

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

CAUSE NO FAM 265 of 2010

BETWEEN:

TANIA ANN DAVIES

Petitioner

AND:

BRYNLEY I'ANSON DAVIES

Respondent

AND:

JANELLE FLEUR KROON

Co-Respondent

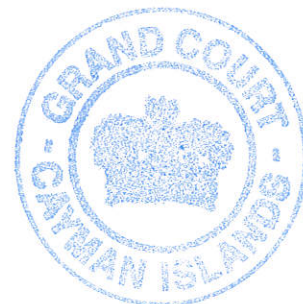
IN CHAMBERS

Appearances: **Petitioner in Person**
 Respondent in Person

Before: **Hon. Justice Marlene I. Carter Actg.**

Date of Hearing: **16th January 2018**

Judgment
Delivered: **18th July 2018**



RULING

1. This is a Summons for Directions seeking the exercise of the Court's jurisdiction to enforce court orders and for directions regarding sharing the cost of child care.
2. By way of Consent Order filed on 8th June 2017, [hereinafter "the Consent Order"] the parties agreed on the matter of financial arrangements and child care issues.
3. The Consent Order is significant for the manner in which the parties dealt with financing especially relating to the children of the marriage following the divorce. It is a very

detailed document relating to most aspects of the parties' interaction. In this regard the Court notes that the Consent Order does not make any retrospective provision to cover aspects of the financial matters relating to the children of the marriage before the date that the Consent Order was agreed.

4. Generally, the terms of a Consent Order agreed between parties, especially as it relates to ancillary matters on divorce, cannot be changed unilaterally and certainly a Court must be satisfied that there is a significant change of circumstances before such terms can be modified. Courts have always approached an application to vary a Consent Order from the point of view that although a Court does have a power to vary, that this "jurisdiction ought not to be exercised where the order itself appears to contemplate finality and is made by consent of the parties."¹
5. This exercise of the Court's jurisdiction was considered by the Court of Appeal in *Foster v Foster*² where Sir John Chadwick, President of the Court of Appeal stated it was not essential that there be shown a change of circumstance in order to provoke the Court's jurisdiction but that it was a matter to be considered in the Court's discretion as to whether to allow such an application.
6. At the hearing of the summons, the parties agreed that paragraph 8 of the Order dated and filed on the 25th of August 2014 no longer forms part of the Consent Order.
7. The Respondent seeks the following orders:

"1. That the Petitioner to pay the balance of US\$5,029.88 in compliance with paragraph 4(1) of the Order for Directions dated 8 June 2017 whereby it was order that the Petitioner should pay to the Respondent the sum of US\$195,000.00 in full on or before 7 August 2017.

¹ Range v Tange [1988-89 CILR 437]

² Foster v Foster CICA (Civil) 05/2011



2. *That the Petitioner to pay the balance of US\$1,156.20 in compliance with paragraph 4(2) of the Order for Directions dated 8 June 2017, whereby it was ordered that the Petitioner should pay to the Respondent the sum of US\$13,305.66 by 7 July 2017; and*
3. *That the Petitioner to pay interest on the amounts unpaid since the dates they were due; and*
4. *Petitioner to pay Respondent's costs on an indemnity bases to be taxed if not agreed."*
8. At the date of hearing of the Summons, the Respondent acknowledged that the payments at paragraphs 1 and 2 had been made however he informed the Court that they were not made in strict compliance with the timelines outlined in the Consent Order. I make no further order with regard to the Summons.
9. The Petitioner filed a Cross Summons on 8th December 2017. On the date of hearing, the Respondent informed the Court that he had only been served with the Cross Summons on the previous day, 15th January 2018, he was however prepared to proceed. Some of the matters sought on the Petitioner's Cross Summons were not pursued as the parties were able to agree on same.
10. I will deal with the issues in the Order that they were set out in the Cross Summons:

"1. That para 8 of the Order dated 25 June 2012 be enforced:



'The Respondent shall pay the costs of the children's flights to and from school as and when the same shall fall due for so long as the children are attending schools in England. The flights to be arranged so that they coincide with the flight of the parent who is agreed shall accompany them on any such flight. Where the children's mother is to accompany the children then she shall reserve the flights and forward details to the Respondent who then has 72 hours in which to propose an alternative flight option should he be able to obtain details of same. The Respondent

will then transfer funds to cover the children's flights to the Petitioner's bank account within the next 48 hour period, or otherwise as may be reasonable as to timing, thereby allowing her to purchase the flights. Alternatively, he will purchase the tickets and forward e-tickets within the same 48 hour period and the Petitioner will in turn reimburse him for the cost of her flight within 48 hours or otherwise as may be reasonable as to timing.'

and H required to reimburse W for the cost of AD's summer 2017 flight being US\$1,523.61."

11. The parties agreed in principle that the cost of the payment should have been made. There was obviously between the parties some lack of communication which had resulted in the breakdown of these costs not being provided to the Respondent. The actual cost of the flight after changes was agreed between the parties at US\$1156.00. The Respondent will reimburse the Petitioner for these costs.

"2. *'That para 3(i) of the Order dated 8 June 2017 be enforced:*

'the parties will share in the proportions BD 65% and TD 35% payment of the school fees for AD and reasonable extras (which for non-compulsory school trips of a cost exceeding GBP 50 requires both parties' approval or a Court Order in accordance with paragraph 4 of the order made by Williams J on 25th August 2014) as they appear on the school bill ("AD's Fees") and each party will pay their respective share of AD's Fees directly to the school no later than 5 working days before the final due date on the school bill.'

and H required to reimburse W for his 65% share of the cost of AD's school trips being:

- (i) *NHS trip to Scotland – total cost £1000 - H's share £650*
- (ii) *NHS trip to Namibia – estimated at £3,395 (£1,750 paid to date) – H's share £2,206.75."*

12. The Respondent argued that AD's trips were non-compulsory school trips and further that he had not specifically consented to these trips. The Petitioner stated that the trips, albeit non-compulsory, were previously agreed to.



13. In regard to school trips, paragraph 3(i) of the Consent Order is very clear. By its terms as set out above, the Order states that a school trip which is non-compulsory and exceeded GBP50.00 required both parties' approval. There is no evidence to indicate that the Respondent had given approval for these trips.
14. There is no argument by the Petitioner which shows a change of circumstances to justify the Court going beyond the provisions of the Consent order. Therefore, without the Respondent's agreement to these non-compulsory school trips, the Respondent cannot be compelled to reimburse the Petitioner for 65% of the cost of these school trips unless this Court exercises its discretion in this regard.
15. The Respondent proposed that he will pay 50% of the school trips. This appears to be reasonable in the circumstances and I find that there is no further need for the Court to deal with this aspect of the Cross Summons. This Court orders that the Respondent pay 50% for AD's school trips to Scotland and Namibia.

"3. *That para 3 (xii) of the Order dated 8 June 2017 be enforced:*

- (i) *'any medical costs for A and AD which are only partially covered by the medical insurance arranged for them (e.g. due to deductibles and co-pays) and paid for pursuant to this Order will be paid for by the parties on the same sharing basis as set out in (x) and (xi) herein and all medical costs which are uninsured or exceed the insurance limit (including dentistry and ophthalmology) shall be arranged and paid for equally provided that both parties have agreed to the incurrence of such uninsured/over-limit medical costs.'*

And H required to reimburse W for his 65% share of AD's braces (attached on 27 August 2017) being CI\$1690."

16. The Petitioner stated to the Court and agreed that AD's full dental treatment commenced in October 2016, sometime prior to the Consent Order of 8th June 2017. She also agreed that the Consent Order did not specifically provide for the payment of medical costs which had been incurred prior to the agreement and which were not detailed in the

Consent Order. However it was clear to this Court that the Petitioner believed that the payments were covered by that Order. In email correspondence exhibited to her affidavit in support of the Cross-Summons she stated:



“This is not a retro-active claim. It is orthodontic treatment which AD has just commenced and which will continue for some time. Both the treatment and the payment straddle the Consent Order. It is the reason I requested the wording specifically include orthodontic treatment. Your son needs braces – which will be applied hopefully on 25 August when you return from Peru and you are responsible for a share of the costs. There is nothing to sort out. The decision was made in June, included in the Consent Order and must be adhered to – along with my payment to you on Monday.”

17. The Court notes that the Petitioner was represented by experienced Queen’s Counsel for the ancillary hearing and that she would have had the benefit of advice before the terms of the Consent Order were agreed. The fact that the Consent Order may not contain the provision that the Petitioner assumed that it did does not therefore carry significant weight in this court’s consideration of this aspect of the Petitioner’s Cross Summons.
18. The Respondent’s argument was that he should only be required to pay such amounts which became due after the 8th June 2017, the date of the Consent Order and that these amounts could only relate to costs which were not covered by medical insurance.
19. The Respondent asked the Court to determine whether the medical costs should be dealt with in the same manners as the medical payments.
20. The parties agreed to provide the Court with further documentation relating to the history of payments for AD’s braces.
21. Subsequent to the hearing, the Petitioner forwarded to the Court an email from Smile Dental Orthodontic Clinic detailing the payments for AD’s orthodontic care for 20

months of treatment from 24th October 2016 to 24th May 2017, the payments of which amounted to CI\$1085.00; and from 24th May 2017 to 24th July 2017, the payments of which amounted to CI\$2015.00.

22. It appears that Smile Dental Clinic did convey to the Respondent that the breakdown was related to costs and not payments made before or after 8th June 2017.
23. Paragraph 3(xii) of the Consent Order of 8th June 2017, deals with all matters going forward from that date. Some of the payments for AD's dental coverage for his braces predate October 2016. Without some provision which would encompass those payments already incurred by the Petitioner, the provision of the Consent Order cannot encompass payments made between October 2016 and the date of the Consent Order. The Respondent is only responsible for one half of the payments made subject to Consent Order.
24. It is not absolutely clear to the Court what the actual payments are. The documentation provided by Smile Dental Clinic relate to the costs of overall treatment and not specifically to payments made.
25. The email from Rhonda of Smile Dental Clinic dated 17th January 2018 speaks of costs and not payments. The Court will order that all payments made after 8th June 2017 are to be calculated and the Respondent be responsible for one half of all payments actually made and the Respondent should reimburse the Petitioner in that amount.
26. Apart from these, other matters were raised in the Cross Summons relating to:

- (i) American Airlines miles card – the parties agreed that the Respondent would provide all updates for the mileage programme as he received them and that he would add the minor child, AD's name and phone number so that he could be alerted to changes to the flights and/or flight times once these were booked;



(ii) Allowance for the older child of the marriage – the parties agreed to resolve this matter by setting up a standing order for monies to be paid into the minor child’s account directly.

(iii) Telephone costs for the older child of the marriage – the parties agreed that there was no basis upon which the Court could move to vary this aspect of the Consent Order previously agreed.

27. The parties were advised to seek to resolve minor issues between themselves with the aid of a mediator if necessary to save themselves the costs of a Court hearing.

28. No order as to costs.


HON. JUSTICE MARLENE I. CARTER
JUDGE OF THE GRAND COURT (ACTG.)

