

1 IN THE GRAND COURT OF THE CAYMAN ISLANDS
2 FAMILY DIVISION
3 IN CHAMBERS
4

CAUSE NO. FAM0059/2016

5
6 BETWEEN

7 DZ

8 Petitioner

9 AND

10 AZ

11 Respondent
12

13 Before: Hon Acting Justice Kirsty-Ann Gunn
14 Appearances: Miss K Reid for the Petitioner
15 The Respondent in person
16 Heard 24th and 25th October 2018
17 Decision: 25th October 2018
18 Full Reasons
19 Released: 7th March 2019
20
21
22



23 These proceedings were heard in private. No person shall publish any material which is
24 intended or is likely to identify the child involved in these proceedings, including the school
25 that they attend. "Publish" includes broadcast by radio or television and includes causing
26 such material to be published.
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28
29

30 **HEADNOTE**

31
32 *Children Law - specific issue order – religious upbringing*
33 *Hague Convention on the Civil Aspects of International Child Abduction - proof that*
34 *a country is a signatory*
35 *Matrimonial Causes Law – ancillary relief – matrimonial property - financial*
36 *contribution – child maintenance*
37
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39

1 **JUDGMENT**

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- 3
- 4 1. On 25th October 2018, following two days of evidence, I gave the parties my decision on the
- 5 various issues I had to determine with brief reasons and undertook to provide my full reasons in
- 6 due course. This course was necessary as these proceedings had been causing "L", the child of
- 7 the marriage, significant emotional distress. My reasons are hereby provided. I hope the parties
- 8 are not offended if I refer to the Petitioner as mother ("M") and the Respondent as father ("F").
- 9

10

11 **Background**

12

- 13 2. M is a 45-years old Caymanian and a practising Christian. F is 49 years old and a practising
- 14 Muslim. He was born in "country A"¹ but has acquired Caymanian status by marriage to M.
- 15
- 16 3. The parties married in December 2007 after a brief courtship. They resided in the Former
- 17 Matrimonial Home ("FMH") on Grand Cayman. In August 2011 their daughter, "L", was born.
- 18 During the relationship F was physically and emotionally abusive towards M and L, causing
- 19 numerous interventions by the police and the Department of Child and Family Services ("DCFS").
- 20 The parties frequently argued about L's religious upbringing. There were several short periods
- 21 of separations before the parties finally separated in February 2016. At that time M moved to
- 22 Cayman Brac with L while F remained in the FMH. On the 23 March 2016 M petitioned for
- 23 divorce. F having failed to file an answer, the Petition was found proved on 29 April 2016 and
- 24 the matter adjourned for the settlement of ancillary matters. The ancillary matters came on for
- 25 hearing on 24 October 2018. The hearing lasted two days.



¹ The identity of the country has been omitted to protect the identity of the child.

1 4. Section 21 of the Matrimonial Causes Law ("The Law") provides that "at the time of pronouncing
2 a decree under this Law, the Court shall, as appropriate, make orders for –

3
4 (a) the custody, care and control of the children of the marriage;

5 (b) the disposition of matrimonial property, including the matrimonial home;

6 (c) varying any settlement of the property of the spouses made in consideration of the
7 marriage, whether such settlement was made before or upon the treaty of the said
8 marriage.

9 (d) varying any other settlement of matrimonial property;

10 (e) making financial provision from the property of either spouse for the children of the
11 marriage and for the other spouse;

12 (f) providing for periodic payments to be made by either spouse for the benefit of the
13 children of the marriage and for the other spouse; and

14 (e) costs."
15

16 5. Furthermore, section 19 provides that *"in dealing with all ancillary matters arising under this*
17 *Law, the Court shall have regard first of all to the best interests of any children of a marriage and*
18 *thereafter to the responsibilities, needs, financial and other resources, actual and potential*
19 *earning power and the deserts of the parties."*
20

21 6. In determining the issues regarding L's upbringing her welfare was my paramount consideration.
22 I applied the welfare checklist provided by section 3(3) of the Children Law (2012 Revision)
23 ("CL")
24

25 7. I will detail the other relevant legislation and authorities as I deal with each individual issue I had
26 to determine.
27



1 8. The matters I had to determine at that time were -

- 2
- 3 (i) Whether there should be a sole residence order to M or a shared residence
- 4 order between M and F;
- 5 (ii) the arrangements for contact between L and F;
- 6 (iii) the conditions upon which L could travel overseas with either parent;
- 7 (iv) L's religious upbringing;
- 8 (v) child maintenance; and
- 9 (vi) the distribution of matrimonial property.
- 10

11 9. In addition to M's affidavit and the *viva voce* evidence of both M and F, I heard the evidence of

12 Ms Bouvia Ferguson, L's assigned social worker in Cayman Brac, and considered the report of

13 Genevieve Tomlinson, a social worker in Grand Cayman who assessed F. I also had reports from

14 various medical professionals who have diagnosed and treated M and L over the years.

15

16

17

18 **Matrimonial Property**

19

20 10. While M has suggested that F may have a beneficial interest in property in "country A" she did

21 not pursue that line of argument, nor was any concrete evidence adduced to suggest that such

22 property existed. Consequently, I dismissed that possibility. M's mother had added M and a

23 number of other family members (including L) as beneficial owners of a parcel of land in Cayman

24 Brac. F did not seek to argue that the Cayman Brac land was matrimonial property.

25 Consequently, there were only three assets which I had to consider whether they were

26 matrimonial property and how to distribute them, namely -

27

28

29

30

31



1 (I) *The North Side Land*

2
3 11. M, together with other family members inherited a large parcel of land. At the time of M and
4 F's marriage, the land was subdivided and one piece was registered in M's sole name. In 2009
5 the parties decided to open a landscaping/plant nursery business which F would run. The start-
6 up capital was raised via a loan with Credit Union which was secured against the North Side
7 land. Any income from the business was reinvested in the hope of growing the business. The
8 business did not do well and ceased trading in 2014. Since separating, M and F agreed to place
9 the land up for sale in order to repay the existing loan. In the interim M continues to make
10 monthly repayments.

11
12 (II) *The Former Matrimonial Home*

13
14 12. M purchased the FMH prior to the marriage. M had borrowed the deposit from her mother and
15 raised the remaining funds through a mortgage. F was added to the title at the request of the
16 bank when they refinanced the mortgage. After the parties separated, F remained in the FMH.
17 Due to F's unemployment M continued to pay the utility bills, strata fees and mortgage. In
18 order to meet all of the family's financial obligations, M secured a part-time job in addition to
19 her full-time employment. M was unable to keep up the repayments on the FMH mortgage and
20 the bank eventually took possession of the house. M's evidence was that there was unlikely to
21 be any funds remaining once the bank had applied the proceeds of the sale to the remaining
22 debt and fees. F did not dispute this assertion.

23
24 (III) *The Family Motor Vehicle*

25
26 13. The parties purchased a Chevy Trax which is now charge-free and valued at just over CI\$15,000.



1 *Debt*

- 2
- 3 14. Other than the loan secured against the North Side property, M has a debt owing to the Credit
- 4 Bureau for the balance of her credit card and a CUC bill for the FMH. M's evidence was that
- 5 during their marriage she would borrow funds from family members, obtain short-term loans
- 6 and use her credit card to buy food for the family and pay bills when their combined income was
- 7 insufficient to meet all of their responsibilities. F accepted that M was solely responsible for
- 8 ensuring all the bills were paid and meeting the household's needs, and that he had been
- 9 unaware that M had been resorting to using her credit card. The parties agreed that while they
- 10 co-habited F had provided M with the majority of any income he generated. The level of F's
- 11 financial contribution was greatly disputed, but they both agreed that it was significantly less
- 12 than M's contribution.
- 13

14

15 **The Residence Order**

16

17 *L's Needs and Wishes*

18

- 19 15. L is 7 years old. L has been described by her parents and her social worker as an intelligent,
- 20 happy and loving child, although she is also strong-willed and can have aggressive outbursts and
- 21 tantrums. L is known for her curiosity and is able to, and frequently does, express her wishes
- 22 and thoughts to others.
- 23
- 24 16. M has been L's primary carer since birth. L is physically healthy and performing above
- 25 expectation at school. M and Miss Ferguson's evidence was that L can become extremely
- 26 distressed when she is separated from M against her wishes.
- 27



1 17. Both in evidence and in her report Miss Ferguson highlighted the effect of parental arguments
2 on L –

3
4 *"Whilst there was no proof that the parents had done any physical harm to [L], it*
5 *was found that the perpetual feud between them was having a subliminal effect on*
6 *the child. When social workers or police interacted with [L], she often repeats or*
7 *mimics some of the unkind things that she heard or saw at home."*²
8

9 18. L has told Miss Ferguson that "Mommy and Daddy don't get along "and that "Daddy hurt
10 Mommy". L also disclosed that "she knows that Daddy wouldn't be happy if she goes to church"
11 and that while she loves F he is "not a nice person".
12

13 19. L was assessed by a Clinical Psychologist in October 2016 (age 5) and she was found to have
14 *"disrupted attachment, due to trauma and exposure to multiple adverse and highly stressful*
15 *experiences. [L's] clinical presentation, consistent with disinhibited social engagement,*
16 *aggressive play and poor emotional regulations places her at a significant risk for further*
17 *development of maladaptive social relationships and ongoing difficulty with emotional*
18 *regulation and behaviour".* Clinical therapeutic service was recommended which L has been
19 receiving and will be necessary for some time to come. Both F and M accepted this diagnosis
20 and treatment plan.
21

22 20. M was concerned that because F has not had extended periods of caring for L on his own, F is
23 not yet able to handle L's outbursts and tantrums and wished for him to attend various
24 parenting programmes to acquire the necessary parenting skills before overnight visits with F
25 commence.
26

27 21. The evidence was that L wanted to continue living with M and visit F. Both parties were keen to
28 provide L with a consistent parenting regime in both households.
29
30
31

² Report dated 14 October 2016



1 22. It was accepted that since the parties separated, M had been meeting all of L's day-to-day
2 emotional, educational and physical needs, without assistance from F. Occasionally M has to call
3 upon grandmother (78) and a family friend (82) to provide child care, although Miss Ferguson is
4 of the opinion that with their advanced age they will struggle to cope with L's behavioural
5 issues.

6
7 23. Contact between L and F has been limited due to the parties residing on different islands.
8 However, M has accommodated visits between L and F during trips to Grand Cayman. On those
9 occasions F and L spend a few hours together and F will arrange activities for them to do.

10
11 *M's Health and Circumstances*
12

13 24. M accepted that she has a significant psychiatric disorder. The report from her treating
14 psychiatrist confirmed that M is compliant with the treatment regime and that her condition is
15 stable and she is able to "provide balanced, loving care for her daughter". F initially sought a
16 shared residence order because he felt it was necessary to ensure continuity of care for L in the
17 event that M's mental or physical health deteriorated.

18
19 25. M and L currently reside in rented accommodation. M continues to work two jobs and uses
20 short-term loans in order to meet her and L's needs as well as repay the debts accrued during
21 the marriage.

22
23 26. M sought a sole residence order as L would be living largely with her on a different island to F,
24 and she considered that F had not yet acquired the necessary tools to care for L overnight.

25
26 27. F also sought a condition that should M wish to travel overseas with L, they should be
27 accompanied by another adult who would be in a position to provide care for L should M's
28 health deteriorate while off island. M had no objection to such a condition.



1 *F's circumstances*

2
3 28. At the time of the hearing, F had just secured employment after an extended period of
4 unemployment. While the starting salary is modest, he hopes this will increase after his
5 probationary period. F currently rents a bedroom in a house with shared facilities. He accepted
6 that due to his financial circumstances he was not yet able to provide suitable accommodation
7 for L to visit with him overnight. He was keen to have regular visits until he could do so and M
8 offered to facilitate such visits, both in Grand Cayman and Cayman Brac. During the proceedings
9 F acknowledged that attending parenting classes would assist him managing L's behaviour and
10 he agreed to attend these.

11
12
13 *The Consent Order*

14
15 29. During the course of the first day of the hearing F and M came to a consensus as to L's living
16 arrangements and her contact with F. The agreement reached was that –

- 17
18 (a) A sole residence order is made for L in favour of M to reside in the Cayman Islands.
19
20 (b) L shall have flexible contact with F, although no overnight contact is permitted until:
21 (i) the Department of Child and Family Services has approved F's
22 accommodation;
23 (ii) F has completed both the parenting and co-parenting programmes run
24 by the Family Resource Centre; and
25 (iii) DCFS is satisfied that F has the necessary skills to parent L.
26
27 (c) Mr Hunter of the Department of Family Services is not to be involved with the
28 assessment set out in the preceding paragraph.
29
30 (d) L's contact with F shall be a minimum of once per month. F shall pay the costs of L's
31 flight and accommodation for visits to Grand Cayman.

1 (e) L's contact with F shall start and end at a location to be agreed by M and F.

2
3 (f) In the event that M becomes unfit to care for L, F shall be considered the first
4 person to take over her care, as long as F has met the conditions for overnight
5 contact (see (b) above). Upon M being fit to resume L's care, L shall resume living
6 with M.

7
8 (g) L and F shall have unrestricted telephone/social media contact.

9
10 (h) M is permitted to travel overseas with L for up to one month as long as they are
11 accompanied by another adult. M shall keep F informed as to their destination and
12 period of travel. Where possible, regular contact between L and F shall be
13 maintained while L is overseas with M.

14
15 30. Given the evidence before me, I am satisfied that a residence order is necessary to settle L's
16 living and contact arrangements. In particular an order would prevent further uncertainty and
17 arguments between the parties which have been causing L distress. I am also satisfied that the
18 parties' proposed order would ensure F acquired the skills necessary to successfully parent L,
19 ensure meaningful contact between F and L and overall meet L's needs by providing the
20 stability, structure and certainty L needed to thrive emotionally, physically and intellectually.



Travel To "country A"³

31. F wishes to travel with L to "country A" so that she can meet his family. This is not an immediate issue as F does not have the funds to do so at the present time, but he desired an order for the future. M was concerned about L travelling to "country A" with F as she was unsure whether there were laws and procedures in place to have L returned should F or a family member prevent L's return to the Cayman Islands. F was keen for L to meet his family in "country A" and sought to reassure M that he had no intention of relocating L to "country A". F had no objection to M accompanying L on any trip and asserted that "[country A] is a signatory to the Hague Convention" and that there was no need for the court to prevent L traveling to "country A" with him. Given F's behaviour towards M in the past, I found that M had good reason to be concerned as to how she and L may be treated by F once they arrived in "country A" and the possibility that they may be prevented from leaving. The burden was on F to prove on the balance of probabilities that "Country A" was in fact a signatory and/or that there were appropriate safeguards in place. It is customary for a qualified attorney from the country in question to give evidence of the local laws and procedures.

32. The Hague Conference website (www.hcch.net) cites "country A" as a member of the Hague Conference and a contracting party to the *Statute of the Hague Conference on Private International Law*⁴, but not a signatory to the *Convention on the Civil Aspects of International Child Abduction*⁵. Unfortunately, despite being afforded an opportunity to do so, F was unable to provide satisfactory evidence on the laws and procedures of "country A". His mere assertion that "country A" was a signatory is not enough. In the absence of evidence on "country A"'s status and local laws and procedures I was unable to make a decision on L travelling to "country A" either way.



³ The identity of the country has been omitted to protect the identity of the child.

⁴ <https://www.hcch.net/en/instruments/conventions/status-table/?cid=29>

⁵ <https://www.hcch.net/en/instruments/conventions/status-table/?cid=24>

1 33. Given the terms of the agreed residence order, L will only be able to travel with F with M's
2 consent. Should an agreement not be reached, F can apply to the court for leave to temporarily
3 remove the child from the Cayman Islands at which time the issue can be revisited with the
4 necessary evidence available.
5

6
7 **Religious Upbringing**
8

9 34. L's religious upbringing was the focal point of these proceedings. M and F's conflicting religions
10 and cultures were the cause of frequent disagreements between the parties when they were co-
11 habiting. While both parties now agreed that L should be permitted to decide for herself which
12 faith she wished to live by, they disagreed and frequently argued about how their wish should
13 be executed.

14 35. L was only 4 years old when M and F separated and, therefore, would have had limited
15 understanding of the significance of faith in her life. She had witnessed arguments between her
16 parents and was aware that the issue of her religious upbringing had been the cause of some of
17 those arguments. Since the parties separated L has been accompanying her mother regularly to
18 church services and attending Sunday School and Vacation Bible School. Although F is content
19 for M to teach L about Christianity, he strongly opposed L going to church or associated events
20 or schools. F's evidence was that while he intends to teach L about Islam, he has no intention at
21 this time to take her to a mosque.
22

23 36. F objected to L attending any organised faith services on the grounds that -
24

25 (i) such attendances will "brainwash" L into accepting the Christian faith, thereby
26 undermining their wish for L to make an informed and balanced decision on which
27 faith she wishes to adopt at the appropriate time; and

28 (ii) L will be at risk of sexual assaults by members of the church M attends. Although F
29 was unable to identify any specific threat of harm within M's church community, his
30 concerns stem from reports, both locally and in the world press, about sexual abuse
31 committed by members of Christian churches.

1 37. F proposed that M be prohibited from causing or allowing L to attend church or receive teaching
2 on Christianity by anyone other than M and that this should be done within the home. In turn, F
3 would also only teach L about Islam at home until L is ready to make her choice.
4

5 38. M strongly opposed F's proposal. M's evidence was that her Christian faith touches every aspect
6 of her life. If L was prevented from attending Christian faith-based events this would restrict M's
7 ability to practice her faith, and be contrary to her right to include her daughter in her faith. M
8 stated that childcare is limited in Cayman Brac and she relies on Vacation Bible School for
9 childcare during school holidays. M and Miss Ferguson's evidence was that the Cayman Brac
10 community was centred around the Christian faith and it was difficult to avoid this in such a
11 small community.
12
13

14 39. Both parties relied on Article 10 of the Bill of Rights in support of their arguments which
15 provides –
16

17 *"(1) No person shall be hindered by government in the enjoyment of his or her*
18 *freedom of conscience.*
19

20 *(2) Freedom of conscience includes freedom of thought and of religion or religious*
21 *denomination; freedom to change his or her religion, religious denomination or*
22 *belief; and freedom, either alone or in community with others, both in public and in*
23 *private, to manifest and propagate his or her religion or belief in worship, teaching,*
24 *practice, observance and day of worship."*
25

26 40. F submitted that permitting M to take L to church, Bible School or any other Christian related
27 events is contrary to L's freedom of conscience. Taking F's argument to its logical conclusion, all
28 children, irrespective of whether their parents share a faith or not, should not be permitted to
29 attend any faith-based worship or teaching outside of their home until they are mature enough
30 to make a choice as to which faith they wish to adopt. F did not provide any authorities to
31 support his contention.

1 41. On the other hand, Miss Reid argued on behalf of M that because the Cayman Islands is a
2 Christian-based society (referencing Part 1 of the Bill of Rights "*this Part of the Constitution...*
3 *recognises the distinct history, culture, Christian values and socio-economic framework of the*
4 *Cayman Islands...*") it would be unreasonable to prevent L from experiencing the Christian faith
5 of her country.

6
7 42. M's evidence was that she was content for L to learn about Islam and offered to accompany L to
8 mosque as L would be segregated from F during services. During the course of the proceedings F
9 offered a compromise, suggesting that L could attend church for special occasions, such as
10 Christmas, Easter and Mother's Day, but that all other teaching would be carried out by M at
11 home. This was not acceptable to M as she wished for L to experience all aspects of Christianity.

12
13 43. Miss Ferguson's evidence was that, despite L being only 7 years old, she was acutely aware of
14 the conflict between M and F concerning her attendance at church. L was aware that F did not
15 approve of L attending church with her mother. F accepted M's evidence that he would call her
16 on Sunday mornings to check whether M had taken L to church and would threaten to call the
17 police should she do so. On one occasion he did contact the police to remove L from church.
18 Miss Ferguson expressed deep concern for the emotional harm this behaviour was causing L.

19
20 44. Miss Ferguson's evidence was that L experiences separation anxiety, and that she has witnessed
21 first-hand L being in a heightened state of distress when she is separated from M against her
22 will. One such episode occurred on the morning of the second day of the hearing and required
23 intervention by both M and Miss Ferguson to console the child so that they could attend court.

24
25 45. Miss Ferguson produced a report from Dr Erica Lam who, up until recently, had been counselling
26 L. The report identified specific concerns with L's aggressive outburst and tantrums, learning and
27 motor skills difficulties at school, and previous trauma impacting on L's wellbeing (see paragraph
28 19 above).



1 46. Miss Reid relied on the decision of Wall J in **In Re J (Child's Religious Upbringing and**
2 **Circumcision) [1999] 2 FCR 345** who adopted counsel's submission that -
3

4 *"In principle... it is normally wholly inappropriate for the court to require a child to*
5 *be brought up in a particular religion, contrary to the wishes, beliefs, and way of life*
6 *of the residential parent. To impose upon a child a religious upbringing which is not*
7 *shared by, and perhaps resented by, the residential parent is to expose the child to a*
8 *significant risk of confusion, conflict of loyalty, and the damaging perception that he*
9 *is in important respects incompatible with the psychological and emotional*
10 *environment in which he lives."*
11

12 47. Miss Reid invited me to find that, because M and F had agreed that L should reside with M with
13 monthly visits with F, preventing L from joining in Christian activities with M would expose L to
14 the risks of the psychological and emotional harm referenced in **Re J**.
15

16 48. I appreciated that both F and M are very passionate and firm in their faiths and what they each
17 believe is best for L. It was evident that they both act out of love for L.
18

19 49. F expressed his concern that Miss Ferguson's opinion on the subject of religion may be
20 prejudiced as she is a Christian too and attends Church in Cayman Brac. While Miss Ferguson
21 acknowledged being a Christian, she denied that this influenced her recommendation. Having
22 heard her evidence I am satisfied that she maintained a professional objectivity on the subject
23 of religion.
24
25
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31



1 *The Law*

2
3 50. This was the first time that a court in this jurisdiction has been required to determine by which
4 faith a child should be raised when parents are unable to agree. The court is permitted to make
5 a specific issue order *"giving directions for the purpose of determining a specific question which*
6 *has arisen, or which may arise, in connection with any aspect of parental responsibility for a*
7 *child"* (section 10(1) of the CL), which extends to the child's religious upbringing and instruction.
8

9 51. In considering whether to make an order directing the future of L's religious upbringing, I
10 reminded myself that the child's welfare is paramount and gave due consideration to the
11 welfare checklist. I was mindful that I was not to make an order unless I considered that doing
12 so would be better for the child than making no order at all (section 3(5) of the CL).
13

14 52. The starting point of my deliberations is that the CL does not impose any obligations on parents
15 in respect of religious upbringing or instruction. "Religious persuasion" is included in the welfare
16 checklist and is therefore considered an important feature in a child's life. The CL defines
17 "parental responsibility" as *"all the rights, duties, powers, responsibilities and authority which by*
18 *law a parent of a child has in relation to the child and his property"* (section 5) which would
19 include the right to bring up children in a particular religious faith, or in none. The CL prohibits
20 DCFS from bringing up a child in care in any religious persuasion other than that in which he or
21 she would have been brought up if the care order had not been made (section 35(5)) and DCFS
22 must consider the child's religious persuasion when making any decisions with respect to any
23 child in its care (section 24(5))). All of these provisions underscore the freedom which parents
24 have over the question of the children's religious education and upbringing.
25

26 53. F's argument that a child's participation in any religious activity is contrary to the child's
27 freedom of conscience is unsustainable as such a principle would encroach on areas which are
28 entirely within the rights afforded to a party with parental responsibility. A party or parties with
29 parental responsibility is entitled to decide on the child's religious upbringing without
30 interference unless a court finds it to be necessary to order otherwise.
31

1 54. There are a small number of authorities from the UK on the subject of religious upbringing. In
2 **Re G (Children) (Religious Upbringing: Education) [2012] EWCA Civ 1233** the court held that -
3

4 *"Some manifestations of religious practice may be regulated if contrary to a child's*
5 *welfare. Although a parent's views and wishes as to the child's religious upbringing*
6 *are of great importance, and will always be seriously regarded by the court, just as*
7 *the court will always pay great attention to the wishes of a child old enough to be*
8 *able to express sensible views on the subject of religion, even if not old enough to*
9 *make a mature decision, they will be given effect to by the court only if and so far as*
10 *and in such manner as is in accordance with the child's best interests. In matters of*
11 *religion, as in all other aspects of a child's upbringing, the interests of the child are*
12 *the paramount consideration."*
13

14 55. In considering what is in L's best interests, I kept in mind the statement of Scarman LJ in **Re T**
15 **(Minors) (Custody: Religious upbringing) (1981) 2 FLR 239** at 247
16

17 *"There can be little doubt that one's development as an adult is determined to a*
18 *substantial extent by the conditions of one's childhood. This makes it imperative in*
19 *the long-term that the conditions in childhood should be acceptable to the children."*
20

21 He continued later at paragraph 244 -
22

23 *"It is reasonable on the part of a mother that she should wish to teach her children*
24 *the beliefs and practices of Jehovah's Witnesses as it is reasonable on the part of the*
25 *father to wish that they should not be taught those practices and beliefs.*
26

27 *It is not for this court, in society as at present constituted, to pass any judgment on*
28 *the beliefs of the mother or on the beliefs of the father. It is sufficient for this court*
29 *that it should recognise that each is entitled to his or her own beliefs and way of*
30 *life..."*
31

1 56. M's right to manifest her religion has to be balanced against L's welfare and the rights of F. Any
2 interference with a parent's right to include their child in their religious practices is permissible if
3 it is in the child's best interests (*Ismailova v Russia* [2008] 1 FLR 533)
4

5 57. I am greatly assisted by Bellamy J's review of the law and summary of the applicable principles
6 in *Re N (A Child) (Religion: Jehovah's Witness)* [2011] EWHC 3737 (at page 12) and I adopt
7 these –
8

9 (1) Parental responsibility is joint and equal. Neither parent has a predominant right to
10 choose a child's religious upbringing.

11 (2) Where parents follow different religions and those religions are both socially
12 acceptable the child should have the opportunity to learn about and experience
13 both religions.

14 (3) The parent's right to enable their child to learn about and experience his or her
15 religion is not an unconfined right. Where the practice of that religion involves a
16 lifestyle which conflicts with the lifestyle of the other parent and the court is
17 satisfied that that conflict has had or may in the future have an impact on the child's
18 welfare the court is entitled to restrict the child's involvement in those practices.

19 (4) Restrictions imposed for welfare reasons do not necessarily amount to a breach of
20 that parent's right to follow the beliefs and practices of his or her religion provided
21 that any restrictions imposed are justified by the findings made by the court and
22 proportionate.

23 (5) In determining such an issue, as in the determination of any other question relating
24 to the upbringing of the child, the child's welfare is the court's paramount
25 consideration.
26



1 *Analysis*

2
3 58. I am very concerned that L, at the tender age of 7, is cognisant of the degree of hostility felt by F
4 towards M concerning L's attendance at functions with M. I am also gravely concerned that in
5 the past F has taken extreme steps in order to impose his will that L not attend church services
6 at all. I am in no doubt that F's actions have caused L significant distress and anxiety. The
7 anxiety L displayed during the course of these proceedings was enough to satisfy me that the
8 matter of her religious upbringing had to be resolved by this court without delay.

9
10 59. A child's initial awareness of his or her religion comes from their home environment, and
11 generally depends on his/her involvement in worship and teaching within the family. Later
12 he/she may be exposed to religious teachings at school and acquire knowledge from other
13 sources. For younger children, a conflict between the faiths of their parents is likely to cause
14 emotional conflict unless they are suitably guided and supported by their parents and their
15 wider community. As the child matures he/she will develop the emotional, intellectual,
16 psychological and spiritual sense of belonging to a religious faith or may choose to reject the
17 notion of religion entirely.

18
19 60. I agree with the observations made in **Re J**, that to impose a faith or lifestyle on a child which is
20 inconsistent with that of the resident parent is to expose the child to a significant risk of
21 psychological and emotional harm and is likely to undermine the child's relationship with one or
22 other parent. This result is already evident in this instance from L speaking of her father as not
23 being a nice man.

24
25 61. As a regular visitor to Cayman Brac myself I am familiar with the character of its small
26 community. I accept Miss Ferguson's evidence that the numerous churches provide valuable
27 community services, including much needed childcare and social events, and are at the centre of
28 community life in Cayman Brac. I am satisfied that if M were prevented from accessing the
29 various resources offered by the churches, particularly childcare, she would be unable to meet
30 L's needs.

1 62. At 7, L is old enough that her wishes and opinions should be given considerable weight. I accept
2 M and Miss Ferguson's evidence that L's present wish is to participate in church services and
3 activities with M. M is entitled to practice her faith including attending a place of worship. L will
4 be spending the majority of her time with M. I am satisfied that if L is regularly/frequently
5 prevented from accompanying her mother, this will cause long-term harm to L's wellbeing. Also,
6 given the small population in Cayman Brac, preventing L from attending these activities would
7 isolate her from her peers for these periods, which could cause her further emotional harm.
8

9 63. I accept Miss Ferguson's evidence that there is a real risk that in the long-term L will come to
10 resent F for his actions. This in turn is not in L's best interests as she desires, and she should
11 have, a meaningful and loving relationship with her father without conflict.
12

13 64. I recognize F's concerns that regular exposure to Christian principles and lifestyle may influence
14 L's decision in favour of the Christian faith, but this is not a certainty. I am satisfied that while M
15 wishes to include L in every aspect of her faith, she will support F's efforts to educate L about
16 Islam, including attending the mosque. F's evidence was that his parents were Christians until
17 they, and he, converted to Islam. This very fact demonstrates that a person's religion is a matter
18 of self-determination and can change throughout their lifetime. I am satisfied that any risk that L
19 will develop a preference for Christianity can be addressed by F instructing L about Islam as he
20 intends to do, and by both parents being resolute in their views that respect should be afforded
21 to both religions and that L should make up her own mind as to which faith she will live by.
22

23 65. I was not persuaded that there was a specific risk or a general increase in the risk of L being
24 subject to sexual abuse within the churches she will have contact with.
25
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1 66. I conclude that M should be permitted to take L to attend and participate in religious activities
2 including attending church and Sunday school as long as L wishes to participate. Attendance
3 should not be mandated. L is 7 and may wish to do something else other than attend church. In
4 such instances M will have to make alternative arrangements. Similarly, F is permitted to take L
5 to a mosque and she may participate in Islamic activities as long as L wishes to do so. M and F
6 are permitted to teach L about their respective faiths or any other faith that they wish her to
7 learn about. Importantly, neither M nor F shall themselves, or through a third party seek to
8 criticise, denigrate or undermine the faith or practices of the other. L should spend religious
9 holidays with the parent celebrating that holiday, as long as L wishes to participate in such
10 activities and it does not interfere with her education. As L matures, her wishes to learn or live
11 by one or the other faith, or to reject the concept of religion entirely, must be respected.
12
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15 **Distribution of Matrimonial Property**

16

17 67. When determining what constitutes “matrimonial property ” I have regard to all of the
18 circumstances, including circumstances and timing of the acquisition of the property, the parties
19 contributions, their apparent intentions with regard to and the use of the property during the
20 marriage and how they organised their financial affairs (**B-H v B [2009] CILR 185**).
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1 68. The principles applicable to the division of matrimonial property was settled by the
2 Court of Appeal in **McTaggart v McTaggart** [2011] 2 CILR 366 –
3

4 *“40. We were referred by the parties, both in the skeleton arguments lodged on their*
5 *behalf and in oral submissions made in the course of the hearing, to a plethora of*
6 *judicial decisions in England and Wales and to a few decisions in this jurisdiction.*
7 *Observations made by experienced judges are, of course, of assistance to an*
8 *understanding of the application of the section 19 factors; but it must be kept in*
9 *mind that most cases in this field are decided on their own facts and that there is a*
10 *risk that extensive citation may confuse rather than illuminate. It is not necessary, I*
11 *think, to look further than the decision of the House of Lords in Miller - and in*
12 *particular the speeches of Lord Nichols and Baroness Hale - in order to identify the*
13 *principles. Leaving aside, in this context, the best interest of the children, which (as I*
14 *said) are paramount, there are three strands: need, compensation and sharing*
15 *[2006] 2 AC 618 at paragraphs [10]-[16] per Lord Nichols and at paragraphs [138]-*
16 *[143] per Baroness Hale. The ultimate objective, as Baroness Hale explained at*
17 *paragraph [144], is to give each party an equal start on the road to independent*
18 *living. She said this:*
19

20 *‘[144] Thus far, in common with my neighbour and learned friend Lord*
21 *Nichols of Birkenhead, I have identified three principles which might*
22 *guide the court in making an award: need, generously interpreted,*
23 *compensation and sharing. I agree that there cannot be a hard and fast*
24 *rule, but whether one starts with equal sharing and departs when need*
25 *or compensation supplied a reason to do so, or whether one starts with*
26 *need and compensation and shares the balance, much will depend on*
27 *how far future income is to be shared as well as current assets. In*
28 *general, it can be assumed that the marital partnership does not stay*
29 *alive for the purpose of sharing future resources unless this is justified by*
30 *need or compensation. The ultimate objective is to give each party an*
31 *equal share start on the road to independent living.”*



1 69. The court went on to state at paragraphs 42 and 43:

2
3 *"42. In this jurisdiction a court will need to consider whether, having proper regard*
4 *to the section 19 factors, an order under section 21(b) of the Law for the disposition*
5 *of the matrimonial property will make appropriate provision for the relevant party in*
6 *respect of the three strands: need, compensation and sharing. If not, then the court*
7 *will need to go on to consider whether to make an additional order under section*
8 *21(e), that is to say, an order making financial provision for that party out of*
9 *property of the other party.*

10
11 *43. It seems to me reasonably clear - and I would so hold – that, if satisfied that an*
12 *order under section 21(b) of the Law, or the combination of orders under section*
13 *21(b) and (e), would make appropriate provision for the relevant party in respect of*
14 *the three strands of need, compensation and sharing, the court should not, without*
15 *good reason, make an order for periodic payments under section 21(f). To make an*
16 *order for periodic payments in circumstances where such an order is unnecessary*
17 *because appropriate provision can be made by the disposition of matrimonial*
18 *property either under section 21(b) or by a capital adjustment from the separate*
19 *property of the other party under section 21(e) would be inconsistent with the*
20 *principles of clean break to which Lord Scarman referred in Minton v. Minton, [1979]*
21 *AC at 608.*

22 *'There are two principles which inform the modern legislation. One is the*
23 *public interest that spouses, to the extent that their means permit,*
24 *should provide for themselves and their children, that the other of equal*
25 *importance is the principle of clean break, the law now encourages*
26 *spouses to encourage bitterness after family breakdown and to settle*
27 *their money and property problems. An object of the modern law is to*
28 *encourage each to put the past behind them and to begin a new life*
29 *which is not overshadowed by the relationship which has broken down.*
30 *It would be inconsistent with this principle if the court could not make,*
31 *as between the spouses, a genuinely final order.'*



1
2 *Those observations must be read in the light of the observations in Miller - and in*
3 *particular those in the speech of Baroness Hale to which I have referred - that the*
4 *ultimate objective is to give each party an equal start on the road to independent*
5 *living."*
6
7

8 70. While M has purchased the FMH prior to the marriage, the parties agreed that the property was
9 a matrimonial asset. They both also agreed that M and F contributed to repayments of
10 mortgages and household bills while they were co-habiting, albeit it was also generally accepted
11 that M bore the majority of these expenses. Given the other factors relevant to the
12 determination of the division of the matrimonial assets, there was no need for me to resolve the
13 exact level of each party's contribution to the household.
14

15 71. Even after they separated, M continued to maintain the mortgage payments until financially she
16 was no longer able to do so. I accepted M's evidence was that there are unlikely to be any funds
17 remaining once the mortgage is repaid.
18

19 72. Regarding the North Side land, although M inherited that land, I found that the parties intended
20 the land to benefit the family because it was used to raise funds for the family business.
21 Consequently, the land is a matrimonial asset. How those funds were spent and the business
22 run was a family matter. The Credit Union loan secured by the North Side land was therefore
23 matrimonial debt. The evidence was that this property had been listed for sale for some time
24 and that upon sale there should be some funds remaining. I found that the Credit Bureau debt
25 was also a matrimonial debt as it arose from debts incurred to meet the family's financial
26 obligations.
27



1 73. I am mindful that M has a significantly higher income than F. Once the matrimonial debt is
2 repaid, M will have a much more comfortable lifestyle than F. On the other hand I am conscious
3 that M has been repaying the family debt for 2 years 8 months by working two jobs. Over this
4 period she has repaid roughly CI\$42,000. While there has been a dispute between M and F
5 about F's level of contribution to L's care over that same period, it was agreed that it is nowhere
6 near the amount M has been paying on the loans and spending on meeting L's needs.

7
8 74. M invited me to find that her continued maintenance of the family debt after their separation
9 warranted her being attributed a larger portion of any equity in the North Side land. On the
10 evidence before me, I calculated that any proceeds remaining from the sale of the North Side
11 land would likely be extinguished if M were to be given full credit for all payments she made
12 over the past 2 years and 8 months and for future payments she will have to make until the land
13 is sold. This would leave F without any funds to re-establish himself and provide adequate
14 accommodation for L. With all of this in mind, I had to balance the parties' past contribution
15 and future earning potential with their and L's needs and the just deserts of the parties.

16
17 75. Critically, while M's primary occupation will provide sufficient funds to her to maintain her and
18 L's current lifestyle (once the debts have been repaid), F will not have the funds to set up an
19 appropriate place for L to visit him, particularly the important future overnight visits. I find that
20 F will need a lump sum to find new accommodation.

21
22 76. In balancing the factors of need, compensation and sharing I find that it is appropriate to allow
23 M a partial credit, namely 20% of all past payments and 50% of all future payments of the Credit
24 Union and Credit Bureau debt, from the proceeds of the sale of the two properties. M shall be
25 permitted to retain the family car and F shall receive the equivalent of 50% value of the car as a
26 credit from any proceeds of the sale of the North Side land. Following the application of all
27 credits to the respective parties, the remaining equity shall be split equally between the parties
28 thereby providing F with a lump sum sufficient to provide a start-up sum to secure
29 accommodation himself and L when she visits. If there are insufficient funds from the sale of
30 the North Side land then the credits shall be pro-rated for both parties.
31

1 **Child Maintenance**

2

3 77. I accept that F has only very limited means, his only income being his modest salary from his

4 new employment. The cost of meeting L's needs is far beyond F's current disposable income,

5 particularly as he will be bearing the cost of flights and accommodation for all visits with L. I find

6 that F's contribution to L's maintenance will have to be nominal for the time being. I conclude

7 that F's offer to pay M CI\$75 per fortnight for L's maintenance is reasonable given his current

8 circumstances. Such payments are to commence 1st November 2018.

9

10 78. As agreed by the parties, M and F shall bear the costs of L's school supplies and uniforms,

11 equally.

12

13 79. Given L's high level of academic performance, I consider that it is likely that she will attend

14 tertiary education. Consequently, I make the order for child maintenance to be paid until L is 18

15 or completes tertiary education (but no later than 21).

16

17 80. Both parties are at liberty to return to court to apply for a variation of the maintenance

18 payments should circumstances change.

19

20

21

22 **Costs**

23

24 81. Given F's very limited income I make no order as to costs.

25

26



1
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3 **ORDER**
4

5 1. A Sole residence order is made for L in favour of M to reside in the Cayman Islands.
6

7 2. L shall have flexible contact with F, although no overnight contact is permitted with her Father
8 until:

9 (i) the Department of Child and Family Services have approved F's accommodation;
10

11 (ii) F has completed the parenting co-parenting programmes run by the Family Resource
12 Centre; and

13 (iii) DCFS is satisfied that F has the necessary skills to parent Lilly.
14

15 3. Mr Hunter of the Department of Family Services is not to be involved with the assessment set
16 out in the preceding paragraph.
17

18 4. L's contact with F shall be a minimum of once per month. F shall pay the costs of L's flight and
19 accommodation for visits to Grand Cayman.
20

21 5. Contact with F shall start and end at a location to be agreed by the parents.
22

23 6. In the event that M becomes unfit to care for L, F shall be considered the first person to take
24 over her care, as long as F has met the conditions in paragraph 2 above regarding overnight
25 contact. Upon M being fit to resume L's care, L shall resume living with M.
26

27 7. L and F shall have unrestricted telephone/social media contact.
28

29 8. M is permitted to travel overseas with L for up to one month in the company of another adult.
30 M shall keep F informed as to their destination and period of travel. Where possible, regular
31 contact with F shall be maintained.



- 1 9. L may travel with F overseas, whether to "country A" or elsewhere, either with M's consent or
2 with the permission of the court should the parties be unable to agree
3
- 4 10. M is permitted to include L in her religious activities including attending church, Sunday school
5 and other religious activities/events **on condition that L wishes to participate/attend.**
6
- 7 11. Both parents are permitted to teach L about their respective faiths, and any other faith should
8 they feel it to be appropriate. **Neither parent shall do anything either themselves or through**
9 **third parties to criticize, denigrate or undermine the faith or practices of the other parent.** If
10 the parent is desirous, then L should spend the respective religious/cultural holidays with that
11 parent as long as it does not conflict with L's school attendance; e.g. Christmas and Easter with
12 M and Eid with F.
13
- 14 12. As L gets older, her wishes as to whether to learn and live in accordance with one or other faith
15 should be respected.
16
- 17 13. F shall pay M \$75.00 per fortnight towards L's maintenance starting 1st November 2018. All
18 payments are to be deposited directly into M's Credit Union account.
19
- 20 14. The parents shall share the cost of L's school uniforms and supplies equally.
21
- 22 15. Paragraphs 13 and 14 shall continue until L is 18 or completes tertiary education, whichever is
23 later, but not beyond her 21st birthday.
24
- 25 16. In the event there are any funds remaining from the sale of the FMH which are owing to the
26 parties, these are to be split equally between them.
27



17. M shall continue to service the Credit Union loan and repay the Credit Bureau until the North Side land is sold. Upon that property being sold the proceeds shall be applied as follows -

- (i) repaying the Credit Union loan
- (ii) repaying the Credit Bureau (credit card, express loans and the outstanding utility bills)
- (iii) the remaining balance shall be distributed as follows:

- M shall receive a credit to the value of 50% of all payments made by her to service the Credit Union loan and Credit Bureau debt between the making of this Order and the settling of the debt.
- M shall receive a credit to the value of 20% of all payments made by her to service the Credit Union loan and the Credit Bureau debt from March 2016 to the making of this Order.
- Father shall receive a credit of 50% share of the Chevy Trax, being \$7,571.88.

Any remaining proceeds of the sale of the North Sound property shall be divided equally between the parties.

18. The parents are at liberty to return the matter to court for variation or discharge of any orders made above.

HON KIRSTY-ANN GUNN

ACTING JUDGE OF THE GRAND COURT

