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

COURTS OFFICE LIBRARY
Cause No: FAM 0025/2012

BETWEEN:

K. T.

A. L.



PETITIONER

RESPONDENT

Appearances:

**Mr. David McGrath of Samson and
McGrath for the Petitioner**

**Ms. Laura Hatfield of Solomon Harris for
the Respondent**

Before:

The Hon. Mr. Justice Charles Quin

Heard:

30TH April 2013

Preamble

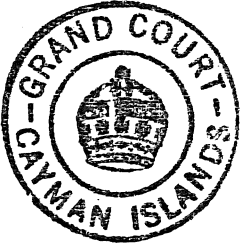
A decision in this matter was required three days after the hearing – on the 3rd May 2013. Accordingly, the Court’s decision was provided in an Order on that date. The reasons for the decision are now provided in this Judgment.

JUDGMENT

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1. This is the hearing of the Petitioner’s Summons issued on the 16th April 2013 for an Order that two of the three minor children of the marriage – LL, born on the 5th June 2005, now aged 7 years and 11 months, and RL, born on the 7th July 2007, now aged 5 years and 10 months, - be permitted to commence schooling at the Dwight School, in Manhattan, New York, U.S.A., (“Dwight”) in September 2013. In support of the Petitioner’s Summons she has filed two affidavits with exhibits, dated the 18th April 2013 and the 26th April 2013, respectively. The Respondent husband opposes the Petitioner’s Summons and has filed, in support of his position, an affidavit with exhibits, dated the 23rd April 2013.

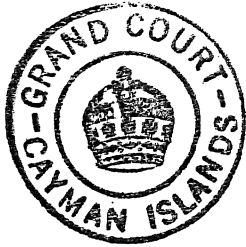
2. The sole point on which this Court must make a determination is in relation to the schooling of LL and RL and counsel for the parties have provided helpful case summaries and position statements.



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THE FACTS

- 3. Both LL and RL currently attend the Brooklyn Heights Montessori School (“BHMS”) however, BHMS has advised that it is unable to accommodate RL for the term commencing September 2013.
- 4. The Petitioner asks this Court for an Order that both LL and RL be enrolled at Dwight for the academic year commencing September 2013.
- 5. On the other hand, the Respondent husband wishes that, for the term commencing September 2013, LL to remain at BHMS and that the younger, R.L., attend the John M. Harrigan School (“PS29”), which is a public school in Brooklyn.
- 6. Having read the affidavits from the Petitioner and the Respondent, and, having heard submissions from both counsel, there is no doubt that both parties sincerely desire what is best for the children. However, it is unfortunate that the decision on this matter has to be made by the Court, and, urgently because Dwight requires a response to its offer of places in Dwight to both boys by the 3rd May 2013.



RELEVANT HISTORY

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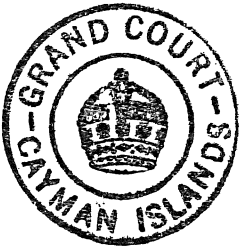
- 7. The Petitioner and the Respondent were married in Honolulu, Hawaii, on the 26th October 2004. They have lived in Hawaii, New Zealand and Cayman. There are three children of the marriage namely, LL, RL, and ML. ML was born on the 11th January 2011, and is now 2 years and 4 months old.

- 8. On the 31st January 2012 the parties signed a Separation Agreement which gave them joint custody of the three children of the marriage and included that they still continue to co-parent the three children. The Petitioner is to have primary care and control of the children. The Separation Agreement provided for the Respondent to be responsible for the cost of maintaining the children, such costs, including their educational, medical, dental, optical and general needs.

- 9. In February 2012, with the consent of the Respondent, the Petitioner relocated from the Cayman Islands to New York with the three children of the marriage and became resident in Lower Manhattan.

- 10. In March 2012, after considerable search for schooling in the New York area, LL and RL were offered places at BHMS, which, as stated above, is in Brooklyn.

- 11. In August 2012 the Petitioner and three children moved from Lower Manhattan to Brooklyn to be nearer to BHMS. However, BHMS has advised that it is unable to accommodate RL for the term commencing September 2013.



PETITIONER'S POSITION

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2 12. The Petitioner's case to move both LL and RL to Dwight goes further than the fact
3 that RL will not have a place at BHMS in September 2013.

4 13. The Petitioner submits that LL has not settled in at BHMS. LL does not find BHMS
5 sufficiently challenging and has few friends. RL, on the other hand, seems to enjoy
6 playing in preference to having a more steady focus on school work, which LL
7 displays, and therefore is not progressing as well as the Petitioner would like.

8 14. In January 2013 both LL and RL sat the Educational Records Bureau (ERB) exams
9 and scored 95% and 94% respectively. It is accepted by both parties that both LL
10 and RL are extremely bright.

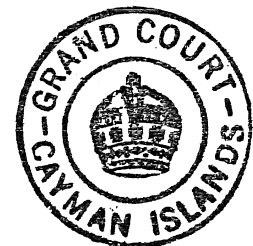
11 15. As a result of the dissatisfaction with BHMS in relation LL, the Petitioner sought
12 other private schools in the New York area and, in late February 2013, she received
13 offers of admission to Dwight for both LL and RL.

14 16. It is common ground between the parties that Dwight is a prestigious school –
15 offering an excellent academic and extracurricular curriculum. In fact, the
16 Respondent confirms this and states,

17 *"I am most grateful and proud that [LL] and [RL] were offered places at such a*
18 *renowned school..."*

19 17. The Petitioner submits that her reason to relocate back to Manhattan from Brooklyn
20 is focused almost entirely on the children's educational needs.

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1 18. In essence, the Petitioner has always been the primary caregiver for LL and RL.
2 With the Respondent’s consent and pursuant to the terms of the Separation
3 Agreement, she and the three children moved to New York in February 2013. The
4 Petitioner has been deeply involved in the education and upbringing of the children.

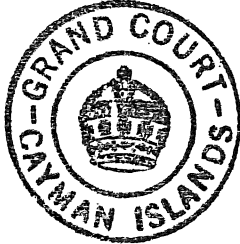
5 19. The children have spent only one full semester BHMS and, regrettably, there is no
6 place for RL to continue at BHMS for the 2013-2014 academic year.

7 20. In relation to LL, the move back to Manhattan for entry into Dwight would provide
8 him with a “more challenging and stimulating academic environment and a greater
9 opportunity for making friends.”

10 21. For RL, the Petitioner submits that moving him back to Manhattan for entry into
11 Dwight would provide him with a more traditional learning environment where he
12 does not have the option to choose playing instead of learning, and one where he
13 receives greater teacher attention.

14 22. The Petitioner also submits that, with the broader range of extracurricular activities
15 at Dwight, there is much less need to commute or travel to these significant
16 extracurricular activities.

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RESPONDENT'S POSITION

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2 23. Even though the Respondent recognises Dwight, as he states above, as a
3 “renowned” school, his position is that he would prefer the children to remain
4 resident in Brooklyn, with LL attending BHMS and RL, for whom BHMS has said
5 there is no place in the upcoming year, attending PS29.

6 24. The Respondent contends that “*continuity*” of residence and education in Brooklyn
7 preserves “*the current status quo*” and leads to greater stability and, in short order,
8 RL may well be able to re-join LL at BHMS.

9 25. The Respondent is concerned that any move back to Manhattan, to attend Dwight,
10 will lead to further emotional upheaval – beyond that already experienced by the
11 parents’ separation. The Respondent therefore maintains that LL and RL need
12 stability and a sense of security as a matter of priority.

13 26. The Respondent maintains that changing schools and homes, yet again, is not in the
14 best interests of the children at this time.

15 27. Furthermore the Respondent contends that there is a financial issue.

16 Dwight is more expensive – with an increase of US\$7,400.00 per child per year. If
17 LL and RL were to attend Dwight, it is inevitable that the infant, ML, would follow,
18 and this would be a significant financial drain on the matrimonial assets.

19 28. The Respondent submits that the schooling at both BHMS and PS29 is very good
20 and any comparisons would result in marginal differences.

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- 1 iii. I accept the submissions made by counsel for the Petitioner that Dwight
2 would probably offer LL the more rigorous academic challenge that
3 would redound to his benefit and that he craves, as well as offering him
4 a greater opportunity to make friends.
5 iv. RL is also an exceptionally gifted child and could readily benefit from
6 the high educational standards maintained at Dwight.

7 33. I take into account that the Petitioner is not only a nurse, but also a Montessori
8 school teacher.

9 34. In my view, it is highly desirable that both LL and RL attend the same school,
10 where circumstances present that opportunity.

11 35. The Petitioner is in the fortunate position to have sufficient funds to be a fulltime
12 parent and has clearly spent a great deal of time and effort in trying to identify the
13 best school for both LL and RL and for ML in the future.

14 36. I also take into account that educational costs at Dwight will be higher. However, it
15 would appear, from my reading of the exhibits, that there are sufficient matrimonial
16 assets to allow for all three children, LL, RL and ML, to attend Dwight.

17 In light of the evidence of the significant matrimonial assets which will allow for
18 LL, RL and ML to be afforded the best education, I would follow Lady Justice
19 Butler-Sloss in *RP (A Minor)* [1992] 1 FCR 145 and find that,

20 *“It is not necessary to go into any detail in this case about the exact figures and*
21 *whether or not a thousand here or a thousand there can or cannot be found to*
22 *meet the school fees. The general picture is adequate in my view.”*

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1 These comments could have been written for this case as, in my view there are
2 sufficient assets to cover the education of LL and RL at Dwight, as well as to cover
3 the future education of all three children of the marriage at that school.

4 37. In addition, I am persuaded that Dwight provides the better option because most, if
5 not all of the children's extracurricular activities take place either at Dwight or in
6 Manhattan.

7 Assuming the Petitioner finds suitable accommodation for the family, as she had
8 done when she initially relocated from Cayman to Manhattan, New York, attending
9 Dwight, which is also in Manhattan, would result in much less disruption as far as
10 daily commuting for school and extracurricular activities is concerned.

11 38. I accept that there may be some justification in the Respondent's concern about the
12 Petitioner's immigration status. However that concern will continue to exist
13 whether the children attend BHSM and PS29, or they both attend Dwight.

14 39. In light of the fact that the Petitioner is a primary caregiver for the three children,
15 and the Respondent is permanently resident in another jurisdiction so far away, I
16 find that she is better placed to assess their current educational needs.

17 40. Therefore, I am persuaded that both LL and RL should attend Dwight in Manhattan,
18 New York, commencing in September 2013. In my view, that is in their best
19 interests. LL and RL will undoubtedly benefit from the high quality education
20 offered at Dwight, and have an opportunity to make friends who are at a similar
21 educational standard.

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41. As Ward LJ observed in *R Z (A Minor)* [1995] 4 All E. R. 961 at 980:

“Arranging for education commensurate with the child’s intellectual needs and abilities is (an) incident of the parental responsibility which arises from the duty of the parent to secure the child’s education.”

42. In my view, the Petitioner has acted in the best interests of the children by enrolling them in Dwight. This will provide LL and RL now, and ML in the future, with the excellent opportunities for most, if not all, of their educational and extracurricular pursuits.

43. In closing, this Court notes with appreciation the candour from counsel for the Petitioner when he states, amongst his opening comments, that this matter *“is one of those regrettable situations where, for whatever reasons, parents are simply unable to make the sort of decision which ought to be uniquely within their parenting sphere and where a family court has to make an invidious decision in respect of children... .”* The Court also notes and appreciates the open acknowledgment from the Respondent himself who states, as I have already noted above, *“I am most grateful and proud that [LL] and [RL] were offered places at such a renowned school...”*



1 44. These comments, alongside the highly respectful, professional and accommodating
2 manner in which both experienced counsel conducted this matter, all combine to
3 give the Court every confidence that both parties will now work together to ensure
4 that matters relating to the minor children in this matter progress smoothly.

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7 **Dated this the 6th day of May 2013**

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11 **Honourable Mr. Justice Charles Quin**
12 **Judge of the Grand Court**

