

1 IN THE GRAND COURT OF THE CAYMAN ISLANDS

2
3 Cause No: FAM 0169/2015
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5 BETWEEN:

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9 PETITIONER
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11 AND:

12 A R
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15 RESPONDENT
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17 Appearances:

18 Ms. Sheridan Brooks Q.C. for the Petitioner

19 Ms. Cherry Bridges of Ritch & Conolly for the
20 Respondent
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22 Before:

Justice Marlene Carter (Actg.)

23 Heard:

24 29th September 2017

25 Respondent's Submissions on Costs:

26 19th October 2017

27 Petitioner's Submissions on Costs:

28 30th October 2017
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32 **HEADNOTE**

33 *Family Law – GCR O.62 r.4(3) – Costs argued following Summons to vary*
34 *Residence Order.*
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JUDGMENT

1. On the 30th November 2016 this Court made an Order which was agreed between the parties, "the Consent Order," which among other matters, granted a sole residence order to the Petitioner.

2. It is not disputed between the parties that the Court was aware, at that time, of, and endorsed, further discussions between the parties with a view to the submission to the Court on a further agreed position for the Court's approval on matters relating to the Respondent's contact with the two minor children of the marriage.

3. On the 15th of June 2017 the Respondent filed a summons seeking the following:

i. That the Order made on the 30th November 2016 by McMillan J. be varied such that a shared Residence Order be made;

ii. An Order for an increase in contact with the Respondent;

iii. Such further or other Order as the Court deemed fit.

4. After a hearing on the 29th of September 2017 this court asked that the parties submit submissions on costs. This they did in October 2017.

5. The Respondent was unsuccessful his application with regard to both items outlined in the summons above.

6. The Petitioner now seeks her costs on the application.



1 7. The Respondent submits that the Court should exercise its wide discretion on costs and
2 make no order. For the Respondent it is argued that:

3 *i.* On the interim application concerning the welfare of the children the court
4 should depart from the ordinary rule that costs follow the event;

5 *ii.* The court is not seized of sufficient information to make an assessment of
6 the parties' assets and resources to be able to gauge the effect of a costs
7 order on the parties;

8 *iii.* The summons being, as it was, an interim application concerning the
9 welfare of the children, despite the Respondent being unsuccessful on his
10 application, the court should find that costs have not been unnecessarily
11 incurred;



12 *iv.* That the parties required some guidance from the Court as to how to
13 proceed and work together in relation to all children issues;

14 *v.* That the application did not unnecessarily take up the Court's time or
15 cause any unnecessary delay in the proceedings.

16 8. The Petitioner states in her submissions on costs that, after agreement had been
17 reached for a sole residence order to be made in her favour on the 30th of November
18 2016, as envisioned by the Court on the 30th November 2016, a formal Draft Consent
19 Order was first forwarded for the Respondent's attention by the Petitioner's attorneys
20 on the 20th January 2017. No reply was received. When the Respondent informed the
21 Petitioner's attorneys of a Notice of Change of Attorney this formal Draft Consent
22 Order was forwarded to the new attorneys for their attention. No response was
23 received.

1 9. The Petitioner states that:

2 “...it was not until after the Respondent had filed his Summons on 15th June, 2017
3 for a Shared Residence Order and increased contact, and filed his Affidavit in
4 Support, on 7th August, 2017 that it became clear that he had agreed to some of the
5 provisions of the draft Consent Order (paragraphs (d) – (g)) but that he was
6 seeking increased contact by means of having the children sleep over with him on
7 [alternate] Mondays.”¹

8 10. The Petitioner also stated that the increased contact sought by the Respondent was only
9 with regard to the *overnight* stay on the alternate Mondays as it had already been
10 agreed that the children have contact with the Respondent on alternate Mondays until
11 6:00pm.

12 11. Finally, the Petitioner asks the Court to consider that the Position taken by the
13 Respondent has had the result that:

14 “...the Petitioner has had to pay additional legal fees during the period January,
15 2017 – September, 2017 and also for a full hearing relating to this matter, when at
16 the end of the day, the Order made was the same as that submitted to the
17 Respondent’s attorney in January, 2017 some 8 months earlier.”



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¹ Written Submissions on Behalf of the Petitioner (Costs) at page 1

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THE LAW

12. The position in law is not disputed, costs should usually follow the event. This was confirmed by the Court of Appeal in *Roy Michael McTaggart v Mary Elizabeth McTaggart*²:

“106. Put shortly, the position, here, is that costs in matrimonial proceedings – as in other proceedings – are governed by the Grand Court Rules; and, in particular by GCR Order 62, rule 4, which requires (at sub-rule (3)) that:

‘If the court in the exercise of its discretion sees fit to make any order as to the costs of any proceedings, the court shall order the costs to follow the event, except where it appears to the court that in the circumstances of the case some other order should be made as to the whole or any part of the costs. ‘...’

13. This position aligns with that as stated on the Grand Court Rules³ – GCR O.62. r.4(2) and r.4(5):

“(2) The overriding objective of this Order is that a successful party to any proceeding should recover from the opposing party the reasonable costs incurred by him in conducting that proceeding in an economical, expeditious and proper manner unless otherwise ordered by the Court.

(5) If the Court in the exercise of its discretion sees fit to make any order as to the costs of any proceedings, the Court shall order the costs to follow the event, except when it appears to the Court that in the circumstances of the case some other order should be made as to the whole or any part of the costs.”

14. In *DJ v. BJ and RK*⁴ Williams J. further summarized the applicable principles.



² CICA 14 of 2010; [2011] (2) CILR 417

³ GCR 1995 (Revised)/Amended 01.01.02

⁴ FAM 66 of 2014, (unreported) at paragraphs 23-27

COURT'S CONCLUSIONS

15. It is the very sentiments expressed by the Respondent at paragraph 10 of the filed submissions that most concern this Court. At paragraph 10 it was stated as follows:

“In recent years, this Court⁵, and the Court of Appeal⁶, have regularly expressed concern at the level of costs incurred litigating unnecessarily and thereby decreasing the matrimonial assets in circumstances where the parties can ill-afford it.”

16. On the present application it was evident to the Court that both parties were deeply interested in their children's welfare and wanted to spend quality time with them. However, this does not take away from the principles set out above.

17. The Respondent was unable to demonstrate that there was anything that had changed significantly or otherwise which would have necessitated his application for a Shared Residence Order where a Sole Residence Order had been agreed and ordered just some 6 months prior to his summons being issued.

18. As counsel for the Petitioner pointed out in her submissions, the Respondent has been represented by competent counsel throughout and took the advice of his counsel when he agreed the consent order.



⁵ *DJ v. BJ and RK* FAM 66 of 2014, (unreported)

⁶ *B v. B* 2014 (2) CILR 234

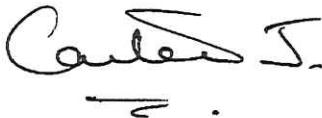
1 19. This court is unable to agree with the Respondent's submissions that the parties could
2 not agree on various matters. It was apparent that the parties and their attorneys had
3 been engaged in meaningful and somewhat successful discussions to resolve other
4 outstanding issues between them concerning the children. The result of these
5 discussions was the formal draft Consent order to which the Respondent ultimately
6 agreed in the main.

7 20. The Respondent filed this summons and sought, in practical terms, just a few more
8 hours with the children on one of the days when he already had agreed access until
9 early-evening. Apart from this, the summons was concerned with working through
10 what were relatively trivial matters surrounding summer contact with the children.

11 21. The result is that, this Court, having dismissed both applications sought on the
12 summons, there is no reason to deviate from the provisions of GCR O.62 r.4(3), costs
13 shall follow the event. There are no circumstances upon this application which
14 necessitate that any other order be made. The fact that this is an interim application
15 touching upon the welfare of the children is no reason to condone unnecessary
16 litigation between parties in family proceedings.

17 22. Costs to the Petitioner.

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19 **Dated this the 28th February 2018**

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**Carter J (Actg.)
Acting Judge of the Grand Court**

