a maternal grandparent at all times; and
- (iv) **Weekend 4** – B residing with the father.

There may be such further contact or variation as agreed by the relevant parties.

81. During the Christmas school vacation – From 4:00 PM on New Year's Eve to 6:00 PM on New Year's Day, to be alternated from year to year between the mother and the father. B shall be with the mother/maternal grandparents or with the father from 4:00 PM on Christmas Eve until 4:00 PM on Christmas Day, and then with the other party from 4:00 PM on Christmas Day until 6:00 PM on Boxing Day, with the pattern alternating each year. These contact arrangements may vary if the father seeks to travel with B for an overseas holiday during the Christmas vacation. In addition there should be such further contact between B and the mother and the maternal grandparents on dates and times agreed by the father, to include at least one two night overnight contact visit.

82. During the Easter vacation - Good Friday and Easter Monday contact is to be reasonably agreed between the father and the mother/maternal grandparents.



There will be such further contact between B and the mother and maternal grandparents on dates and times agreed by the father.

83. During the Summer vacation B will have contact with the mother/maternal grandparents for a two-week block period on dates to be agreed by the parties – B will have contact with the father for a three-week block period on dates to be agreed by the parties. In addition, outside of these block periods, there will be such further contact between B and the mother/maternal grandparents on dates and times agreed by the father, but to include two nights overnight contact every fortnight.

84. On special occasions the contact arrangements will be as follows:

- (a) Mother's Day – If B would normally be with the father on the Mother's Day weekend then he shall have additional contact with the mother from 4:00 PM on Saturday to allow B to be with the mother on Mother's Day – such contact is to be supervised by a maternal grandparent and it is intended to take place only if the mother is in attendance;
- (b) Father's Day - If B would normally be with the mother/maternal grandparents on the Father's Day weekend then he shall be returned to the father by 4:00 PM on Saturday to allow for B to be with the father on Father's Day. The father should provide additional contact to compensate for any contact lost due to this arrangement;



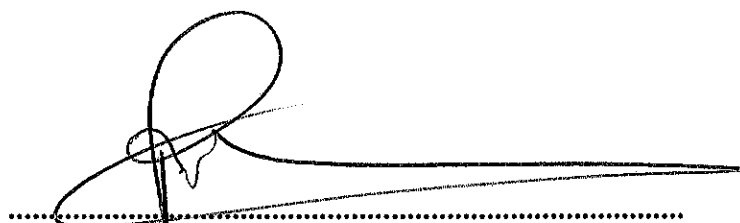
- (c) Parents' birthdays – on the mother and the father's respective birthdays, B shall spend time with that parent, details to be agreed by the parents. The contact for B with his mother is to be supervised by the maternal grandparents and it is intended to take place only if the mother is in attendance. The father should provide additional contact to compensate for any contact lost due to this arrangement¹⁹; and
- (d) B's birthdays – both parents shall spend time with B on his birthday – details to be agreed. The contact for B with his mother is to be supervised by the maternal grandparents.

85. Pursuant to s.13(7) of the Law, I order that all contact between the mother and B must be supervised by a maternal grandparent. For such contact to take place the mother must be sober and therefore the supervisors must not allow there to be contact between B and his mother if the mother has been drinking or is drinking alcohol on the day of contact. With the consent of the parties I direct that the maternal grandparents acquire a breathalyser or alcohol detection strips to enable them to determine whether or not the mother has been drinking on each contact visit. Any testing should not be done in the presence of B as it may be upsetting for him. The maternal grandparents informed the Court that they felt such

¹⁹ For avoidance of any doubt, as B resides with the father and spends far less time with the mother pursuant to the contact order, there is no requirement for the mother's contact time to be reduced to "compensate" the father for the additional time B spends with her pursuant to the arrangement ordered in paragraphs 84(a) and 84 (c) above.

conditions, which they welcomed, would assist them when marshalling the supervised contact and understanding what their obligations are.

86. I am troubled by the high level of legal costs expended by this family which are disproportionate to the issues and complexity, in what is in reality a frequency of contact case. It is clear to me that all of the parties love B dearly and want what is best for him. With this in mind, it is hoped that they do not need to return to Court again. This Order is designed to ensure that they all play a meaningful role in B's life, without undermining his primary placement with the father. It is hoped that the father's indication that he will be willing to take a flexible approach and allow additional contact for the maternal grandparents, if it fits in with his family's plans is something that occurs. For additional contact to the mother, the father will no doubt be reviewing how the mother is able to address alcohol dependency moving forward.



The Honourable Mr Justice Richard Williams
JUDGE OF THE GRAND COURT



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.