

IN THE GRAND COURT OF THE CAYMAN ISLANDS
HOLDEN AT GEORGE TOWN, GRAND CAYMAN

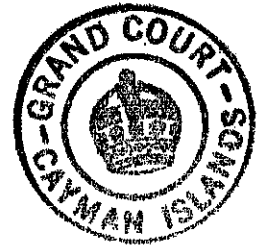
CAUSE NO. FAM 18 OF 2014

BETWEEN: PHILIPPA CATHERINE CLARK PETITIONER

AND: JAMES ALEXANDER CLARK RESPONDENT

Appearances: Mr. David Holland of Samson & McGrath
 for the Petitioner

 Ms. Sarah Dobbyn of Sinclairs
 for the Respondent



Before: Hon. Justice Henderson

Heard: July 9, 2014



RULING

1. On this ancillary application, both parties have asked for a shared residence order but disagree on how the sharing should be split. Each of the parties would like to have care and control of the children during the school term with the other party enjoying care and control during the summer vacation.

2. The parties were married in July 2005 and moved to the Cayman Islands in December of that year. They have two children: Rudy, age four, and Max, age seven. Max has a learning disability which has been described as attention deficit hyperactivity disorder. He attends Cayman Prep and has been doing moderately well at that school. Rudy has been attending Little Trotter's Preschool.

3. The parties separated in July 2013. In that month, Mr. Clark moved out of the matrimonial home while Mrs. Clark remained in the matrimonial home with the two children.

4. Each of the parties has claimed in evidence to have been the primary caregiver of the two children during the marriage. The resolution of that question is not possible on the evidence before me. What is clear is that Mrs. Clark had primary care of the two children from the date of separation until November of 2013. She lost her job in the Cayman Islands in that month and returned shortly thereafter to the United Kingdom. Around this

time the parties agreed on a four-days-on-and-four-days-off regime according to the evidence I have, although it is a mystery why they would have reached that agreement right around the time Mrs. Clark lost her job and left the country.



5. Each of the two parties has been here, as I say, since December 2005, and both were due to be rolled over in December of this year. I will return to that subject as it is of fundamental importance on this application.
6. Each of the parties appear to me to be reasonably competent, although not perfect, parents. Perfection is not something which one encounters in parenting.
7. Mrs. Clark is 44 years of age and works in the field of recruitment. She was terminated from her employment here. She then went to the United Kingdom and obtained another job there but regrettably has been let go and is now unemployed. She resides at the present time in Slinfold, a town in West Sussex, about 30 miles from London. She is living in a one-bedroom apartment, which would hardly be acceptable in the long run if she were to have the children in her care and control during the school term but might be adapted in some manner to allow the boys to visit for a while during the summer vacation. She has arranged for both of the two boys to be accepted into what she describes as a "well-regarded" primary school in the Slinfold area. Two of her sisters live within a short drive of Slinfold, providing her with something of a support network in her new home.
8. There is photographic evidence of the matrimonial home around the time of separation

showing a rather untidy and, I would infer, unsanitary condition in the interior. This was at a time when Mrs. Clark was solely responsible for the upkeep of that home. On the other hand, it must be said that when the social worker visited Mr. Clark on a random basis, without giving him warning of her arrival, she encountered less than ideal tidiness in his home and less than ideal sanitary conditions.

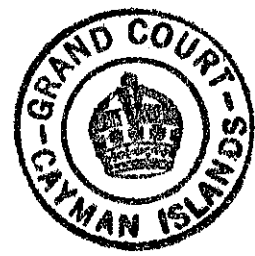
9. Mr. Clark is 37 years of age. He is a chartered accountant and works for Cayman Free Press. He earns \$105,000 per year at present. Mr. Clark has two children from a prior relationship but he does not appear to have introduced his two children (the subjects of this application, Rudy and Max) to these prior children. I also note that his maintenance payments for the two older children were in arrears as of 2009, although the arrears were cancelled during that year.

10. Mr. Clark has had primary care and control of Rudy and Max for periods of time since separation and particularly for the period of time since Mrs. Clark left the country. On one occasion, he took both children to Honduras without Mrs. Clark's consent. This was a deliberate act and one which I view negatively. Mr. Clark's new girlfriend has started sleeping over at his residence in the Cayman Islands.

11. I turn to the subject of permanent residency.

12. Mr. Clark claims that the couple always planned to stay permanently in the Cayman Islands. He also claims to want permanent residency, but he has not applied for it although he has been eligible to apply for the last six months.





13. He has obtained an unsworn opinion from a non-lawyer who purports to be an expert in immigration law and regulations. She says that upon application Mr. Clark would receive 97 points without considering the local investment category. Thus, he would need to earn another 13 points in that category. If he does not apply or if he does not receive the requisite 110 points, he will have to leave the Cayman Islands at the end of December or at least shortly thereafter.

14. The Immigration Amendment Regulations of 2013 in schedule 2 under factor 3 show that points are awarded in the local investment category either for the net equity in a home (which is usually the subject of the investment) or, alternatively, for the total mortgage payments made over the preceding five years. To get any points at all for net equity, one must have an equity of at least \$50,000. The evidence makes it clear to me that there is no possibility of Mr. Clark being awarded points in the net equity category.

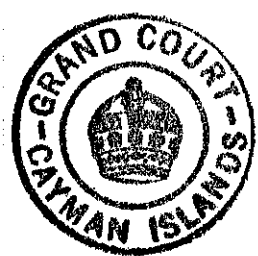
15. Neither counsel has addressed in argument the alternative to the question of how many points would be awarded for total mortgage payments made over the last five years and the purported expert from CML does not address that crucial factor in her letter. Thus, it is at least doubtful that Mr. Clark will be able to receive permanent residency if he does apply and at least doubtful therefore that he will be staying in the Cayman Islands beyond the next few months.

16. Email messages have passed between the parties, particularly around the time that Mrs. Clark decided to return to the United Kingdom. I infer from these messages that

Mr. Clark was ambivalent at the time about whether he would return to the United Kingdom as well or stay here and apply for permanent residency. On December 12th, 2013, he said, "You need to do this so that the boys will have somewhere to go next September when term starts." In context, the word "this" refers to Mrs. Clark returning to the United Kingdom and setting up a residence there. On January 20th, 2014, he said in a message, in effect, that it has not yet been agreed that the boys will live with "you" in the United Kingdom, meaning that he may well apply for permanent residency. On the same day, in a different message, he said, in effect, that he would return to the United Kingdom by the end of 2014 at the latest. So it is clear that until recently he has been ambivalent about the question of returning or alternatively staying here and attempting to obtain permanent residence.

17. Mr. Clark has been somewhat more involved than Mrs. Clark in the education of Max. He has adduced some corroborated evidence which demonstrates that he has been going to Cayman Prep over the lunch hour on a regular basis and assisting his son with reading. There has been a slight improvement in Max's academic performance from January to June of this year, improvement which was exaggerated significantly by Ms. Dobbyn in her argument. Max got one above standard grade in June and zero in January. He got 66 at the standard grades in June and 59 in January. So there has been some slight improvement.

18. I have been assisted to a certain degree by a social worker's report from Ms. Sherene Barnes. I say "to a certain degree" because it is not a comparative report. She was able to prepare an admirably thorough report on Mr. Clark and on the children's present

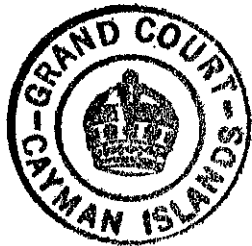


circumstances in the Cayman Islands but she has no basis for comparison because she had no opportunity to observe Mrs. Clark in a home environment or even to inspect the home which Mrs. Clark has obtained in the United Kingdom. So, her opinions are guarded and rightly so. The report contains a number of observations about Mr. Clark's parenting skills, some positive, some negative, as is common in such reports. The report concludes with a tepid recommendation for maintaining the status quo. Ms. Barnes says "the most feasible" arrangement is for the children to remain in the Cayman Islands.

19. If there is a single word which describes this application, it is "premature". I cannot conclude that the best interests of the children require that they live permanently during term time with either parent. Mr. Clark may well not be permitted to live in the Cayman Islands in the long term. Mrs. Clark is unemployed and not at present living in suitable accommodation for the children. The unknowns outweigh the knowns on each side.

20. I have concluded that the suggestion of a temporary order (advanced by each party in oral argument) is the only reasonable solution at this time. For the immediate future, Mr. Clark is better placed to look after the children than Mrs. Clark.

21. I make the following order: first, by consent a shared residence order; second, the children are to reside with Mr. Clark during the school term until further order; third, Mrs. Clark is entitled, at her discretion, to have the children reside with her during the school vacation period; fourth, the children may not be removed from the Cayman Islands except that Mrs. Clark may, at her discretion, remove them to the United Kingdom for the summer vacation period; fifth, Mr. Clark is at liberty to apply for a



permanent order after he has obtained permanent residency; sixth, Mrs. Clark is at liberty to apply for a permanent order after she has been in full-time permanent employment for at least six months and has obtained suitable accommodation for the children.

Dated this 9th day of July, 2014

Henderson, J.

Henderson, J.
Judge of the Grand Court

