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

CAUSE NO. FAM 245 OF 2010

BETWEEN:

KCP

Applicant

AND

JB

Respondent

Appearances:

Mr C. Fee of Samson & McGrath for the Applicant
The Respondent in person
Mrs M. McCormac Guardian ad Litem
Mrs. R. Myles representing the child

Before:

Hon. Justice Richard Williams

Heard:

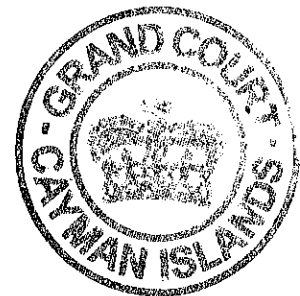
22 April 2015 & 12 August 2015

Date of Judgment:

12 August 2015

Date of Circulation:

19 August 2015



HEADNOTE

Children Law Proceedings – Guardian ad litem – Refusal of application by father to terminate appointment – Test that application to terminate appointment of Guardian is an unusual application, not to be lightly granted- Refusal of application for recusal of judge – Considerations in recusal application and guidance in TF v RF & DF & NMF [2007] EWHC 2543(Fam).

EX TEMPORE JUDGMENT

1. This is an Ex Tempore Ruling emanating from further applications made in these long drawn out children proceedings. It may not read like a formal written judgment. Having regard to the issues involved in this case, I felt it important to



give an immediate decision and to provide the parties with the reasons why I have made that decision. Due to the likely length of the ruling it will need to be perfected and transcripts of the ruling will be anonymised and provided to the parties.

5

6 2. This matter concerns J, a young girl born on 13 December 2009, who is now 5
7 years old and was around 2 when years old when these protracted proceedings
8 commenced. I shall refer to her as J in this judgment. Her unmarried Caymanian
9 parents are KCP (her mother), and JB (her father). I shall refer to them as the
10 mother and father.

11

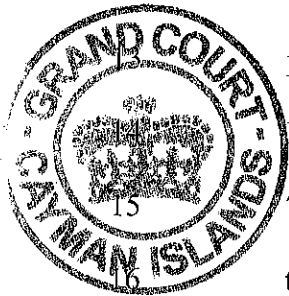
12 3. There are a number of outstanding applications requiring determination. A three
13 day hearing had been scheduled to commence on 20 January 2015 to deal with a
14 number of cross summonses. These summonses included a summons filed by the
15 mother on 10 September 2014 seeking \$600/month child maintenance from, and
16 payment of half the school fees by, the father. The mother also seeks payment of
17 arrears of child maintenance which she contends accrued when she and the child
18 were residing in the United States.

19

20 4. The father's Summons filed on 2 September 2014 is also awaiting determination.
21 In that Summons he seeks orders revoking my order made on 31 July 2014 in
22 which the Court recorded that the parties had agreed to share payment of J's

1 school fees. I therein ordered that J would reside with the father on alternate
2 weekends from Friday to Monday and that in the week following such contact she
3 would be with him from Wednesday after school until Friday mornings. I also
4 gave directions to the final hearing when Schedule 1, final residence and contact
5 issues would be dealt with. I appointed Mrs. M. McCormac as the Guardian ad
6 litem. On 17 September 2014 the father filed a further Summons which simply
7 reiterated his application to revoke the order made on 31 July 2014 and his wish
8 to revisit issues about contact.

9
10 5. Most regrettably, the final hearing fixed for January 2015 could not proceed as I
11 was compelled to adjourn it due to the manner in which the father was litigating.
12 A further application for my recusal had been brought to my attention during the
previous night. The application was brought by the father's Notice of Judicial
Disqualification/Recuse dated and sent by email to the Clerk of Courts by email at
7:29 p.m. on 19 January 2015. The Notice and attachments filed by the father on
the following day included details of a formal outstanding complaint against me
made by him to the Judicial and Legal Services Commission ("JLSC"). It appears
that the complaint had been filed on 12 January 2015. I informed the parties that
ordinarily I would have been willing to hear the recusal application, but in light of
the complaint made to the JLSC I felt it inappropriate to hear any applications
until the JLSC had dealt with the complaint. As a consequence, all of the
Summonses were adjourned generally. Thereafter the JLSC dismissed the



1 complaint at the preliminary stage. The father informed me that the Commission
2 advised him that he should apply to the Court of Appeal.
3

4 6. On 26 March 2015 the father filed a Summons seeking orders for contact with J
over the Easter holidays and the summer holidays. As the application had been
filed by him only in the week before Good Friday, Listing was unable to
accommodate a hearing in the Court list prior to Easter. The outstanding issue to
be determined from that Summons was Summer contact.
8

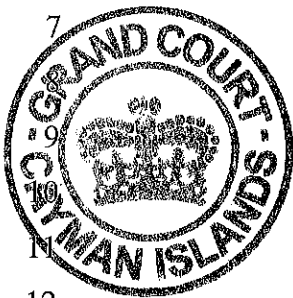


9
10 7. In light of the issues raised in the father's Summons the mother filed an
11 application on 16 April 2015 also seeking orders in relation to summer contact, an
12 order about Mother's Day contact as well as directions for final determination of
13 the outstanding Summonses. She sought an order to temporarily remove J for a
14 holiday to Florida on 11 July 2015 returning on 18 July 2015.
15

16 8. I was aware at the outset of the hearing that the father intended to file an
17 application for an order terminating the Guardian ad Litem's appointment and
18 appointing a "new expert." I recall at the January hearing that the Guardian had
19 been concerned that this issue, which had been then mooted by the father, should
20 be resolved as a preliminary issue before dealing with the Summonses. She was
21 concerned about the content of the evidence and submissions filed by the father,
22 including the criticisms he made of her in paragraph 5 to 7 and 37 to 50 of the

1 above-mentioned Notice filed on 20 January 2015. Attached to that Notice is an
2 email from the father sent to the Secretary of the JLSC in which he stated:

3 *"Please find attached evidence regarding concerned with the*
4 *appointment of the GAL including conflict of interest, not fairly*
5 *visiting the child in my care. As was emailed to the court while*
6 *seeking proper assessments. The court indicated on November 13,*
7 *2014 she is the most respected and qualified GAL. My family has*
8 *requested qualifications on this at every juncture and cannot be*
9 *provided. Apparently the court is attempting to mislead me on the*
10 *GAL qualifications and fairness thus downplaying the direct*
11 *conflict of interest that is present by the court knowingly*
12 *appointing a court staff member's spouse. This is not a fair nor*
13 *transparent procedure. I have a right to object to matters on*
14 *experts if they pose a conflict of interest."*
15



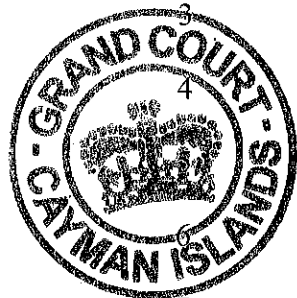
16 9. When considering the outstanding applications, I am surprised that the father
17 sought to list an application for contact before the issue of my recusal had been
18 determined. Following the January hearing and upon receiving details of the
19 dismissal of his complaint to the JLSC, the father should then have sought a
20 listing for his application for my recusal and his proposed application for the
21 removal of the Guardian. This he did not do, and before I felt able to rule on the
22 filed Summonses concerning contact, I must determine whether I should recuse
23 myself and whether the Guardian's appointment should continue. That said, on
24 22 April 2015, after further discussions at Court, the parties agreed various orders
25 for contact, especially for over the summer period.



1 10. At the outset of the hearing on 22 April 2015 I expressed my concerns about the
2 appropriateness of my making rulings concerning the child whilst the recusal and
3 revocation of appointment applications were still pending. It was agreed that I
4 should deal with the recusal application and the father's application for the
5 termination of the Guardian's appointment before determining the other recently
6 filed Summonses. It was agreed that I could deal with the application in relation
7 to the Guardian, although notice had not been given in a summons, on the basis
8 that an oral application was then being made by the father. The father agreed with
9 this approach and was in a position to read into the record detailed written
10 submissions made in relation to both applications. He was also able to add further
11 comments to clarify the written submissions. The applications went part heard,
12 because the Guardian who is entitled to notice of the application, required time to
13 give instructions to her attorney concerning the content of the father's oral and
14 written submissions. Accordingly, the Guardian filed her signed written response
15 to the father's application for the removal on 31 July 2015, the contents of which
16 she has verified the accuracy and adopted today. The child's attorney filed
17 skeleton submissions on 7 August 2015 in preparation for today's hearing.

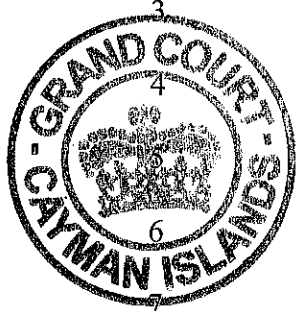
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19 **Preliminary issue – Father's Application for an Adjournment of the Hearing of His**
20 **Application for the Judge's Recusal and the Termination of the Guardian's**
21 **Appointment**

22 11. I refused this application at the outset of today's hearing and I said that the
23 reasons for my decision would follow.



1 12. Yesterday, at 2:00 p.m., I was shown an email from the father in which he said
2 that he had provided a "*draft application for a continuance*" as he was waiting for
3 critical information relevant to his applications, including the Guardian's
4 handwritten notes. In support of his application he stated that he was relying upon
5 "*S.9 Constitution order 2009.*" I do not see how this section which gives guidance
6 as to the right approach to pending legal proceedings before the appointed day is
7 of any assistance or relevance to his application for an adjournment.

8
9 13. After sending that email, at 2:15 p.m. the Listing Officer provided my Personal
10 Assistant with a chain of emails sent by the father. The first email is one dated 20
11 July 2015 to Listing in which he states that he wishes a hearing before the Chief
12 Justice concerning an order that "*has not been complied with to the letter*" and
13 was thereby a breach of the Chief Justice's Practice Circular No. 1/2014. He also
14 indicated that he was "*having significant difficulty receiving my request from the*
15 "*judiciary, it is apparent the officers are not willing to facilitate their duty and*
16 "*provide my request. In any event at this time I will ask that the current 12 August*
17 "*2015 hearing be continued or dismissed to a yet to be determined date until I can*
18 "*get all my information requested.*" He again stated that this latter application
19 would be made pursuant to "*section 9 of the Constitution Order 2009*". The next
20 email sent to me was one sent by the father dated 30 July 2015 in which he said
21 he was filing "*an application on summons*" on Monday, 3 August 2015 in
22 relation to non-compliance with court orders.



1 14. The next email was one sent by the father to Listing yesterday at 11:00 a.m. to
2 which he attached a draft "*application for a continuance*." He indicated in the
3 email that he would also be providing a sealed version of a non-compliance
4 application, presumably that is the application he had demanded on 20 July 2015
5 to be heard by the Chief Justice. The belatedly filed draft application for
6 continuance contains 63 paragraphs. This is yet a further illustration of the
7 father's inappropriate approach to litigation, in which on days close to the
8 hearing, and in particular on the eve of the hearing, he files detailed applications,
9 evidence or submissions. Despite this I permitted him to make the application and
10 to rely upon the contents today. The mother and the Guardian did not oppose. In
11 the application, he reiterates that his application is made pursuant to section 9 of
12 the Constitution Order 2009 and he says that his "*right to file for recuse is duly*
13 *outlined in the Standards in Public Life Bill (2013) (Guidelines for 2015*
14 *implementation), Anti-Corruption Law 2008 and Civil Servants Code of Conduct*
15 *all outlining Conflicts of Interest which merit no need for information why*
16 *recuse.*" Although some parts of the rambling application deal with why he
17 contends that there should be an adjournment, the majority is an attempt to make
18 further submissions on the recusal application and the application for the
19 termination of the Guardian's appointment. He also seeks therein to
20 inappropriately reopen dated issues contained in previous judgments which were
21 never appealed. For example, he seeks an adjournment to enable him to
22 "*overturn*" all the old rulings in relation to the application to remove from the



jurisdiction *"disrupting the judiciary's integrity due to my first attorney's negligence."* It seems that he seeks the same Court to then report his former attorney to the Anti-Corruption Commission.

4

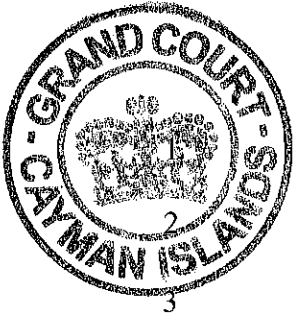
5 15. From the confusing application document, his argument for an adjournment
6 seems to be based on a number of conflicts that he says have arisen for persons
7 involved in or around the case and his claim that judicial officers were not
8 responding to his emails for information requests dating as far back in September
9 2014. He says that as *"this critical evidence has not been provided by the*
10 *judiciary officers, the court has undertaken an ad-hoc hearing to determine if a*
11 *recusal should occur."* The father contends that since the hearing on 22 April
12 2015 he has been requesting information on the administration of his case by
13 sending *"numerous emails"* to the *"Case Management Officer."* He says that he
14 was referred by that person to my personal assistant who in turn directed him to
15 the Court Administrator and that his requests for information have not been
16 answered. He also states that *"Further enormous amounts of other requests have*
17 *also not been answered and simply ignored."* He says he has *"sent several follow*
18 *up emails on each subject and mass emails pertaining to each past email. These*
19 *mostly go unanswered which demonstrate the willful refusal to provide relevant*
20 *information pertaining to my application. These are part and parcel to my*
21 *application(s), ensuring transparency and accountability. This appears to be a*
22 *cover-up by the officers to not facilitate simple requests which records of this case*



1 *applicable to all parties involved.*" Again, from the contents of his own
application, the father highlights how he inappropriately conducts his case by
inundating the Court Office with an enormous amount of unreasonable requests
which are wholly disproportionate with the issues in the case. For example, one of
his criticisms concerning disclosure it is that he feels entitled to obtain copies,
when there is not an appeal, of copies of the Judge's notes in the case. Although
he was fortunate enough to receive extracts from the Judge's notebook in the past,
this does not give him an entitlement to notes whenever he seeks them. This is a
clear illustration of his lack of understanding as to what disclosure he is entitled
to.

12 16. He criticises the Guardian Panel for not providing the information that he requests
and that he intends to make an application via the Guardian Complaints Panel. He
criticises the Court Administrator because his wife has been appointed as the
Guardian in this case. He contends that the appointment means that the Court
Administrator has breached several statutory laws and bills implemented to
regulate corruption, abuse of public funds, ensuring transparency and eliminating
direct and indirect collaboration.

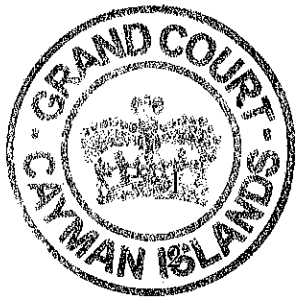
20 17. The father contends that there is a conflict because the mother's husband is
involved in the new court facility project, something in which the Court
Administrator is also involved. It appears that part of the disclosure he wrongly



feels he is entitled to, and pending receipt of which there should be an adjournment, is the correspondence between those two individuals.

4 18. In support of the application for an adjournment, the father indicates that he
5 wishes to bring matters to the attention of the Court where his rights were violated
6 by the Government. It is not clear in anyway how these are relevant to the
7 application for an adjournment although I note that the father alleges that I have
8 failed, as "*mandated*" to allow evidence to be filed in relation to breaches of
9 human rights, abuse of office, breach of trust, false certificates, corruption
10 pertaining to the administration of justice, providing benefit and advantage to the
11 Applicant mother. He indicates that due to this he will be filing matters with the
12 Anti-Corruption Committee. It appears the adjournment is sought to enable him to
13 file that with that Committee as well as to the Human Rights Committee before
14 my determination of the applications.

15
16 19. It also appears that an application for an adjournment was sought so that he can
17 have the Court, prior to determination, seek an auditor or appoint a financial
18 regulator to review the mother's finances to ensure transparency on how public
19 funds have been used in relation to legal aid. He infers that the mother receives
20 legal aid because her husband is collaborating with the "*Judicial Administration*
21 *pertaining to the new court facility.*" He contends that the mother has provided



false information concerning legal aid and seems to be suggesting that she should be handed a custodial sentence of three months in relation to the same.

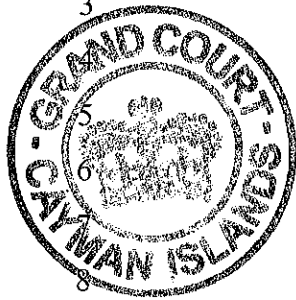
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4 20. The applications for recusal and concerning the Guardian's appointment have
5 caused significant delays, the former since January 2015. I still note that the
6 Guardian, conscious of delay, was content for the application in relation to her
7 appointment to proceed in April 2015 even though a formal written application
8 had not been filed by the father. It is these applications coupled with the earlier
9 complaint to the JLSC that has prevented the Court from moving on to deal with a
10 number of outstanding Summonses.

11

12 21. On the first day of the hearing of his applications on 22 April 2015 the father was
13 given ample opportunity to make all of his submissions and conclude his case.
14 This is precisely what he did and at no time did he indicate that he was not in a
15 position to make and conclude his submissions. In fact the real issue on 22 April
16 2015 was whether the other parties had sufficient time to consider the detailed
17 submissions and attachments being produced close to and on the day of the
18 hearing by the father. The primary reason of the adjournment at around 6:00 p.m.
19 on that day was to enable the Guardian's attorney to take proper instructions
20 about the very recent submissions. All parties should be very clear because I
21 stated at the outset of the afternoon on 22 April:

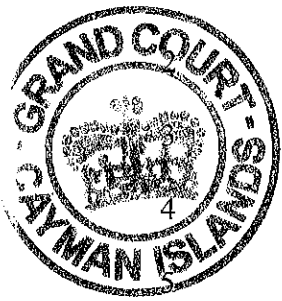
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1 *"... For the avoidance of doubt at this afternoon's hearing I will*
2 *hear from the father. Although no formal summons was filed by*
3 *him I will permit him to make and conclude his submissions in*
4 *relation to his application for the termination of the Guardian's*
5 *appointment. I will permit the mother to make her submissions in*
6 *relation to those two applications if she feels in a position to do so*
7 *this afternoon. Thereafter, I will adjourn to enable the Guardian*
8 *and her adviser to be properly prepared for the application,*
9 *recognising that case authorities say that any application for the*
10 *removal of a Guardian should ordinarily be on notice to the*
11 *Guardian and she should be given time to prepare."*

12
13 Therefore, it was clear that the father had presented his case on 22 April
14 concerning the two applications and the Court was not expecting to hear further
15 submission from him save in reply to the other parties' submissions and
16 concerning any intervening events or information.

17
18 22. The Court must actively case manage all cases that come before it. The Court has
19 a duty when exercising its discretion to give effect to the Overriding Objective set
20 out in the preamble to the Grand Court Rules. When considering the Overriding
21 Objective the Court must deal with every matter in a *"just, expeditious and*
22 *economical way."* The Court should ensure that the *"normal advancement of the*
23 *proceedings is facilitated rather than delayed."* The Court should also deal with
24 the matter in ways which are proportionate to the importance of the case and the
25 complexity of the issues. The Court should allot an appropriate share of its



resources when taking into account the needs of other court users and to ensure that valuable Court time is properly used and not abused by parties. In addition, in a case such as this, in which a number of the issues delayed by the current applications are ones brought under the Children Law, I recognise that the child's welfare is a paramount consideration and the general principle that any delay in determining the question is likely to prejudice the welfare of the child.

23. This is not a case in which an adjournment would have been appropriate and consistent with the Overriding Objective. The father who was content to present and conclude his submissions on April 2015 has not satisfied me that there are grounds for an adjournment. The granting of an adjournment would be counter to my obligation to ensure that these proceedings are concluded in an expeditious and economical manner, especially having regard to the best interests of the child. Accordingly, I did not grant an adjournment as sought by the father.

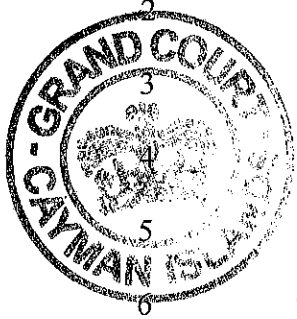
Background

24. This case has a long drawn out history characterised by a significant number of applications being made by the parties. I recognise, when reviewing the father's often inappropriate manner of litigating before and during hearings, that for a considerable period of time he has not had the benefit of legal representation, I believe four applications for legal aid have been declined by the Chief Justice and that the father proposes to make a further application. That said, these proceedings



1 need to be brought to a close and if orders made by a Judge, especially if intended
2 to be a long-term order, do not meet the approval of either party then the correct
3 approach is for the aggrieved party to appeal to the Court of Appeal and not to try
4 to tactically challenge them by bringing or threatening to bring recusal
5 applications. The manner in which this father has conducted the proceedings,
6 even giving maximum leeway for the fact that he is in person, falls way outside
7 what one would consider reasonable when having regard to the Overriding
8 Objective.
9

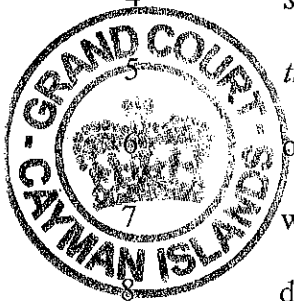
10 25. During the time when the mother had been given leave by the Court to reside out
11 of the jurisdiction with J there were a number of hearings primarily dealing with
12 issues of contact between J, and her father. Regrettably, on short notice the
13 mother filed an Expedited Summons on 30 April 2014. Listing accommodated
14 that Summons on 5 May 2014 as the Summons sought an order to extend the
15 leave to remove from the jurisdiction until 28 June 2014, as the mother required
16 that time to conclude her studies. She was returning to college in Tallahassee very
17 shortly after 5 May and therefore the application had to be considered by the
18 Court on short notice. The father was critical and remains critical of the expedited
19 listing. It does appear that the initial approach to the Court for the listing was not
20 done in the appropriate manner by the mother. The mother was legally
21 represented at the time and it should have been her attorney who consulted with
22 the appropriate officer in the Listing Office, and not the mother directly



1 contacting a member of staff, who was not a part of the Listing team, in an
2 attempt to facilitate an expedited hearing. At the hearing I extended the dates for
3 the temporary removal, but I also echoed some of the father's concerns about the
4 listing procedure adopted by the mother and a member of staff. In my Ex
5 Tempore Ruling handed down at the hearing on 5 May 2014 I acknowledged that
6 *"to his credit, the father and his attorney have both been able to file a detailed*
7 *affidavit and despite the shortness of time were willing for the court to consider*
8 *this matter today."*

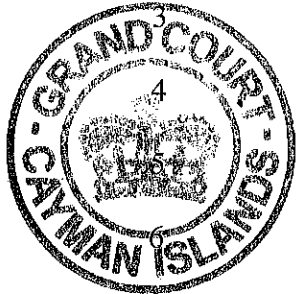
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10 26. Before I go on to deal with the relevant background, to put it into some context, I
11 remind myself of the following remarks I made in my Ex Tempore Ruling on the
12 5 May 2014 wherein I stated:

13 *"The Court delivered a detailed judgment in November 2012. I do*
14 *not intend to go into that judgment in any detail today, as to do so*
15 *would not be particularly helpful to this application. However, I*
16 *note that the judgment set out my clear concerns in relation to the*
17 *parents' inability to work together to achieve what is in the best*
18 *interests of J. At today's hearing the nature of several matters*
19 *which have been raised, and also the matter which they have been*
20 *raised, regrettably tend to illustrate that the parents have failed to*
21 *act upon the concerns or advice given to them in the judgment.*
22 *There appears to be a failure to move on at all in relation to the*
23 *co-parenting in a healthy manner. These issues may be more*
24 *relevant to the circumstances that will have to be put in place when*
25 *both the parties are living in the Cayman Islands."*



1 27. I also wish to refer to the helpful observations of Thorpe L.J. in *Re F (Shared*
2 *Residence Order)* [2003] EWCA Civ 592, [2003] 2 FLR 397 when he said "*One*
3 *of the functions of the judge is to make findings and that another function is to be*
4 *selective and to make findings that are relevant and necessary for the disposal of*
5 *the issue.*" Thorpe L.J. was saying that a judge was not required to make findings
6 on every area or issue that has been presented to the court for determination or
7 which had become apparent during the hearing. He concluded that the judge must
8 determine the factual issues that have implications for the decisions that he has to
9 take in relation to the child. This is equally applicable to the proceedings before
10 me, and how I should approach the voluminous submissions made particularly by
11 the father when I now go on to review the background.

12
13 28. The parties met in December 2007 and began their relationship in around April
14 2008. M was aged 20 and F was aged 28. J was born in December 2009. In
15 November 2012, after a nine day hearing, I granted leave to the mother to
16 temporarily remove J from the jurisdiction to enable her to study at college in
17 Tallahassee. At the same time I made orders concerning the father's contact with
18 J. A joint custody order was made and care control was granted to the mother. I
19 do not intend to go into the background that led up to that hearing, as it is fully set
20 out in my detailed Judgment handed down on 22 November 2012. Although I
21 remind myself of the same when giving this ruling, I need not repeat that detail
22 herein.

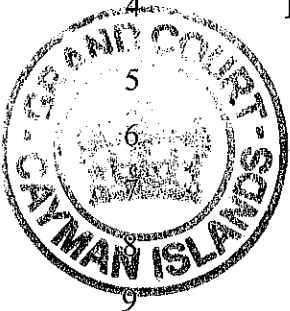


1 29. On 20 June 2014 the father filed a 96 page affidavit. That affidavit gave the reader
2 an indication as to the manner in which the father intended to pursue the litigation
thereafter and the reasons why he felt that to be appropriate. In that affidavit he
heavily criticised the mother. The father therein criticised the Court for giving
4 "special treatment" to the mother by fixing the expedited May 2014 hearing. The
father stated in the affidavit that the mother's fiance abused his position as a
senior civil servant to the father's and his business' detriment. The father therein
7 raised complaints about the impartiality of the Royal Cayman Islands Police
8 Service, alleging that they had fraudulently altered police reports. He criticised his
9 legal adviser who he felt had "poorly" represented him at the lengthy removal
10 hearing and who he contended had not acted impartially or without influence on
11 his behalf. The father stated that his attorney had acted "maliciously", had "misled
12 the court" and "denounced her oath to not ensure J's welfare was secure." At
13 paragraph 431 of the affidavit the father stated:
14

15 *"I am saddened to express this movement of friends facilitating*
16 *friends is apparently happening in the judiciary."*
17

18 He went on to say at paragraph 433 that:

19 *"I shall file a full complaint regarding my previous representation*
20 *to the said bodies as our Bill of Rights and the CBA to protest the*
21 *conduct of the courts officer. The case has simply turned into an*
22 *Operation Tempura that needs a judicial review and public*
23 *scrutiny. My democratic and constitutional right to a fair trial*
24 *must be guaranteed. My previous representation has acted*



1 *willfully to pervert the course of justice by withholding evidence*
2 *and witnesses allowing J to be tormented."*

3
4 He went on to say that the mother's conduct:

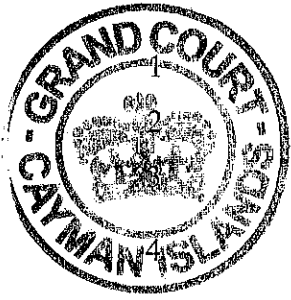
5 *"has caused the court's judgement to be entirely meritless and ill-*
6 *fated towards J's welfare. I am cautious of the information*
7 *provided and shall seek orders of protection for my family, myself*
8 *and J from the honourable court."*

9
10 He continued stating that:

11 *"This case precedent has been erroneous and shall cause much*
12 *tsunami's across the local judiciary given the cause and effect as*
13 *the rule of law has repeatedly violated J's Declaration of Rights*
14 *mandated by the Geneva Convention and the Cayman Islands*
15 *Children's Law. Sadly this officer has caused a Justice who is*
16 *willing and able to assist the people of Cayman Islands to violate*
17 *Article...." (then sets out a number of Articles) .*
18

19 30. Despite his criticisms the father goes on to say at paragraph 436 in his affidavit
20 that:

21 *"I have always had and will always remain to have the utmost*
22 *respect for Justice Williams. I requested after the judgement was*
23 *handed down that he continued hearing this case thus he would*
24 *view the travesty that has occurred. I feel he brings a change in*
25 *positive approach that is much needed in this country. Sadly many*
26 *of the unprofessional attorney's and tactics need to be eradicated*
27 *to ensure justice prevails and the system works. I do apologise for*



criticisms within this affidavit or my exhibits however J is my primary concern."

I should add that although the father has changed his view about whether I should remain in the case, when in Court he has always expressed his views courteously.

31. On 24 December 2014 the father wrote to the Secretary of the JLSC, the Premier of the Cayman Islands, the Leader of the Opposition of the Cayman Islands, the Office of the Governor, the Human Rights Commission, the Cayman Bar Association and other notable persons. In the rather rambling letter he alleged bias and reiterated his wish that *"the office of this justice and staff recuse from this matter."*

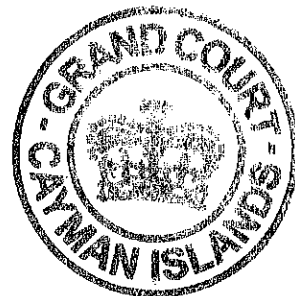
32. This was followed by his Complaint about me made to the JLSC on or around 12 January 2015. The Court has not been provided with the documentation and Schedule 1 Form which he submitted to the JLSC.

33. When making submissions during the hearing on 22 April 2015 he indicated that there should now be outside adjudication for his case. He said that any Judge hearing these matters *"should not be a judge who is the judge in the Cayman Islands, but one brought in from outside, as there is a conflict."* He expressed concern that there was a conflict with the Chief Justice as he had risen up through

1 the civil service before he was a Judge and because the mother's husband is well-
2 known in the community. He then went on to say that he did not know if the Chief
3 Justice knows the mother's husband. He added that I would be conflicted from
4 hearing any case involving a Guardian appointed by the Guardian ad Litem Panel
5 due to my appointment to the Panel pursuant to the Guardian's Ad Litem (Panel)
6 Regulations, 2012.

7
8 34. During the father's submissions he confirmed that over and above his criticism of
9 the Judge and the Guardian, he also criticises the police, the Judicial
10 Administration, his former and opposing attorneys and the previous jointly
11 instructed expert who he termed the "evaluator." He indicated that he was happy
12 with the treatment and service he received from the JLSC.

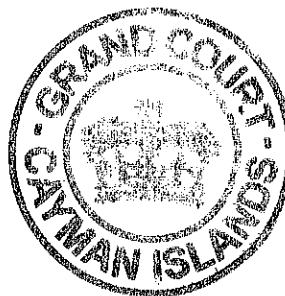
13
14 35. Following the mother's return to the jurisdiction, the matter came before me on 30
15 June 2014. I made a shared residence order by consent, that order remains in
16 force. I ordered that there be a two weekly cycle for contact over the Summer
17 holidays, with the mother having the first two weeks and then the father the
18 second two weeks. The matter was adjourned until 31 July to review contact after
19 the Summer holidays and after J's return to school, as well as consider
20 applications for financial provision under schedule 1.



1 36. At the outset of the hearing on 31 July 2014 the father stated that despite his
2 adverse comments about my handling of the case he was not making an
3 application for me to recuse myself. I went on to make an interim order pending
4 final hearing of the children arrangements. I ordered that during term time J
5 would have alternate weekends with the father Friday until Monday and that in
6 the week following a visit to the father would have contact Wednesday after
7 school until Friday mornings. I indicated to the parties that during the school
8 holidays they should be working towards equal sharing of time and sharing
9 important dates. I gave directions in relation to the final hearing. The perfected
10 order was approved by me on 27 August 2014

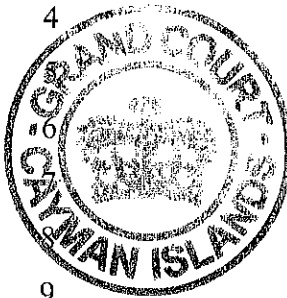
11

12 37. Prior to the hearing I was aware that the father had criticised the "*custody*
13 *evaluator*". He had made his criticisms at previous hearings, but reiterated some
14 of them in an email to the mother's attorney on 31 July. He said that the previous
15 custody evaluator had not acted impartially when ascertaining who should be the
16 primary caregiver. He said that she had undisclosed conflicts of interest ranging
17 from being friends with the mother's sister and they having worked together, that
18 she met with the sister as a witness who did not provide an affidavit for the report,
19 that the sister and the evaluator had a meeting prior to trial for other matters, that
20 the evaluator attended the school with the mother's husband, that the "*evaluator*"
21 and the husband served on a board together and that the evaluator was not



1 licensed to practice. He criticised the evaluator for the reporting process. He
2 concluded saying:

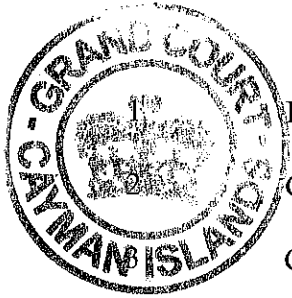
3 *"It is now on record our objection to the usage of this evaluator*
4 *however my previous representation refused to take my directions*
5 *in all these issues listed above. My previous representation was*
6 *even contacted and advised by the third party members of issues*
7 *arising with the evaluator but she refused to dismiss her. Clearly*
8 *this was no fault of my own. My previous representation also has*
9 *similar personal and professional conflicts of interest. Due process*
10 *was flawed and corrupted. I have prepared proposals to the court*
11 *on suitable qualified professionals."*
12



13 38. Having regard to this background I canvassed with the parties at the hearing on 31
14 July the possible appointment of a Guardian ad Litem. My notes from the hearing
15 state:

16 *"Discussion with the parties concerning whether it is one of those*
17 *cases in which the Guardian might be appropriate, rather than a*
18 *social worker. Court is concerned that the in-depth view that might*
19 *be needed to put long-term arrangements in place may be asking*
20 *too much for social worker and that a Guardian representing the*
21 *children's interest may be better placed. Both parties are in*
22 *agreement that if a Guardian were available then they would be*
23 *content for that appointment."*
24

25 39. Following the hearing I made enquiries with the Court Administrator and I was
26 informed that Mrs. M. McCormac, a Guardian ad Litem approved by Guardian
27 Panel and appropriately appointed pursuant to procedure set out in the Law and



Regulations, was available and was willing to accept an appointment as J's Guardian. As a consequence, she was formally appointed by my order as J's Guardian on 4 August 2014.

4

5 40. On 19 September 2014, the father filed a notice seeking my recusal. Also, rather
6 than appealing the Order of 31 July 2014 he sought an order to revoke that order
7 and reinstate the Order of 30 June 2014.

8

9 41. The matter next came before the Court on 13 November 2014. The father decided
10 not to pursue that recusal application. At the hearing I carefully explained to the
11 parties the role of the Guardian and how the parties may seek her assistance and
12 communicate with her. Directions were then given to the above-mentioned final
13 hearing date scheduled for January 2015.

14

15 42. On 2 April 2015 JB wrote to the Guardian's attorney by email in which he
16 criticised the Guardian saying that she "*demonstrates an inherent bias*" and has
17 "*no real interest or any contact with the child in this matter...*". He said that:

18 *"For the record I am still making contact with local and*
19 *international firms for legal representation as my right in the*
20 *Cayman Islands Human Rights and the ECHR, Article 6 outlines*
21 *provisions for the Legal Aid Fund. I desire this matter be resolved*
22 *while every party's right to natural justice is honoured. Perhaps*
23 *your client can offer assistance and insure my 5th legal aid*
24 *application is granted with her special connections. This*

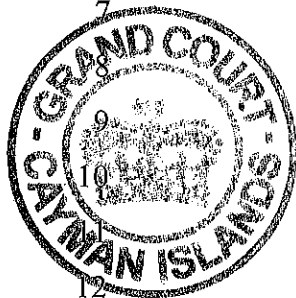
1 connection has been raised already and you have left this matter
2 and answered while proof of this is public information on the CIG
3 website.”
4

5 He went on to say:

6 “To cease this conversation your client has NO qualifications
7 pertinent to this matter, therefore her appointment is baseless and
8 a waste of courts time and public legal aid funds, the Plaintiff’s
9 party’s time, my time, the child’s time and all members who
10 participated. While I understand the ad hoc appointment of GAL’s
11 (Opening of the Judiciary 2014) it is evident the process of
12 analysis by your client, qualifications, experience, cultural and
13 historical knowledge are absent and all grounds for appeal,
14 perhaps the court was mislead on qualifications. This child is five
15 years old, not a teenager she is not an alcoholic or drug addict so
16 any experience on those matters outlined in the CV are not
17 relevant to this matter of a developing 5 year old Caymanian
18 child.

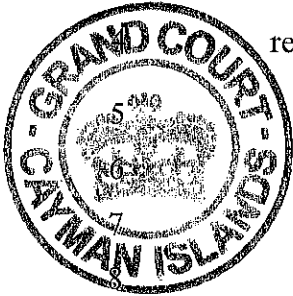
19 In the avoidance of wasting time and public funds and continuing
20 delaying the administration of justice perhaps your client would be
21 best to withdraw herself from this case as she is a Public Officer
22 (as outlined in her resume with her panel appointment) and is
23 evident your client has unique connections to the Judiciary which
24 shall cause the probability of bias.

25 I have an application fully prepared for the revocation of your
26 client’s appointment due to these numerous anomalies with
27 appointment which I will file in due time.”
28
29



1 **Law in Relation to Recusal Application**

2 43. An oft used starting place is the law as laid down by the House of Lords in *Magill*
3 *v Porter* [2001] UKHL 67, [2002] 2 AC 357. For present purposes it suffices to
refer to what Lord Hope of Craighead said (para [103]):

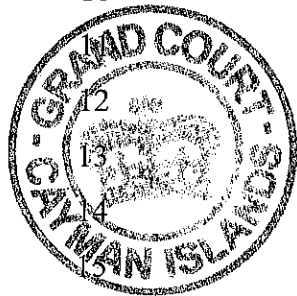


"The question is whether the fair-minded and informed observer, having considered the facts, would conclude that there was a real possibility that the tribunal was biased."

9 44. Burton J. in *Ansar v Lloyds TSB Bank plc* (2006) EWCA Civ 1462 made the
10 following statement which was approved by the Court of Appeal when he said at
11 paragraph 19:

12 *"The nature of the allegations may, on occasion, be decisive*
13 *although it does not follow that even if an allegation of wholly*
14 *outrageous conduct, such as the taking of a bribe, were made, that*
15 *would necessarily qualify as a ground for recusal, if it was*
16 *manifestly fanciful or unfounded."*

17
18 45. I have been guided by the helpful approach taken by Sumner J. in family case of
19 *TF v RF & DF & NMF* [2007] EWHC2543 (Fam). The Judge was faced with a
20 recusal application made by the father who contended that the judge had shown
21 bias towards the mother. Sumner J. made it clear that all such applications had to
22 be considered seriously even if they are, as here, in part wild and extravagant. At
23 paragraph 180 of his Judgment the Learned Judge set out the following principles:



1 *"i) Justice must be seen to be done but that does not mean that*
2 *judges should too readily accept suggestions of appearance of bias*
3 *thereby encouraging parties to believe that they might thereby*
4 *obtain someone more likely to favour their case.*

5 *ii) The fact that a judge had commented adversely on a party or*
6 *witness or found them to be unreliable would not found an*
7 *objection unless there were further grounds.*

8 *iii) A real danger of bias might well be thought to arise. –*

9 *a) if there was personal friendship or animosity between a*
10 *judge and any member of the public involved in the case,*

b) if the judge was too closely acquainted with such a person,

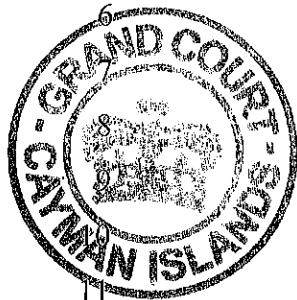
c) if the judge had rejected the evidence of such a person or
 expressed views in such extreme or unbalanced terms such as
 to throw doubts on their ability to approach the person or the
 issue with an open mind,

16 *d) or for those or other reasons cause doubt in the ability of the*
17 *judge to ignore extraneous matters or prejudices and bring an*
18 *objective judgment to bear.*

19 *iv) A judge should resist the temptation to recuse himself simply*
20 *because it would be more comfortable to do so as for instance*
21 *when the litigant appears to have lost confidence in the judge.*

22 *v) The test remains, having considered all the circumstances*
23 *bearing on the suggestion that the judge could be biased, whether*
24 *those circumstances would lead a fair minded and informed*
25 *observer adopting a balanced approach to conclude that there was*
26 *a real possibility that the tribunal was biased.*

27
28 46. Sumner J. insightfully went on to observe at paragraphs 181 and 182 that:



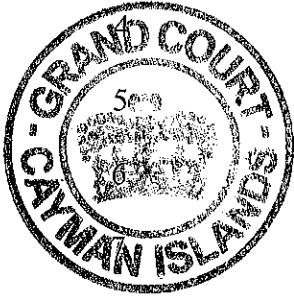
1 *"181. Such applications are not uncommon in the Family Division*
2 *from litigants in person. That is understandable given the highly*
3 *emotional aspect of many of the cases, the tense atmosphere, and*
4 *the antipathy that often exists between the parties. That is added to*
5 *by the merits of judicial continuity. It may lead to the same judge*
6 *giving a series of judgments between the same parties, often with*
7 *one of them being unsuccessful on a number or all occasions.*

8 182. Those factors which are not comprehensive may give rise to
9 an appearance that the judge is too involved, or that the prospect
10 of favouring the party who has not so far been successful becomes
11 improbable. There is an added factor. The sheer number of
12 decisions taken by a particular judge, or the length of time over
13 which they have presided in relation to particular parties may
14 make it prudent for a fresh approach to be preferred. This is
15 particularly so when it might assist the losing party more readily
16 to understand the situation and thereby increase the prospects of
17 some agreement between the parties."

18
19 47. When I consider the father's application, I have regard to all of these principles,
20 having already drawn them and the relevant cases to the attention of the parties at
21 the outset of the hearing.

22
23 **Submitted Grounds for Recusal**

24 48. The father informed me that I was biased and conflicted. He relied upon the
25 following matters, all of which I have extracted from his evidence and pointed out



1 to the parties to enable them to make submissions on today, particularly enabling
2 the father to point out if I have missed any of the grounds:

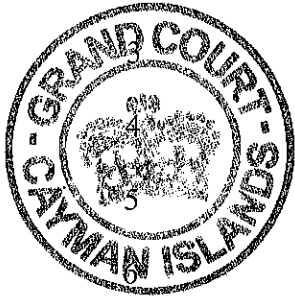
3 • His view that I have a personal knowledge and relationship to the
Guardian. This is simply inaccurate and I have sought to explain to him
on a number of occasions there is no relationship or interaction other than
in court, save for attending one official function which we both happened
to attend.

8 • His recollection that I asked his previous counsel on two occasions why
9 his oral testimony was not in the form of affidavit evidence. This is likely
10 correct as on a number of occasions the father has sought to rely upon
11 evidence which should have been first disclosed in an affidavit and not
12 produced for the first time during the hearing. I have given great leeway
13 throughout these proceedings concerning the admission of evidence by
14 him. My comments at that time were made when he had an attorney
15 representing him and he and his attorney should have known what was
16 required.

17 • His view that in a written judgment I had concluded that he made
18 unfounded allegations about the other party. He is correct, I did so on the
19 evidence placed before me.

20 • His recollection that I had questioned parts of a paragraph in his affidavit
21 in which he stated that his previous attorney had not duly represented him.

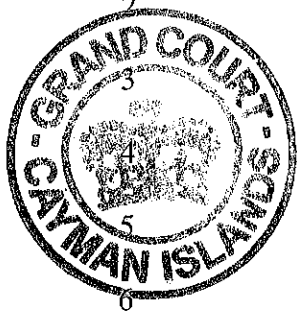
22 This again is correct as due to the very serious nature of the allegations



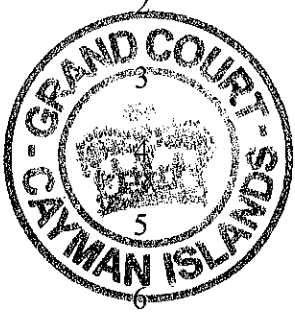
1 being made I enquired whether he had notified her of the same, as I felt
2 she should be made aware of them if he was seeking findings to be made. I
also informed him that there is a complaints procedure which should be
followed and that this would enable his attorney to make observations and
address the same. I have to say that I found Ms. Clemens to have
conducted his case in a highly competent manner in the courtroom and
that the only possible criticism is how forcefully she presented his case.

- 7
- 8 • His view that I had refused or expressed reluctance to overturn my
9 previous judgements thereby preventing his right to a fair trial. I did
10 refuse, however I have notified him on a number of occasions that if he is
11 not happy with the decision of the Court the appropriate approach is to
12 appeal it. He has chosen not to file any appeal at any stage of these
13 proceedings, but feels the appropriate way to litigate is by placing duress
14 on the Court and the Guardian by threatening to make and making the type
15 of applications before me today, by making complaints to the JLSC and by
16 widely circulating criticisms about the officers involved in the case to
17 members of the community.

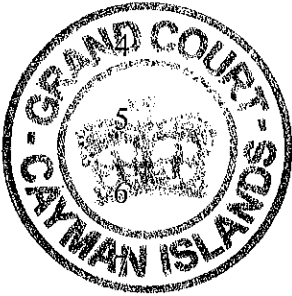
- 18 • My refusal to admit evidence. I have refused to admit evidence that is not
19 relevant or not produced in the proper form. However on most occasions I
20 have permitted him to admit evidence giving him greater leeway as he is a
21 litigant in person.



- My signing of a Court Order in November 2014. I did sign an order and I would have checked to see that that it reflected the order that I made in Court, having regard to what was recorded in my detailed written note rather than in the briefer minute which is produced by my personal assistant. If it is not a consent order I do not need the order to be signed or seen by all parties.
- The making of Court Order of August 2014 which he felt was limiting his time with J which he says was done purposely to remove him from being on an equal footing. If I did make this order it would have been done having regards to the welfare checklist and the paramountcy of the welfare of the child and not for the purpose the father states.
- My refusal to vary the Order concerning the contact schedule as desired in his Summons of September 2014. After hearing from the parties and reviewing any evidence I did refuse to vary the previous order that I had only recently made, there being no change of circumstances. Again the husband did not seek to appeal the earlier decision which he could have done if he felt it wrongly reached, as he also could have done in relation to my decision to refuse a variation.
- His belief I had had discriminating and preconceived notions about his and his family's finances and that comments had been made by me because of his family's skin colour and physical appearances. This is a fanciful suggestion made without a factual basis.



- 1 • His recollection that I indicated to him “with a smirk” when he said he had
2 no finances that he could do without cable television for a while. I have
3 no recollection about saying this, but I have frequently commented to
4 parties in child maintenance and ancillary cases that it is important to
5 prioritise one’s outgoings and that cable television is a luxury not a
6 priority.
- 7 • His view that I inappropriately felt that he could afford to travel to see the
8 child thereby indicating my “social disconnect and unfamiliar with local
9 citizens of a small island environment where most Caymanians are
10 presumed wealthy by the overseas media”. I did feel that he had sufficient
11 finances to attend for contact in the United States based on the detailed
12 evidence before me. A great deal of evidence was given and produced by
13 his attorney on this point including a review of a number of flight pricings,
14 the cost of renting, and hotels – again that decision was not appealed.
- 15 • His view that I have “an unyielding reason to ignore” his affidavits, his
16 attorneys that he may have had and his testimony and have failed to
17 review his evidence placed before the Court because of who the mother “is
18 connected with.” This is a fanciful statement.
- 19 • His view that I stated that the mother’s husband “did not need to be heard
20 because of his high position in the Government.” This was not made and
21 no other party who was in Court recalls it being made.

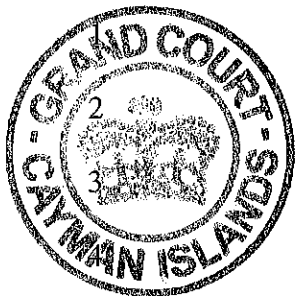


1 • His recollection that during a means hearing on the 31 July 2014 when he
2 said he indicated that he did not have an attorney that I said I did not care
3 about his application for legal representation “while shrugging.” That I
4 had thereby failed to act judicially in assisting him with his right to an
5 attorney. This is not what occurred, for on a number of occasions I have
6 tried to carefully explain to him what the process is for applying for legal
7 aid. I am satisfied he was aware of the procedure and has used it to make
8 at least four applications to the Chief Justice.

9 • His view that I have never assisted him to obtain legal representation. As
10 I have already stated, applications are made to and considered by the Chief
11 Justice.

12 • His view that I expressed an attitude that he did not need an attorney
13 whilst insisting that the Guardian retained an attorney by the Legal Aid
14 Fund causing him to be “discriminated is a Caymanian father.” I am of
15 the view that the child should always have an attorney when she has a
16 Guardian. This case bears that out, as the Guardian has had to defend
17 attacks to her professional integrity arising from a number of serious
18 allegations made by the father about the same and by having separate
19 representation, detached representations have been able to be made on her
20 behalf.

21 • I had discriminated against him by “shrugging my shoulders” and
22 insisting at a hearing on 30 November 2014 that the hearing would take



place in January 2015, despite him saying that without legal assistance and
due to his work he would not have sufficient time to prepare. It is fair to
say that I insisted on the hearing date remaining. Having regard to the
delay principal set out in the Children Law, I felt that the delay beyond
that date would be prejudicial to J.

- Hearing dates were given to the mother by Listing whenever she sought
them and were not given to him when he required them. This is a matter
for Listing but some urgent applications, after Listing has consulted with
me, are listed when applied for by the mother as the matter had to be
urgently determined.
- He was given short notice of hearing dates obtained by the mother. When
urgent hearings have been requested they may have been given short dates
by Listing if it was felt to be in the best interests of J.
- Experts appointed by the Court including the Guardian did not have the
requisite experience especially when compared to experts of Caymanian
origin, including his mother. This assertion is incorrect and inappropriate.
His contention is partly flawed because the father is unable to understand
the different role that the Guardian has and that a psychologist would have
if one had been appointed.
- The fact that the Court allowed the Guardian three months to review the
case prior to the hearing and that this was done as "the court has a vested
interest to ensure a decision that shall have significant impact on" his



case. If a delay of three months was given, it was to allow a proper assessment of preparation for a report. Three months is a standard time given for such an assessment and report unless there is some reasons for greater urgency.

- His view that any judge within the jurisdiction is conflicted and biased and that the proceeding should only be heard by a Judge who should be brought in to hear the case. This is fanciful and highlights the father's lack of understanding and insight.

10 **Conclusion on Recusal Application**

11 49. The father has made it clear that he feels that my approach to these proceedings
12 has been biased towards him. He criticises a number of persons within the Judicial
13 Administration and feels he would not get a fair hearing from any of the resident
14 Judges. His criticisms are so confusing, overlapping and voluminous that it would
15 not be feasible or appropriate for them all to be set out in this Judgment. He also
16 criticises a considerable number of persons who do not work within the Judicial
17 Administration and he deems it appropriate to widely disseminate his views in the
18 wider community. The father made it clear that he has "*lost confidence in any*
19 *CIG body due to many conflicts of interest.*" His rambling submissions in support
20 of his application are difficult to follow as they are often grounded on an
21 inaccurate recollection of what has occurred during the hearings. It is interesting
22 to note that the other parties do not agree with his recollection of comments which

1 he asserts have been made by this Court. In the past, he has threatened to take no
2 part in the proceedings unless his demands are met. For instance in his widely
3 circulated communication within the community on 24 December 2014 he said:

4 *"I am requiring the orders of November 2014 and July 2014 be*
5 *revoked given the levels of bias and tactics that have been*
6 *occurring since this matter has been before this court. I previously*
7 *filed for judicial recuse however I was advised this was incorrectly*
8 *submitted which caused me to withdraw my recuse. Attached.*
9 *There is no desire by the court to recuse from this case even with*
10 *all the new evidence before the court to overturn the judgement. I*
11 *hereby request that the office of this Justice and staff recuse from*
12 *this matter given these matters at hand including that I am not*
13 *being offered fairness or just treatment nor am I on equal footing. I*
14 *am a Caymanian, where are my rights. I have no intention on*
15 *attending court until I have legal representation as per my third*
16 *legal aid application to ensure this matter is resolved with a*
17 *competent, fair and practical justice."*
18



19 50. It is a great pity that so much time and effort has been misplaced by the father
20 vociferously attacking the very system that is endeavoring to assist J and this
21 family. I have made it clear in previous judgments that the position taken by the
22 parties, in particular the father, is damaging to J. What is troubling is that the
23 Court has on a number of occasions recognised that the father is a very important
24 figure in the J's life and a substantial level of contact has been granted with that in



mind. However, for both parents' relationship with J to remain a healthy one there must be an end to this consistent litigation.

4 51. Following the approach by Sumner J., I have endeavored to analyse what I have
5 said and how it might appear to a fair-minded and informed observer. I have
6 discounted the wild allegations made by the father against me personally and
7 concerning his perception that I have a relationship with the Guardian. I have
8 shared his concern about the manner in which a short-notice listing of an
9 application by the mother came about when she was seeking to extend her time at
10 University, but he also has to realise that certain applications must be heard
11 promptly if it is in the child's best interest for that to happen.

12
13 52. I am not persuaded that my approach or my manner has reached the level where I
14 should recuse myself. I also do not accept there to be any merit in the father's
15 contention that all Judges based in this jurisdiction should not be permitted to hear
16 anything related to these proceedings. I do not consider that there are sufficient
17 grounds for me to recuse myself. I have considered, like Sumner J., that if on the
18 other hand I thought that a different approach from another Judge would assist, I
19 would willingly transfer the case if a Judge was readily available in a jurisdiction
20 of this size. The fact that the father believes that no Judge based in Cayman
21 should hear the matter negates the benefit of such an act as he, along with any

1 expert hereafter involved, would likely face similar accusations and applications
2 that are continually made by the father.
3

4 53. I wish to make it clear that the fact that I have not acceded to the father's
5 application to recuse myself does not mean that if it is convenient, for example
6 due to my non-availability, that another Judge is precluded from hearing any
7 applications in this matter. I have simply found that there are no grounds for my
8 making an order to recuse myself.
9

10 **Application to Revoke/Terminate the Appointment of the Guardian**



11 54. The father asks for the Guardian to be removed. It is important to note that
12 criticism of the Guardian from the father is not unique to her, nor the grounds put
13 forward for her removal. In his affidavit he makes it clear that back in 2012 he felt
14 that the then jointly instructed expert was incompetent and impartial. He blames
15 his attorney for allowing that person to be appointed.
16

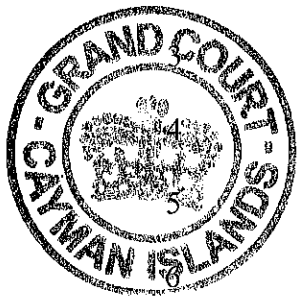
17 55. The expert he now wishes to be appointed he says should be:

18 *"a competent, qualified, knowledgeable, experience, and*
19 *jurisdiction and biased expert to undertake review of this matter*
20 *who is a fellow peer from a neutral jurisdiction that can*
21 *understand the matters at hand."*

1 When one reads his submissions it is clear that he is of the view that the Guardian
2 has none of the above attributes.

3
4 56. The father views the appointment of the Guardian as being deliberately
5 prejudicial, contending that she is conflicted as her husband is the Court
6 Administrator and the fact that the mother's husband is a senior civil servant.
7 Interestingly, when the appointment of a Guardian was canvassed with the parties
8 on 31 July 2014, they both agreed that if one was available they would be content
9 with that appointment. As already mentioned, my notes indicate that following the
10 hearing I made enquiries with the Court Administrator and I was informed that
11 the Guardian was available and willing to act and was able to comply with
12 directions that had already been given. The notice of the appointment was sent to
13 the parties on 4 August 2014. In the father's detailed affidavit sworn on 20
14 August 2014 he gave no concerns about the Guardian's appointment. The father's
15 concerns only arose when the Guardian refused to adopt the approach that the
16 father wished her to take.

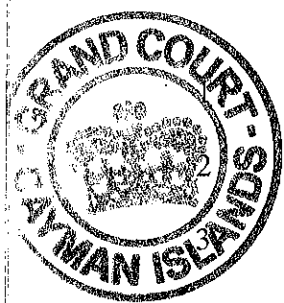
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18 57. Regrettably, the father is totally unable to comprehend, although it has been
19 brought to his attention, the procedure leading to an individual becoming a Panel
20 appointed Guardian. Any individual may apply to be accepted onto the roll of
21 Guardians. Each application is carefully considered by the Panel, the majority of
22 Panel members are Caymanian. The Panel then selects suitable individuals to be



1 included on the role of Guardians. This precise procedure was followed in this
2 Guardian's instance. There is absolutely no conflict due to the fact that the
Guardian is married to the Court Administrator, a fact which is well-known. The
fact that the Court Administrator has come into contact at a work level with the
mother's husband in relation to the new court facility is irrelevant and again does
not create a real or perceived conflict. The Guardian would be expected to
7 observe J's interaction with the mother's husband, as he is a key person in J's life,
8 and in fact the Guardian could be criticised if she had failed to do so.

9
10 58. I am the Chairman of the Panel, and the father contends that this is one of the
11 grounds for my recusal and the revoking of the Guardian's appointment due to a
12 conflict. The husband's submissions would mean that any Judge or Magistrate
13 who chairs the panel (Schedule 2 of the Regulations make it mandatory for a
14 Judge or Magistrate to be the Chairman) will never be able to hear a case
15 involving a Guardian.

16
17 59. The Panel reviews the experience of individuals who seek to serve the public as a
18 Guardian. The father contends that this particular Guardian does not have the
19 necessary experience. It appears that he has sought to search online to find out
20 background information about her, a medium he also uses to broadcast his views
21 about individuals involved in the case. The Guardian's experience and
22 qualifications which had been sent to the father on 19 January 2015, can be found



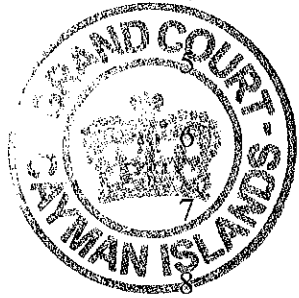
as exhibit A in the Guardian's Response dated 30 July 2015 and have been shown to me by Ms. Myles this afternoon. It is clear from them, that she has the necessary qualifications to act as a Guardian ad litem in the Cayman Islands.

4

5 60. This Guardian has appeared as a Guardian in a number of matters at both
6 Summary Court and Grand Court level. It appears that she has been appointed in
7 eight different cases as a Guardian in this jurisdiction. She has acted as Guardian
8 in some of the most complex cases that I am seized of and has always discharged
9 her duties professionally and dutifully. In this case, as in all the cases, she has
10 exhibited by her conduct her understanding that her role is to represent the
11 relevant child's interests, recognising that to be paramount. Being a Guardian of
12 some experience, she is able to forcefully, yet appropriately, represent the child's
13 interests and do so even if pressure is being put on her by any parent who may not
14 agree with her approach. This is precisely what has happened in this case, a
15 conscientious Guardian, has not allowed herself to be bullied by threats of
16 applications to revoke appointment made by a father who disagrees with her
17 approach and recommendations. Regrettably, it is a father who does not
18 understand the role of the Guardian and the child's attorney.

19

20 61. I am satisfied, despite the father's accusations that she has been dilatory in
21 conducting enquiries, that the Guardian has contacted or sought to interview such
22 persons as she thinks appropriate and considered what professional assistance is



1 required.¹ As properly set out in her written Response, she has met with J on
2 twelve occasions, with the father on five occasions, with the mother on three
3 occasions (including seeing her husband), with J's teacher on three occasions,
4 with the J's School Principal on one occasion. At the father's request she has also
met with three of his friends and J's paternal uncle and aunt. She also spoke to Dr.
Malcolm, a psychologist, who the father had wrongly led her to believe was
involved in the case. I agree with the Guardian that the father is unable to
appreciate the difference in her role and that of a child psychologist.

9

10 62. Any criticism of the investigatory techniques of the Guardian on the basis that she
11 did not video/audio record all of her meetings with J does not carry merit. In fact
12 any such recordings may have damaged the Guardian's attempts to form a bond
13 and properly assess the child. The criticism of the Guardian for failing to review
14 300 hours of videos taken by the father whilst J was in his care, and it appears
15 over the telephone when the child was in the care of the mother, again is without
16 foundation. He wrongly contends that Rule 3.11(9) requires the Guardian to
17 consider all evidence that any person gives to her just because that person feels it
18 appropriate. This is not correct, the Guardian has a discretion and as I mentioned
19 when I earlier referred to the case of *Re F*, children hearings are not to become
20 elongated hearings requiring review of every fact raised by the parties, but a
21 review of the evidence that is relevant and helpful to the decision about what is in

¹ Rule 3.11 Children Law (Grand Court) Rules 2013.



1 the best interests of the child. I am concerned that the father has amassed 300
2 hours of videos of J, and especially by his indication that many have been placed
3 on YouTube, which is a very public forum. I reminded him during this hearing of
4 my comments made in my Judgment at the removal application which came about
due to him frequently videoing J in states of distress, possibly thereby adding to
her distress, and the surreptitious manner of the making of such recordings, and if
I recall correctly at that time some in a doctor's surgery without the doctor's
consent. There is absolutely no merit in his criticism of the Guardian for her
9 refusal to provide him with any notes that she may have taken during the
10 investigation, as he is not entitled to those.

11
12 63. Mr. Fee highlighted that at different stages of these hearing the mother has not
13 necessarily agreed with all of the recommendation made by the Guardian. In fact,
14 leading up to the hearing when a shared residence order was made, she disagreed
15 with the recommendations for the level of contact that each parent should have
16 with J. Mr. Fee noted that the mother, after careful consideration, agreed with the
17 recommendation. He highlighted this not for that fact, but for the fact that the
18 Guardian had felt strong enough to be able to make recommendations which she
19 knew neither party would initially agree with. This approach, coupled with other
20 comments she has made and continues to make criticising both parents' inability
21 to work with each other, are indications of her neutrality.



1 64. Mr. Fee submitted that both of these applications illustrated an inappropriate
2 manner and approach to litigation by the husband. He refers to the husband as
3 being paranoid and delusional and that his allegations are fanciful. Although, in
the absence of expert evidence, it would be inappropriate for me to make any
finding about Mr. Fee's views about mental health issues, I am satisfied that the
allegations made in support of each application are fanciful and that the father's
manner of litigating is inappropriate. I accept Mr. Fee's view that the father is
8 unable to accept anyone else's view about what is in the best interests of J , and
9 that if anyone departs from his views the father feels the way forward is for them
10 to be removed from the proceedings.

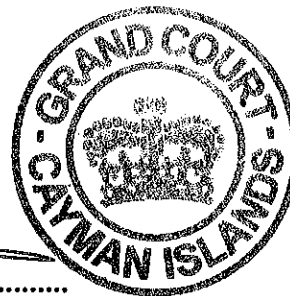
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12 65. The parties should carefully read paragraphs 40 to 44 of the Guardian's written
13 Response dated 30 July 2015. I endorse the Guardian's views that tensions exist
14 between the parents and that these are bad for J and adversely affect the ability of
15 each parent to enjoy their lives. Both parents should pay close regard to the
16 Guardian's statement when she says:

17 *"In closing I must say the contrary to what father thinks, this case,*
18 *in my view, is not a very complex one. This is a case in which J has*
19 *two good parents who love her very much. However, due to the*
20 *inability of the parents to work together in a unified manner to*
21 *parent J and the unwillingness of the father to move beyond the*
22 *past, particular, those events leading up to the Order of the Court*
23 *which allowed J to leave the jurisdiction with her Mother while the*
24 *Mother completed her studies, this matter has not been finalised."*

1 *I trust, therefore, that for J's sake, and with the completion of*
2 *hearing of the applications before the court, directions can be*
3 *made to take this matter to final conclusion."*
4

5 66. As a Ward J. stated in *Oxfordshire County Council v P* [1995] 1 FLR an
6 application for the termination of appointment of a Guardian is "*an unusual*
7 *application, not lightly to be granted.*" Although in that case he went on to make
8 the order, Ward J stated that he only did so "*in the exceptional circumstances*" of
9 that case. I am satisfied that the Guardian has carried out her duty to safeguard the
10 interests of J in the manner prescribed by Rules. I find the criticisms made by the
11 father to be without merit, and they are a further illustration of the manner in
12 which he litigates if a person involved in the case does not agree with the
13 approach that he feels is appropriate. Accordingly, his application for an order
14 terminating or revoking the appointment of the Guardian is refused and I consider
15 it to be without any proper foundation.



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21
22 **The Honourable Mr. Justice Richard Williams**
23 **JUDGE OF THE GRAND COURT**
24

25 The judgment in this matter is being distributed on a strict understanding that in any report no person other
26 than the attorneys (and any other person identified by name in the judgment itself) may be identified by
27 name or location and in particular the anonymity of the child and the adult members of their family must be
28 strictly preserved.