IN THE GRAND COURT OF THE CAYMAN ISLANDS
FAMILY DIVISION

CAUSE NO. FAM 180 OF 2011

BETWEEN:

B

Petitioner

AND:

B

Respondent

Appearances:	Ms. Francesca Dowse of Samson & McGrath for the Petitioner Mr. Nicholas Cusworth QC instructed by Campbells for the Respondent
Before:	Hon. Justice Richard Williams
Heard:	10th, 11th, 12th, 13th December 2012
Written closing submissions received:	21st and 24th December 2012
Draft Judgment circulated:	25th March 2013
Date of Judgment:	10th April 2013

HEADNOTE

Family Law – Children - Application for leave to permanently remove children from jurisdiction - Mother wishing to relocate to Florida USA with children - Relevant considerations to be applied to a permanent removal application

JUDGMENT

1. This matter concerns C, a 5 year old boy born on 14th May 2007 and K, his 4 year old sister, who was born on 26th December 2008. Both children were born and have since birth resided in the Cayman Islands, a state of affairs summarised by Mr. Cusworth QC in his final written submissions when he stated:

> *"...their pre-school past and present has centered on Cayman, which is their familiar world."*

2. On 18th August 2011 Quin J ordered that the Cayman Islands be deemed to be the country of residence for the children for the purposes of the Hague Convention for the Prevention of the Abduction of Children. Interim care and control of the children was granted to the mother by Henderson J at the ex parte hearing held on 12th August 2011. That order, with access to the father, was reconfirmed at an inter-partes hearing before Quin J on 18th August 2011. The father contends that there is a *"shared care agreement"* between them, but this is disputed by the mother.

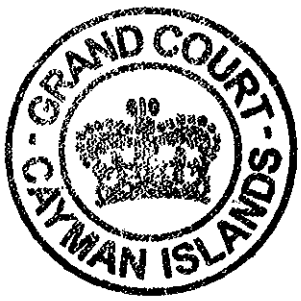
3. The parents, who were married on 22nd December 2008 in Grand Cayman, are separated and in the midst of protracted divorce proceedings. The mother, an American national, is aged 28 and the father, a Caymanian national, is aged 37. The mother currently has a Residency and Employment Right Certificate ("RERC"). The mother is Jewish and the father is of the Christian faith. I hope

that the parties will not be offended if from now on I refer to them for convenience as the mother and the father.

4. The application before the Court is the mother's application dated 28th September 2011 for leave to permanently remove both children from the Cayman Islands to relocate with her to Florida, United States of America. It is intended that she would initially live in the town of Wellington, Florida. At the hearing, the mother indicated that if leave were given she intended to relocate during Summer 2013, at some stage after the current school year had come to an end. The father opposes the application, contending that removal would not be in the best interests of the children. If leave to relocate is given it will require a discharge of the consent order made by Quin J on 18th August 2011 which prohibits removal of the children from the jurisdiction without written consent or order of the Court.

5. Mr. Cusworth QC rightly highlights that relocation cases are among the most difficult cases that family courts face, and drew our attention to Professor Patrick Parkinson of the University of Sydney's apt reference to them as being *"the San Andreas fault of family law."*

6. Mostyn J succinctly describes relocation cases at paragraph 4 in ***Re AR*** [2010] EWHC 1346 (FAM), when he stated:



> *"Applications for leave to relocate are always difficult for the court and distressing for the parties. They involve a binary decision - either the child stays or he goes. There is no scope for any middle way. If the decision is that the child goes, then the left-behind parent inevitably suffers a disruption to his relationship with the child, at the very least in quantum and periodicity of contact. If the decision is that the child stays then the primary carer, if not invariably, then frequently will suffer distress and disappointment in having what will normally be well-reasoned and bona fide plans for the future frustrated. So the decision, whichever way, is bound to cause considerable trauma."*

7. The hearing lasted four days with this judgment being reserved to a date after receipt of written closing submissions.

Background

8. The parties are embroiled in increasingly acrimonious divorce proceedings covering almost all areas of family law, whether financial or child related. As I stated in my ex tempore ruling given on 16th December 2011:

> *"Although it is undeniable that they both love their children dearly and feel that their actions and positions taken are done for what they believe to be (in) the children's best interest, a sad feature of this case is their inability to resolve a number of issues that keep arising between themselves concerning the immediate and long term future of their children."*

9. As a consequence, there has been a plethora of child and financial applications. The court time occupied in dealing with the various summonses and the legal costs incurred since August 2011 has been disproportionate to the potential matrimonial assets and the issues to be resolved.

10. Mr. Cusworth QC reminded me of my sentiments expressed in ***KP v JB*** (Fam 245 of 2010). Although the parties have given some oral evidence in previous hearings, there is value in repeating the same herein:

> *"7. This hearing is the first time during these proceedings that the parties have been able to give oral evidence and be tested in cross examination. As a consequence, both parties seemed intent on trawling through the whole history of their relationship from its inception to the current date. Such a detailed analysis of the history of their relationship is not as helpful to the Court when determining the applications as the parties appear to believe it to be. A great deal of irrelevant and unhelpful evidence has been placed before this Court. Since the parties have been given the opportunity to conduct such an exercise at this hearing, the Court would not now expect them to seek or feel the need to do the same at any future related hearing.*
>
> *8. I will now go on to deal with the relevant background. I have regard to the approach of* ***Thorpe LJ in Re F (Shared Residence Order)*** *[2003] EWCA Civ 592, [2003] 2 FLR 397, namely that one of the functions of the judge is to make findings and that another function is to be selective and to make findings that are relevant and necessary for the disposal of the issue. When considering what orders would be in the best interest of J at this*

time, I am not required to make findings on every area or issue that has been presented to me for determination or which have become apparent during the hearing. I must determine the factual issues that have implications for the decisions that I have to take in relation to J."

11. Although the paternal grandparents are divorced, having had the opportunity to hear from them in court, it is clear that the father comes from a very supportive family. The father's parents are affluent and this enabled him to gain a good education, obtaining a bachelors degree in International Business from the University of Florida in 2000. He has been a restaurateur, a building developer and a businessman, but his various projects appear to have encountered difficulties. The father states that he has been employed as an assistant project manager with CDA Construction since February 2012. He has been indicating for quite some time that he hopes, in the foreseeable future, to obtain better paid employment within the Dart group of companies.

12. It appears that the mother did not have an ideal relationship during her late teen years with her mother, seemingly wishing to assert her independence by spending time out of the home for periods of time. The mother finally left home aged eighteen. A number of the issues between them have since been resolved. The maternal grandmother, who I heard from in court, is supportive of her daughter's proposed relocation with the grandchildren to Florida. It is evident that their

relationship has improved since the birth of C and following the mother's move to the Cayman Islands. The quality of the mother's long term relationship with her family in Florida remains an uncertainty, as it has been untested since her late teens. I have regard to this when I consider the indisputable bond and interaction of the father and children with the paternal grandparents, despite the latter's divorce. I noted the respectful manner in which the paternal grandparents spoke about each other, and the clear recognition that, although they had both moved on with their personal lives, the family remains an important unit which needs both of their united support. I did not gain the impression that the mother's family was as close or had been as emotionally supportive to her, as the father's family had been to him. I acknowledge that the geographical distance between them is a contributing factor to this state of affairs.

13. The parents met in Florida in late 2005 when the mother was aged twenty-two and employed as a waitress in a cocktail bar, being so employed since the age of nineteen. The mother stated that when they met she was ready to go back to college, although in reality she said that she never actually "*started college after High School but I was not sure what I wanted to pursue my degree in.*" She said that by the time she met the father she had decided that she wanted to get a degree in business. The mother stated the advent of motherhood with C placed a temporary halt to her plans of advancing her education.

14. The parties moved to live in Cayman in around September 2006, a time when the mother was pregnant with C. The mother contends that in agreeing to relocate she had relied upon a promise from the father that, when they had earned enough money, they would move back to Florida to live. However, as Mr. Cusworth QC forcefully points out:

> *"... Even if there is now some issue as to what their longer term plans may have been, or what the reasons were for settling in Cayman in the first place, the fact remains that they (the parents) have by their earlier decisions brought C and K up this far to be Caymanian children."*

15. After moving to reside in Cayman there were a number of family trips taken each year to Florida, sometimes with and sometimes without the father. The parents married in Cayman on 22nd December 2008, only four days before K's birth.

16. The mother stated that she "*tried to fill the void*" in her life in Cayman by attending the Cayman Law School. She said she failed to complete the course, which "*did not work out,*" due to ill-health. She stated that she supported the husband's work at the restaurant/bar. The mother contends that she was the children's primary carer, but whenever she could work around her care of the children, she would assist the father with the various property development projects. The mother said that she started a tanning company in Cayman, to try and settle in and integrate into life in Cayman. The mother states that she is

currently working two jobs. She states that despite working *"every available hour"* she cannot "*make ends meet with the high cost of living*" and that this has been exasperated by the fact that the father has been in continuous breach of the interim child maintenance order.

17. The mother stated that she soon became unhappy with life in Cayman. She said the pressures of work on the father caused him to turn to drink, to stay out late, to work long hours, to be controlling and that they argued. She said that she spent her time primarily looking after the children. She explained that she "*felt trapped, and isolated from her family.*"

18. In April 2011 the family, including the nanny, went to Florida to attend the mother's aunt's wedding. The father returned to Cayman leaving the mother and children to extend their stay. Against the father's wishes, the mother initially refused to return to Cayman. In her affidavit the mother stated that the husband was controlling and she did not want to come back to Cayman "*in a miserable relationship with no family.*"

19. The mother, against the father's wishes, started to make enquiries into employment for herself and schooling for the children in Florida. It was only after the father flew back to Florida that he was able to persuade the mother to let C come back to Cayman with him and to attend school. K remained with the

mother, the nanny having already returned to Cayman pursuant to the father's instructions. After the wedding the mother eventually reluctantly returned to Cayman because she said she was missing C. Even if the mother's reasons for remaining in Florida with the children were as stated, the Court cannot accept that it was the appropriate thing for her to have unilaterally decided to remain there with them. It was clear at the time that the father wished the children to return to their home in the Cayman Islands. The correct approach for the mother would have been to make the very application which is now before me. Any relocation, if there is to be one, should be a structured one.

20. In July 2011 the father went to visit family in France for three weeks. During his absence the mother concluded that she "*was happier*" without him. She felt that she was better able to care for the children when he was away, as she felt less stressed. However, despite this, she stated that she decided to make one last attempt to make their relationship work.

21. The mother indicated that, immediately upon the father's return from France, she realised that things could not improve. She felt that she could not endure what she felt to be mental, emotional or physical abuse in the marriage. As a consequence, she filed her petition for divorce on 11th August 2011. The father, although not accepting all of the allegations set out in the petition, decided not to contest the petition which was proved on 28th September 2011.

22. On 12th August 2011 the mother applied for and obtained an ex parte order before Henderson J for care and control as well as protective injunctions, including an ouster order in relation to the former matrimonial home under the Protection from Domestic Violence Law 2010. On 18th August 2011 the return date came before Quin J and a consent order was reached in which the duration of the injunctions was extended, a costs allowance order was made in the sum of $10,000, interim financial orders were made and increased and defined access ordered. In addition, an order was made prohibiting either party from removing the children from the jurisdiction without written consent of the other party or order of the court.

23. On 21st September 2011 the mother applied for an order permitting her to temporarily remove the children from the jurisdiction to enable her to celebrate Thanksgiving in the United States during the last week in November. On 22nd September 2011, when the matter came before me, further financial orders were made. Access was further defined enabling the children to stay with the father from after school on Tuesday evening until Wednesday morning. The parties could not reach agreement in relation to the application to temporarily remove from the jurisdiction and the application was adjourned. It was at this hearing that the mother indicated that she would be issuing an application seeking leave to remove the children permanently from the jurisdiction to relocate to Florida. As a consequence, the court ordered that a Court Welfare Officer investigate and report. The application for permanent removal was scheduled for hearing on 1st

and 2nd December 2011. It is that regrettably delayed application that I am now considering.

24. The case then took an unusual turn, as on 18th October 2011 a social worker removed the children from the mother's care and placed them in the care of the father. The children had been at the father's house enjoying defined access, and upon the instructions of the social worker he failed to return the children to the care of the mother. The state of affairs came about due to the father and the maternal grandmother's report to the Department of Children and Family Services about the mother's feeding routine and sleeping arrangements for the children. They raised particular concerns about K who the mother placed in a zipped up child sleep tent. The social worker had applied for and obtained warrants from a justice of the peace.

25. After receiving lengthy evidence from the parties, as well as the social worker, I gave a detailed ex tempore ruling on 1st November 2011. A copy of the transcript of ruling was given to both parties and therefore I need not reiterate in any detail the contents. Although expressing some concern about the use of the sleeping tent, I did not find that the children were likely to suffer significant harm, or in fact any harm whilst under the care of the mother. I found that the mother and the father would be able to offer suitable care. In the ruling I stated:

> *"She has, in my view, despite the father's evidence, been the person with- if one does not want to use the word "primary" carer - the one with greater day to day care of the children."*

26. In the ruling I commented that:

> *"The mother, with the father, with the paternal family hopefully supporting her in that role, is able to continue looking after these two young children well. It is clear from the evidence of the access visit before the Court, and the surrounding evidence, that the children are close to her and very comfortable with her. Although, I do reiterate, on the evidence before (me) I accept that the children have a positive and good relationship with their father."*

Having considered the status quo that had existed before the children's removal from the mother's care, having found that she had been their main carer, I ordered that the children should be returned to the mother's care.

27. I then went on to say:

> *"I reiterate I do not in any way criticise the father and his family's care of the children over the last couple of weeks. In fact, and very much to his credit, I note his willingness to actively promote and facilitate access for the children with the mother."*

I commented that the recent events had meant that the children had spent a considerable amount of time at the father's home. I formed the view from the evidence, despite the mother's concerns, that the children were also comfortable

at the father's home and that he had coped well with their care. I noted that the hearing had afforded me the opportunity, unlike the hearing when I had made interim access orders, to get a better feel for the type of access the children should be having with the father. I stressed that, unless there was good reason including not overly disrupting their routine and their health, the children should have as much access as possible to the father. I also commented that a permanent relocation from the jurisdiction application does not mean that access should be restricted at a certain level pending any possible removal. In fact, I commented that in such circumstances there should ordinarily be an increase in access to cement the relationship with the non-custodial parent.

28. The mother's application to temporarily remove the children from the jurisdiction came before the Court on 16th December 2011. Due to the passage of time the application was now based on a wish to celebrate Hanukkah with her family rather than Thanksgiving. The father objected to leave being given primarily because he felt that the mother would abduct the children by not returning to the Cayman Islands after the visit. The father felt that, although the United States was a Hague Convention signatory and despite Quin J's order that the children's habitual residence was in the Cayman Islands, there would be problems using the American legal system to have the children returned. His stance was to a degree understandably influenced by the circumstances surrounding the mother's extended, against his wishes and their apparent agreement, stay in Florida

between March and May 2011 coupled with her clearly stated wish to live in Florida with the children[1] and admitted research into available housing and schooling there.

29. Upon considering the evidence I found that the mother genuinely wished to take a vacation with the children, that she had put in place satisfactory arrangements for the children during the visit and to enable them to have indirect contact with the father. I recognised that the children were habitually resident in the Cayman Islands and that the United States was a primary signatory to and supporter of the Hague Convention. I concluded that the mother would return and that it was in the children's best interests for them to take this short break out of the jurisdiction with the mother. The mother left the jurisdiction with the children, visited family members in Florida, and duly returned on the appropriate date.

30. At the end of my ex tempore ruling I deliberately made the following statement:

> *"I have been extremely careful not to stray into areas of primary evidence relevant to the permanent removal application. That will be a hearing where a number of different considerations must be made, importantly with the addition of a report....."*

31. I went on to caution:

[1] Application for leave to permanently remove the children to Florida filed on 28 September 2011, five days after fling the application for temporary removal.

"Anyone in Court today would be most unwise to view today's order with my ruling today as an indication as to how this Court might rule in the different permanent removal application."

32. The father's current position is that in the future, if the children and the mother were to remain in the jurisdiction, he would not oppose her travelling to Florida with the children to visit family members and take vacations. This would be on the basis that he was informed of their whereabouts, as well as being afforded the opportunity to have indirect contact with the children. I am satisfied, having carefully observed the father when he gave his evidence, that he is genuine when he expresses this consent. I am satisfied that, finances permitting, the father recognises the need of the mother and children to travel to Florida and develop the important links with maternal family members, especially if they were unable to travel to Cayman. I note that during the hearing the father offered to fund an immediate trip for the mother and children to Florida. The offer was made, he stated, following him hearing the mother's evidence and recognising the strain caused by these proceedings on the mother. I am satisfied that this is also a genuine offer.

33. At the temporary removal hearing the father expressed concerns that the children would come into contact with a former boyfriend of the mother whilst in Florida. The father also stated, a statement which I did not accept, that the timing of the former boyfriend's visit led him to believe that he had come to assist her to

permanently leave the jurisdiction with the children. The former boyfriend had been visiting Cayman Islands with, the mother states, the intention of offering her support. It became evident that the former boyfriend had been scheduled to fly back to Miami on the same flight as the mother and the children. The father had conducted some background checks on the boyfriend and it did appear that he had a history of drug use and had criminal convictions. To a degree, the father's concerns about the character of the former boyfriend are understandable. Although, when considering the father's position, I found that his arrival in the Islands was rather insensitive, I did not find that he arrived here in a surreptitious manner. However, having regard to the apparent character and disclosed previous history of the gentleman I made it a condition of the leave to remove order that the children did not, at that time, come into contact with him during their time in Florida.

34. At the same hearing I made a protection order. The order was made following my finding that the father, upon hearing that the mother's former boyfriend was in the jurisdiction, went out of his way to try and locate them when they were socialising in Camana Bay. The father blocked the mother's car in the car park and took photographs through the car window. I found, even on the father's evidence, that his actions amounted to domestic violence as defined in the Law. In addition, this was compounded by the fact that the father accepted that he had

attended at the mother's residence at 7:30pm that night. I was satisfied that he was uninvited and that there was no good reason for him attending there.

35. There were earlier allegations made by the mother of previous inappropriate behaviour by the husband. The father denied these and made similar allegations concerning the mother's conduct. In my ex tempore ruling following the December 2011 hearing I stated:

> *"I must have regard as to whether there was a previous protection order made. On 2nd August, Quin J granted ex-parte protection and occupation orders. At the inter partes hearing on 18th August 2011, (the father) did not oppose the protection order remaining in place. However, that evidence was not tested and it does not appear that (the father) intended at a later date to seek to vary the order and challenge the factual basis upon which it had been originally granted. On 23rd September, (the father), in place of the protection order gave a solemn undertaking to this Court not to use or threaten to use violence against (the mother) or her property and not to enter or attempt to enter the property without prior invitation. On 26th September, (the mother) gave cross undertakings to this Court in the same terms save that they related to (the father)."*

36. I went on to say:

> *"Although (the mother) alludes to the alleged violence that led to the protection orders at paragraph 20 of her affidavit sworn on 2nd December, she clearly bases this application on the alleged events*

on the night of 30th November. On the way the case has been presented, it would be improper for me to embark on a unilateral exercise of making any findings concerning those early alleged incidents."

37. Neither party during the current hearing have given any significant oral evidence concerning these earlier alleged incidents. Counsel have not sought to make any substantive submissions concerning the same. For the purpose of this hearing, I adopt the same approach to these allegations that I took at the December 2011 hearing. I make no findings upon the same, but do note that they are illustrative of the deterioration in the relationship between the mother and the father.

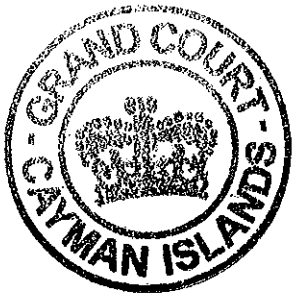
38. Before I move away from the 16th December 2011 ex tempore ruling, because I am now dealing with a substantial written ruling in relation to the permanent removal of the children and because I feel they are still applicable, I see merit in repeating for the record some of the comments that I made therein. I stated:

> *"Although it is undeniable that they both love their children dearly and feel that their actions and positions taken are done for what they feel to be in the children's best interests a sad feature of this case is their inability to resolve, between themselves, a number of issues that keep arising concerning the immediate and long term future of their children. As a consequence, the Court has over the last few months been called upon to an unusual degree to assist them with arrangements for their children....The required involvement of the Court hitherto has been to a level that one*

would not ordinarily expect having regard to the fact that the parties appear to be two intelligent adults."

39. I further commented:

> *"I remind myself of what I said in my ex tempore ruling on 1st November when I addressed (the mother and the father) directly and said:*
>
> > *".... The root cause in this action lies in the relationship between the two of you, and I understand why this is at this time. You will understand that I have made no findings in relation to conduct allegations set out in the earlier affidavit, and it is not appropriate for me to have done so. But whether they are right or wrong, they may go partly to the problems that you are having with each other. But as I said to you earlier, for the long-term plans, whatever they may be, with great respect to both of you, you are going to need to address them.""*



40. I went on to say:

> *"I am sorry to say this, but the parents have got to realise that the deterioration in their relationship is affecting the stability of the children's relationship with both of them and they are going to have to find a way to stop it.... They have different views and they can't seem to accept the other's views."*

Access, the Paternal Grandparents and the Shared Care Issue

41. The mother contends that she is, and throughout the marriage has been, the primary carer for the children. This is not intended to be a criticism of the father, who she accepts spent a great deal of time at work. She stated that the father took many solo trips, including weddings and vacations, leaving her to care for the children. I do not make any finding about that latter statement, as it was not explored during the parties' oral testimony.

42. Following the parties' separation the mother and the children have resided in the former matrimonial home. The mother has had an interim care and control order in her favour since 11th August 2011. The father resides a short distance away from the former matrimonial home. The mother contends that she is the one who is responsible for the children's basic routines, making the day-to-day decisions concerning their care. The maternal grandmother told the court that she was *"very impressed how she has raised them.....very impressed when compared (with) other kids I work with (of) that same age."*

43. The mother states that the children are dropped back from access by the father late, hungry, barefoot, dirty, unbuckled in the car. She says that access handovers can be contentious with the husband speaking to her inappropriately and in a domineering fashion. On the evidence before me, I am satisfied that they may be brought back with bare feet, which really is not a matter of concern in this type of

environment. The father accepts that on occasion he does return late, although not seeking to minimise the importance of strict adherence to contact orders and the stress it may cause to the mother, this would not be a primary reason for giving leave to relocate. However, if the parents are unable to co-operate with arrangements concerning the children and/or have heated exchanges in their presence, these are among a number of factors that I take into account when considering whether it is in the children's best interests to relocate. I am unable to find on the evidence before me, including from the Court Welfare Officer, that the children are not well cared for when with the father.

44. From the mother's evidence, it is clear that she feels that she puts in place a more structured routine for the children than the father. She is concerned that the father undermines what she is trying to do in relation to putting a structure into the children's lives, as he is less rigid when it comes to routine. This is something that had been raised at the earlier hearings. At that time I tried to explain to the parties that parents commonly do have varying approaches to parenting. I indicated that they should accept that the other parent is responsible for the children's care when with them, but at the same time endeavour through communication to accommodate the other parent's reasonable parenting style to promote consistency in parenting.

45. The mother describes the father's access to the children as being –

"A few hours after school on Tuesdays and 2 nights per week on Tuesday and Friday nights."

Mr. Cusworth QC submits that the parties –

"Have put in place an effective shared care agreement."

Mr. Cusworth QC states that:

"In effect..., they stay with the father 3 afternoons/evenings per week with 2 overnight stays, and one full day on each weekend."

46. The current access, which was defined by a court order on 1st November 2011, means that the father has access after school on Tuesday until 6pm and after school on Thursday until Saturday 6pm. This means that not only does he have the nights mentioned by the mother, but also most of the day on Saturday. On reviewing the evidence, despite practical issues such as the children being returned late after access by the father on a number of occasions, I find that the father is committed to access and to his children. I also find that the children's time, despite the parents' problems with each other, is extremely positive with the father and his wider family. Ms. Lucille Bodden, the Court Welfare Officer, stated in her report that the mother -

"Realizes that he (the father) loves the children dearly and never wants to break that bond."

47. A significant part of the access visits with the father take place at either of the paternal grandparents' homes. This means that the father has their assistance with the care of the children. From their evidence, it is clear that they are "hands-on" grandparents.

48. The role of the grandparents becomes evident upon consideration of their evidence concerning the time that the children spend with them during the father's access. The paternal grandmother stated that she sees the children three to four times per week. She told the court under cross-examination that they stay at her house -

> *"Definitely every Thursday.... Once a week, Thursday, is the general sleep over."*

She continued, stating that they stay -

> *"Just about every Friday if C wants to. Generally they sleep over on Thursday. K always wants to sleep over."*

She stated that:

> *"They spend quite a bit of time with grandfather considering we have them 2 ½ days a week, I know (grandfather) loves them sleeping over. I think Friday (father) at the (grandfather's). So we try not to take advantage of the situation. See them in the week as well if possible. Tuesday night is pizza night at Brickhouse with (father) and the grandfather."*

The grandmother has been involved in some of the extracurricular activities such as swimming and tennis. The paternal grandfather stated that:

> *"The children sleep more or less once a week at our house. That could be any night between Thursday and Saturday."*

49. On one hand the paternal grandparents' involvement means that the father is taking on less responsibility for the care of the children when they are with him, when compared to the mother when they are with her. On the other hand, it shows what an important role the paternal grandparents play in the lives of the children. This role would obviously diminish if an order to leave the jurisdiction were granted.

50. I have gained the impression that the paternal grandparents, in particular the paternal grandmother, have in the past been supportive of the mother. I note that Ms. Dowse has submitted that the paternal grandfather came across as a person with no warmth towards the mother. I do not share her view that his evidence gives the Court little confidence or hope for the mother's future relationship with the father's family. It was clear that the paternal grandfather felt particularly awkward with the current situation. I had the impression that he was supportive of his son, but did not want to get involved. When asked by Mr. Cusworth QC he said that he could see the mother being a part of the family, but it would depend on whether she and his son were amicable and on him taking his cue from his son.

51. The paternal grandmother's evidence about an awkward situation at Luca restaurant on the mother's birthday (when she left upon seeing the mother there without giving any felicitations), about her removal of a toy from the mother's property without permission, about her unilaterally changing the dates of swimming lessons to enable the father to attend, about her cancellation of health insurance for the nanny and about her expressed wish to pay any future school fees directly to the school, do reflect a degree of unfortunate, yet natural, tension between her and the mother at this time. With hindsight, these were not sensitive acts taken by the paternal grandmother. She may well have thought that the toy police car had been discarded and needed cleaning up, but that does not permit her to attend the mother's property and unilaterally remove it. Again, changing the swimming day to accommodate the father without seeking the mother's input is not something to be commended, even if it was done because it is clear that C in particular enjoys his father's presence at swimming.[2]

52. I also note the paternal grandmother's rather unmeritorious comment made to the Court Welfare Officer that:

> *"The mother was trying to set up her son for her own gain."*

The Court Welfare Officer noted that, when this was stated, the paternal grandmother was very upset about how the separation transpired. During cross-examination the grandmother conceded that she may have said something like

[2] See page 11 Court Welfare Report

that, and that she would be hurt if a comment like that was directed to her. She said it at a time when she was "*extremely hurt*" when she saw what her son was going through and by the mother's comment that she wished that the father was "*locked up.*" She said that this had "*not been an easy road*" and that everyone was "*experiencing horrific pain.*"

53. However, I do not share Ms. Dowse's negative view set out in her closing submissions as to the genuineness of the paternal grandmother's expressed concern for the mother. I am satisfied that prior to the great unease brought on by the breakdown in the parent's relationship, by the initiation of these drawn out proceedings, by her concern about the children leaving and by her wish to support her son through the ordeal, she was close to and gave support to the mother.

54. The ties between the mother and paternal grandmother have been naturally strained during the course of these proceedings. The paternal grandmother gave evidence about trying to include the mother by inviting her to attend at a friend's birthday party or at a Rotary Club's Christmas tree lighting. The mother did not take up the offers. I accept the paternal grandmother's evidence when she says:

> *"I intend to reach out more. I cannot make her change her mind if she feels in isolation. I can do all I can to show her I am the same person. I know that she knows that. I've not changed, she is just not reciprocal."*

She said that the mother needed to meet her half way and that:

"There is no point in me reaching out and she keeps backing up."

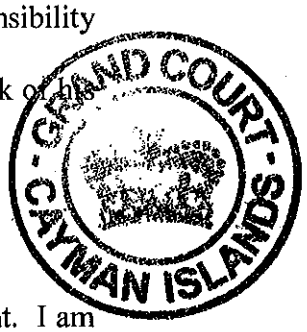
I note that that the paternal grandmother did not seek to make *"a big thing"* of the fact that the mother had, without her consent, been using her discount card to buy cosmetics and that she had been using the paternal grandmother's corporate card in a restaurant.

55. Having had the benefit of seeing the paternal grandparents in Court, I am satisfied that they would, as best they could and dependent on the mother's reciprocation, be supportive of the mother if she were to remain in the jurisdiction. I am satisfied, after the inevitable tension caused by this application and the ongoing divorce proceedings has come to an end, that the paternal grandmother in particular will seek to include the mother in and not isolate her from the support of the paternal family.

56. The mother contends that the children have been cared for by her for most of the school holidays, even though she has requested assistance from the father. The mother states that the father has declined to accept a number of offers made by her for additional access, particularly during the school holidays.

57. I am satisfied, having regard to the surrounding evidence, including an exhibited calendar, that the mother has to care for the children for the bulk of the time

during school holidays. When the children are with her she has full responsibility for their care, whereas the father partly relies upon the supportive network of his family.



58. Mr. Cusworth QC submits that the parents have a shared care arrangement. I am not satisfied that the arrangement they have in place can be properly characterised as being a shared care arrangement. Prior to the party's separation the mother was the primary carer. Post separation the court made orders that reflected the reality of the situation, namely that the children continued residing at the mother's property and the father had access. Since the increase in the level of the father's access from November 2011, done to coincide with the build up to an application by the mother to permanently relocate out of the jurisdiction, he has had greater involvement. As with most contact arrangements he has de facto care and control during the periods when the children are with him. I accept that the father exercises his parental responsibility.

The Law – Shared Care

59. When I consider whether there is a shared care arrangement I am conscious that in ***K v K (Relocation: Shared Care Arrangement)*** [2011] EWCA Civ 793 Black LJ highlighted the fact that there may be no clear dividing line between a primary care arrangement and shared care. In ***K v K*** the children spent five nights each fortnight with the father and nine nights with the mother. In that case the children

spent more daylight hours with the father. In that matter this was held to amount to shared care, although nowhere in the case is shared care actually defined.

60. In ***C v C International Relocation: Shared Care Arrangement)*** [2011] EWHC 33 (Fam) the Court found there to be a shared care arrangement where for the last year there had been a term time division of approximately 2/3 to 1/3. In **C v C** the Court took into account that both parents ensured that the children's needs are met, that they were both interested in all aspects of the children's lives and development and that they were both 'hands on' when they could be.

61. Although the children spend more time with the mother, especially during school vacations, I am conscious that the quantum of time spent with each parent may be less important than the interaction and nature of the relationship between the parent and the child. The preliminary view which I formed in my ruling in November 2011, namely that the mother appeared to be the primary carer of the children, has slightly changed. I am of the view that there is now an arrangement where the children reside mostly with the mother, but spend a significant amount of time with the father. The current arrangement falls within that grey middle area, not fitting the title of either shared care or primary care. In reaching this conclusion I have regard to the Court Welfare Officer's observations in her more recent oral evidence when she stated:

> *"I am not able to choose from the children who they see as their primary carer. They know the day they go to mummy and daddy."*

Although not willing to commit to any parent being the primary parent during her oral evidence, the Court Welfare Officer noted in her more aged report that the mother was their *"primary residential parent* " and the father was the one that enjoyed *"visitation."* I am also conscious that the Court Welfare Officer feels that the father has -

> *"Grasped fatherhood appropriately and has the requisite skills to meet his children's needs."*

The Court Welfare Officer reported that the father -

> *"Provided the necessary nurturing, guidance, security and education his children require."*

62. In light of my findings, which I have arrived at after careful consideration, I urge the parties not to focus on the label they may wish to attach to their interaction with the children but more on their welfare. I share the sentiments expressed by Black LJ at paragraph 145 in ***K v K*** when she stated that she would:

> *"...not expect to find cases bogged down with arguments as to whether the time spent with each of the parents or other aspects of the care arrangements such to make the case "a Payne case" or "a Re Y case"", nor.... expect preliminary skirmishes over the label to be applied to the child's arrangements with a view to a parent having a shared residence order in his or her armoury for deployment in the event of a relocation application."*

The law – Permanent Relocation Cases

63. These proceedings are pending proceedings, having been issued before the commencement date of the new Children Law. Therefore, when determining the application I must have regard to section 19 of the Guardianship and Custody of Children Law 1996 , which provides:

> *"Where in any proceeding before any court the custody or upbringing of a child is in question, the court, in deciding that question, it shall regard the welfare of the child as the first and paramount consideration, and shall not take into consideration whether from any other point of view the claim of the father, or any right in common law possessed by the father, in respect of such custody, upbringing, administration or application as appear to that of the mother, or claim of the mother's appear to that of the father."*

64. Ms. Dowse submits that this is a classic primary care/access case and that the Court should follow the approach in the case of ***Payne v Payne*** [2001] EWCA Civ 370. Ms. Dowse contends that the Court should not follow ***K v K (Relocation: Shared Care Arrangement)*** [2011] EWCA Civ 793, a case in which the Court of Appeal indicated that when there is a relatively equal shared care arrangement a broader approach was necessary. Mr. Cusworth QC does not agree with the rigid approach suggested by Ms. Dowse, recommending a more modern and flexible approach to the different guidance handed down by the English Courts.

65. There is some local case law on relocation cases, albeit mostly a little dated. In ***Martinez v Arch*** [2003 CILR note 20] Henderson J considered an application to permanently remove children from the jurisdiction where a joint custody order was in place. Henderson J held that an applicant must show, on the balance of probabilities, that the relocation will serve the children's best interests. He found that a proposed relocation which restricts contact would not be in their best interests unless the applicant could show a strong factor in favour of their best interests which offset the detriment. Henderson J indicated that then parent should be given the *"fullest opportunity to reapply."*

66. ***In the Matter of C (A Minor) A v R*** [2008 CILR 400] the Court of Appeal confirmed that the test suggested by Thorpe LJ in ***Payne*** was the one to be followed at that time.

67. In the more recent case of ***MB v JB*** 99/2009 Quin J expressed the view that that the welfare checklist set out in the Children Act 1989 "*sits comfortably*" with section 19 of the Guardianship and Custody of Children Law 1996. Quin J's helpful guidance is a reminder that the Court should always consider the child's needs first and also how a court may go about doing that. His approach to the welfare checklist is even more commendable now that the Children Law (2012 Revision), although not directly applicable to this pending case, is in force.

68. Quin J highlighted the principles that have been ordinarily followed in permanent removal cases by the Courts in the Cayman Islands and referred to the decision of Henderson J in ***Martinez*** stating at paragraph [58]:

> *"The Grand Court has consistently followed the principles laid down by section 19 of the Guardianship and Custody of Children Law."*

69. Quin J also referred to the case of ***In Re C*** (4th February 2010) which came back before Foster J after it had been before the Court of Appeal. Quin J highlighted that Foster J followed the principles in section 19 concluding that:

> *"The sole issue is what is best for the child in the view of the court having regard to all of the circumstances."*

70. Quin J was conscious that there were developments in the law, especially concerning the approach to the test in ***Payne v Payne***. He started by setting out the ratio of ***Payne*** expressed by Thorpe LJ at paragraph [26], namely:

> *"In summary a review of the decisions of this court over the course of the last 30 years demonstrates that relocation cases have been consistently decided upon the application of the following two propositions: (a) the welfare of the child is the paramount consideration; and (b) refusing the primary carer's reasonable proposals for the relocation of her family life is likely to impact detrimentally on the welfare of her dependent children. Therefore her application to relocate will be granted unless the court concludes that it is incompatible with the welfare of the children."*

71. Quin J noted that at paragraph [32] in ***Payne*** Thorpe LJ stated:

> *"Thus in most relocation cases the most crucial assessment and finding for the judge is likely to be the effect of the refusal of the application on the mother's future psychological and emotional stability."*

72. At paragraph 45 of his judgment Quin J repeated Thorpe LJ's discipline set out in paragraphs 41 and 42 of ***Payne***, namely:

> *"[40] To guard against the risk of too perfunctory an investigation resulting from too ready an assumption that the mother's proposals are necessarily compatible with the child's welfare I would suggest the following discipline as a prelude to conclusion. (a) Pose the question: is the mother's application genuine in the sense that it is not motivated by some selfish desire to exclude the father from the child's life. Then ask is the mother's application realistic, by which I mean, founded on practical proposals both well researched and investigated? If the application fails either of these tests refusal will inevitably follow. (b) If however the application passes these tests then there must be a careful appraisal of the father's opposition: is it motivated by genuine concern for the future of the child's welfare or is it driven by some ulterior motive? What would be the extent of the detriment to him and his future relationship with the child were the application granted? To what extent would that be offset by extension of the child's relationship with the maternal family and homeland? (c) What would be the impact on the mother, either as a single parent or as a new wife, of refusal of her realistic proposal? (d) The outcome of the second and third appraisals must*

then be brought into an overriding review of the child welfare as the paramount consideration, directed by the statutory checklist in so far as appropriate.

[41] In suggesting such a discipline I would not wish to be thought to have diminished the importance that this court has consistently attached to the emotional and psychological well-being of the primary carer. In any evaluation of the welfare of the child is the paramount consideration great weight must be given to this factor."

73. Having set out the guidance of Thorpe LJ in ***Payne***, Quin J moved on to consider recent developments which had been brought to his attention. He referred to the judgment of Mostyn J in the case of ***Re AR*** [2010] EWHC 1346 (FAM). In that matter Mostyn J mentioned the following quotation of Wall LJ made at paragraph 33 in ***Re D (Children)*** [2010] EWCA:

"There has been considerable criticism of Payne v Payne in certain quarters, and there is a perfectly respectable argument for the proposition that it places too great an emphasis on the wishes and feelings of the relocating parent, and ignores or relegates the harm done of children by a permanent breach of the relationship which children have with the left behind parent."

74. It is clear that in ***Re AR***, Mostyn J was commenting on the heavy emphasis that has been placed on the impact of a refusal to grant leave to relocate on the primary carer. He was of the view that the approach appeared to -

"Penalise selflessness and virtue while rewarding selfishness and uncontrolled emotions."

In other words, a parent who appeared willing to accept the decision was more likely to be refused leave to relocate than a parent who collapsed emotionally and psychologically. The argument was that the effect on a parent caring for the child who found it particularly difficult to accept would in turn negatively impact the child, and so leave should be granted. Mostyn J felt that the increased likelihood of success of an applicant who argued that they would be greatly distressed by a refusal in effect –

"Represented an illegitimate gloss on the purity of the paramountcy principle."

I do not take Mostyn J, by highlighting these concerns, to be stating that the impact on a mother if her realistic proposals are rejected is not important. It must be a fact and significant feature to be recognised by a judge in his deliberations.

75. As it was raised by Mostyn J in ***Re AR***, Quin J went on to consider the Declaration on International Family Relocation produced at the International Judicial Conference on Cross-Border Family Relocation held in Washington in March 2010. The Declaration recommended a –

"Non-presumptive approach requiring the court to take the impact on the child and the left behind parent into account."

76. Quin J referred to ***Re H*** [2010] EWCA Civ 915 in which Wilson LJ considered the Declaration and concluded that it had no current effect but may be useful when considering future reform.

77. It is evident that Quin J was guided by the relevant questions set out in ***Payne***, the dicta of Mostyn J in ***Re AR***, the paramountcy principle in the welfare checklist when considering the exercise of his duty under section 19 of the Guardianship and Custody of Children Law 1996. It appears, that Quin J, although considering the concerns of Mostyn J in ***Re AR***, still adopted the approach in previous local case authorities and applied the discipline enunciated by Thorpe LJ in ***Payne.***

78. The seeds of disquiet concerning a rigid approach to the applicability of the guidance in Payne sown again in decisions such as ***Re AR*** have again started to take root in some recent decisions; decisions which have been made after Quin J's ruling in ***MB v JB.*** Mr. Cusworth QC in his closing submissions contends that the previously divergent lines of authority have resolved themselves, as evidenced by the approach of Munby LJ in ***Re F (Child: International Relocation)*** [2012] EWCA 1364.

79. Mr. Cusworth QC submits that in ***Re F*** Munby LJ commended the approach taken by Black LJ in the aforementioned shared care case of ***K v K***, and referred me to the significant parts of his judgment. Due to the importance of these parts of

Munby LJ's judgment I set them out herein in quite some detail, commencing at paragraph 29:

> *"29. The starting point now must be K v K. Its central message is conveyed, simply and accurately, in the headnote in the Law Report:*
>
> > *"That the only principle to be applied when determining an application to remove a child permanently from the jurisdiction was that the welfare of the child was paramount and overbore all other considerations however powerful and reasonable they might be; the guidance given by the Court of Appeal as to factors to be weighed in search of the welfare paramountcy and which directed the exercise of the welfare discretion was valuable in so far as it helped judges to identify which factors were likely to be the most important and the weight which should generally be attached to them and promoted consistency in decision–making; but that (per Moore–Bick and Black LJJ), since the circumstances in which such decisions had to be made varied infinitely and the judge in each case had to be free to decide whatever was in the best interests of the child, such guidance should not be applied rigidly as if it contained principles from which no departure were permitted".*
>
> *I need quote only what Thorpe LJ said (paragraph [39]):*

> *"...the only principle to be extracted from Payne v Payne is the paramountcy principle. All the rest, whether in paragraph 40 and 41 of my judgment or in paragraph 85 and 86 of the President's judgment is guidance as to the factors to be weighed in search of the welfare paramountcy."*

80. Munby LJ went on to consider, as I have done in paragraph 61 herein, whether it is important to label the case as a shared or sole care case. Munby LJ was of the view that the court need not carry out such an enquiry, and that no presumptions should operate. Munby LJ elaborated by stating:

> *37. 'In K v K there was a shared residence order. The mother sought to relocate to her country of origin. The importance of K v K for present purposes is to emphasise that even where the applicant is a primary carer there is no presumption in favour of the applicant. That, after all, was hardly new. As was pointed out in K v K* both *Thorpe LJ and the President had made this clear in Payne v Payne. As Black LJ said (paragraph [143]):*
>
> > *"... the effect of the guidance must not be overstated. Even where the case concerns a true primary carer, there is no presumption that the reasonable relocation plans of that carer will be facilitated unless there is some compelling reason to the contrary, nor any similar presumption however it may be expressed. Thorpe LJ said in terms in Payne and it is not appropriate, therefore, to isolate other sentences from his judgment, such as the final sentence of paragraph 26 ("Therefore*

her application to relocate will be granted unless the court concludes that it is incompatible with the welfare of the children") for re-elevation to a status akin to that of a determinative presumption."

There can be no presumptions in the case governed by section 1 of the Children Act 1989. From beginning to end the child's welfare is paramount, and evaluation of where the child's best interest truly lie is to be determined having regard to the 'welfare checklist' in section 1(3).

38. The present appeal focuses attention on one aspect of K v K where this court did not speak with one voice. Thorpe LJ, having approved of Hedley J's analysis in Re Y, said this (paragraph [57]):

"Where each is providing a more or less equal proportion and one seeks to relocate externally then I am of clear that the approach which I suggested in paragraph 40 in Payne v Payne should not be utilised. The judge should rather exercise his discretion to grant or refuse by applying the statutory checklist in section 1(3) of the Children Act 1989."

39. Black LJ (paragraph [96]) adopted a rather different approach:

"Where my reasoning and that of Thorpe LJ diverges is...in particular in relation to the treatment of Payne v Payne. Thorpe LJ considers that Payne should not be applied in circumstances such as the present and that the judge should instead have applied the directive of Hedley J in Re

Y. For my part, as will become apparent, I would not put Payne so completely to one side."

40. Following a careful analysis of the authorities, Black LJ continued in this important passage (paragraphs [141]-[142]):

> *"The first point that is quite clear is that...the principle - the only authentic principle - that runs through the entire line of relocation authorities is that the welfare of the child is the court's paramount consideration. Everything that is considered by the court in reaching its determination is put into the balance with a view to measuring its impact on the child."*
>
> *"Whilst this is the only truly inescapable principle in the jurisprudence, that does not mean that everything else - the valuable guidance - can be ignored. It must be heeded ... But as guidance and not as rigid principle also as to dictate a particular outcome in a sphere of law with the facts of individual cases are so infinitely variable."*

41. She continued (paragraph [144]):

> *"Payne therefore identifies a number of factors which will or may be relevant in a relocation case, explains their importance to the welfare of the child, and suggests helpful disciplines to ensure that the proper matters are considered in reaching a decision but it does not dictate the outcome of the case. I do not see Hedley J's decision in Re Y as representative of a different line of authority from Payne, applicable where the child care is shared*

between the parents as opposed to undertaken by one primary carer; I see it as a decision within the framework of which Payne is part. It exemplifies how the weight attached to the relevant factors alters depending on the facts of the case."

81. At paragraph 42 Munby LJ set out the contents of paragraph 145 from Black LJ's decision[3] what he called a "*vitally important point*" for "*present purposes*".

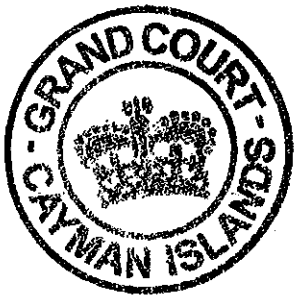
82. Munby LJ referred to the following comments set out in paragraph 145 of Black LJ's decision:

> *"The ways in which parents provide for the care of their children are, and should be, infinitely varied. In the best of cases they are flexible and responsive to the needs of the children over time. When a relocation application falls to be determined, all of the facts need to be considered."*

83. Munby LJ continued stating that:

> *"43. As I read his judgment, Moore-Bick LJ, with whom Black LJ explicitly agreed on this part of the case, was of the same view as her; see in particular paragraph [86] where he said:*
>
> > *"Guidance of the kind provided in Payne v Payne is, of course, very valuable both in ensuring that judges identify what are likely to be the most important factors to be taken into account and the weight that should generally be attached to them. It*

[3] See paragraph 62 herein , where part of section 145 is set out



> *also plays a valuable role in promoting consistency in decision–making. However, the circumstances in which these difficult decisions have to be made vary infinitely and the judge in each case must be free to weigh up the individual factors and make whatever decision he or she considers to be in the best interests of the child."*
>
> *44. On this point, therefore, the correct approach is that of the majority, that is to say Moore-Bick LJ and Black LJ."*

84. Munby LJ further stated that:

> *"60. There is another lesson to be learned from this case. Adopting conventional terminology, this was neither a 'primary carer' nor a 'shared care' case. In other words, unlike a number of other international relocation cases, it did not fall comfortably within the existing taxonomy. This is hardly surprising. As Moore-Bick LJ said in K v K, "the circumstances in which these difficult decisions have to be made vary infinitely." This is not, I emphasise, a call for an elaboration of the taxonomy. Quite the contrary. The last thing that this very difficult area of family law requires is a satellite jurisprudence generating an ever–more detailed classification of supposedly different types of relocation case. Any move in that direction is, in my judgment, to be firmly resisted. But so too advocates and judges must resist the temptation to try and force the facts of the particular case with which they are concerned within some forensic straitjacket. Asking whether a case is a "Payne type case", or a "K v K type case" or a "Re Y type case", when in truth it may be none of them, is simply a recipe for*

unnecessary and inappropriate forensic dispute or worse, it is to be avoided.

61. The focus from beginning to end must be on the child's best interests. The child's welfare is paramount. Every case must be determined having regard to the 'welfare checklist', though of course also having regard, where relevant and helpful, to such guidance as may have been given by this court."

85. The clear message being sent out by Munby LJ is that the child's welfare is the paramount principle to be applied in applications to permanently relocate. To do this the Court should consider all the factors, whether they were or were not contained in the guidance in ***Payne v Payne***, in reaching a decision as to what is in the child's best interests. The decision appears to be advocating a single approach to all relocation cases, in which the Payne factors may apply to all cases, albeit with varying weight. Due to the very recent nature of this decision it may be too early, in the absence of what would be a most welcome ruling from the Supreme Court, to conclusively state that there exists in England and Wales an unquestionable single analytical framework for all relocation disputes. Munby LJ was rightly stressing that each case is different and that the court must not seek to categorise the case in the manner sought by Ms. Dowse.

86. I am satisfied that Munby LJ's approach, in a judgment in which he summarised the entire jurisprudence, is timely and shows the right way forward.

87. I have considered carefully the guidance given in ***Payne, K v K*** and ***Re F***. From those cases one can derive a number of principles which should be applied by a court in considering whether to make an order granting leave to permanently relocate. A number of the following principles were stated by Mostyn J in ***Re AR***.

88. The first, and overarching principle, must be that the child welfare is paramount. It takes precedent over any other consideration.

89. The next principle is that the Court should have regard to the guidance handed down in case law when considering what factors are to be weighed when determining what is in the child's best interests. It is important to note that the guidance should no longer be confined by labels given to the category of care. This means that a judge may consider the Payne guidance, to an extent that he may determine to be relevant to the particular facts of the case, even in what might be termed a shared care case. Attorneys and judges should avoid detailed classification of relocation cases and hearings should not get bogged down in taxonomical arguments or preliminary skirmishes as to what characterisation should be applied to the case by virtue of the time spent with each parent or other aspects of the care arrangements.

90. When the Court considers the guidance the following questions, in a case such as this involving an application made by the mother, should ordinarily be raised and addressed:

(i) Is the mother's application genuine in the sense that it is not motivated by some selfish desire to exclude the father from the child's life?

(ii) Is the father's opposition motivated by genuine concern for the future of the child's welfare or is it driven by some ulterior motive?

(iii) What would be the extent of the detriment to the father and his future relationship with the child were the application granted?

(iv) To what extent would the detriment to the father if the application were granted be offset by extension of the child's relationship with the maternal family and, if applicable, homeland?

(v) Is the mother's application realistic and founded on practical proposals both well researched and investigated?

(vi) What would be the impact on the mother of a refusal of her realistic proposal? The weight placed on this will increase if the child resides with the mother.

91. Another principle arises from the fact that the circumstances in each case vary infinitely and therefore the Court should not be unduly fettered in its approach when deciding whatever is in the best interests of the child. The Court should regard the guidance, which can promote consistency, as helpful in determining the best interests of the child, but not feel that it has to be applied rigidly.

92. Finally, there is no legal principle, or even legal or evidential presumption, in favour of an application to relocate by a primary carer.

93. In the matter before me, as in all such cases, there is no presumption in favour of the applicant mother. I will have to consider and weigh up all of the factors contained in the evidence before me. When reviewing the evidence I will have to consider the principles to which I have alluded above. As I consider each part of the evidence, apply the principles and consider guidance which has been given, I have in mind that the overreaching matter for determination is what is in the best interests of C and K. In applying the paramountcy principle I have regard to the factors mentioned in the welfare checklist.

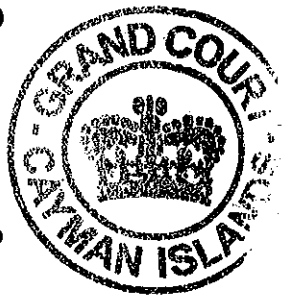
94. I will now move on and consider and apply these principles to the evidence.

The Mother and Father's Financial Position and the Mother's Immigration Status

95. The mother indicates that she is financially struggling in this jurisdiction and that this would remain the case if she was unable to leave with the children. The mother contends that this is a part of her motivation for seeking to relocate with the children to Florida.

96. The mother has no formal qualifications and is currently having to work two jobs. The mother informed the Court that, due to her working hours being cut by one of

her employers, her income derived from her two jobs is only CI$700 to CI$1000 per month.



97. The mother's immigration status is based on residency ("RERC") granted due to her marriage to the Caymanian father. It was submitted at the outset of the hearing that there was a real concern concerning whether, post-dissolution of the marriage, the mother would have immigration status permitting her to remain in the jurisdiction and/or to work if she were to remain. Again, this was given as a motivating factor for her application to relocate.

98. The Court was most fortunate to have the opportunity to hear from Mr. Waide DaCosta, who attended in his capacity as the Chairman of the Cayman Status and Permanent Residency Board. Mr. DaCosta said that he was also the legal adviser to the Board. Although I accept that the Board will consider each application concerning residency on a case-by-case basis, his evidence was persuasive and helpful, not only to this case, but potentially to others that may come before this court. Mr. DaCosta was invited to assist the Court by clarifying the usual approach taken by the Board upon the dissolution of a marriage in which a child was born acquiring Caymanian status, but one in which a parent's immigration status derives from her marriage to her former spouse ("RERC").

99. Mr. DaCosta indicated that the Board had to exercise a discretion, looking to see whether the marriage had been one of convenience as well as whether there was any reason why the parent's presence would be detrimental to the jurisdiction. He went on to say that, if the relevant parent was of good character, it would be most unlikely that the Board would refuse to extend the RERC. Mr. DaCosta said that the extension would last until the child reached eighteen years of age or ceased tertiary education. He indicated that ordinarily a parent would, during that interim period, likely apply for and be granted permanent residency in their own right.

100. In relation to this mother, Mr. DaCosta, who was aware of the background details, said that he felt confident that she would be able to extend her RERC. He said the fee for doing so was in the region of only $100-$200. He indicated that the mother would be able to continue as before, working on an unrestricted basis for no annual fee to the employer. He stated that she could, if she wished, still work two to three jobs and would be in a better position than an individual granted permanent residency. Mr. DaCosta concluded that he felt that he could assure the mother that there would be no reason to refuse her application to extend. He went on to say that if the application was filed it could be heard within a month. He advised that it would be sensible to apply for an extension prior to the dissolution of marriage, thus enabling the extension to coincide with the Court's certification.

101. In light of the insightful and informed evidence given by Mr. DaCosta I am satisfied that the mother would, if she pursued an application and diligently, especially as it would have the support of the father, be able to remain in the jurisdiction and would not be restricted in the employment market for immigration reasons. I do not share the mother's contention at paragraph 163 of her affidavit sworn on 6th November 2012 when she states:

> *"When the decree of dissolution comes through I will lose my right to work without a permit.... I will have no employment...."*

102. The mother comes across as a young, intelligent and well presented lady who, despite the lack of formal qualifications, one would expect to be employable. At this time her prospects on the local job market will be restricted due to her inability to commit arising from the uncertainty about whether her future will be in the jurisdiction. This led me to say the following at paragraph 78 of my ruling in the costs allowance application in September:

> *"The wife is employed on a low salary. Pending the determination of the removal jurisdiction application in only three months it would not be reasonable to expect her to find a more highly paid permanent post. However, if she is not permitted to remove the children from the jurisdiction then at that stage the Court would expect her to use her best endeavours to find better paid employment."*

103. I still feel that if the mother were to remain here then, if properly pursued, more and better employment opportunities will likely arise, for she would then be in a position to offer continuity to an employer. It does appear that the mother is being unduly pessimistic about her employment prospects in the Cayman Islands.

104. I note that the paternal grandmother was the head of arguably the Cayman Islands' largest employment agency. In the past, offers were made to the mother inviting her to seek the assistance of that agency in finding employment. There is evidence of interviews for better paid and more stable employment opportunities being offered. The mother did not, on the evidence before the Court, seek to take up such opportunities in a purposeful way. It appears, despite the paternal grandmother stepping back from the day-to-day running of the agency, that the mother would still be able to pursue that resource if seeking employment.

105. If the mother knew that she was to remain in the jurisdiction she would likely be in a position to obtain better long-term employment when compared to what appear to currently be positions of a rather temporary nature at this potentially transitional and uncertain time. I accept that if she were to find better paid employment she may have to work longer hours and this could necessitate the need to employ a nanny. I note the mother's reluctance to introduce a new nanny into the lives of the children, but if she were unable to relocate, this is an option that both she and the husband should support.

106. It is agreed that the mother has been struggling financially. The mother relies upon her current financial insecurity in the Cayman Islands as a significant reason why leave should be granted. Her financial difficulties have primarily come about due the fact that the father has failed to fully comply with a court maintenance order, especially at a time when the mother has a low income from her employment. The father has only been paying $1,500 per month, an amount which has been taken directly from his salary pursuant to an attachment of earnings order made by Henderson J on 24th of April 2012. The mother, with some force, contends that she is having problems meeting the children's short-term financial needs. This state of affairs led to me stating at paragraph 79 of my judgment in the cost allowance hearing:

> *"The husband is consistently failing to comply with a maintenance pending suit order, with the consequence that the wife and children have income coming into the household well below the level determined by the Court as necessary to meet their reasonable needs. The wife has insignificant amounts of money in her bank accounts and has no liquid assets."*

107. In addition, the non-payment of school fees has been a long-standing issue causing great concern to the mother. The mother contends that the uncertainty caused, by the inability to pay fees, as to whether the children can remain in their current or any private school here is cited as a further motivating factor in her wish to relocate to Florida.

108. It was not until this hearing that outstanding arrears were paid by the paternal grandfather. The father had previously indicated to the Court that fees would be paid, but he failed to do so. He failed to keep the mother updated about developments and his negotiations with the school in relation to this important part of the children's lives. The father appears to have made the rather unattractive and in the circumstances humourless suggestion to the mother, even if he now states that it was said in jest, that she contribute to the fees at a time when he was breaching the court order for maintenance.

109. At the hearing, the paternal grandmother made it clear that she would ensure that hereafter school fees were paid, by taking on the responsibility to pay them. Although the payment of such fees is primarily the responsibility of the parents, I have no good reason to question the veracity of the paternal grandmother's statement. I am satisfied that the fees will be paid by the paternal side of the family and the children will be able to remain in private school here.

110. At the hearing on 22nd September 2012 the Court ordered the father to pay interim child/spousal maintenance in the sum of $5,692 per month. The mother was then to be responsible for paying the utility and strata bills. It was envisaged that the order would cater for the wife and children's needs pending the hearing of final ancillaries, hopefully to take place in December 2011. At the time of the order the Court was aware that there was a sum of around $180,000 in a deposit account

operated by the father. I lamented in my ruling given following the heavily contested costs allowance hearing how matrimonial assets had and were being devoured up by the manner in which the parties chose to litigate the breakdown of their marriage. Regrettably the bulk of the contents in the deposit account, which has now been exhausted, has not benefited the parties and the children but gone towards legal fees amassed over many months. Mr. Cusworth QC rightly submits that at the time of making the application to relocate in September, the family's finances were in a healthier state, with a reasonable sum for maintenance in place. At the time the mother's application to relocate was not motivated by financial concerns.

111. The father wrongly felt it appropriate to unilaterally reduce the amount of maintenance he was paying, in breach of this court's order. His application to vary the level of maintenance later came before Henderson J who refused an application to vary. The father, even if he felt that decision improper, chose not to appeal it. Regrettably, the father also chose not to address the issue of accrued arrears. From that date until the hearing he has been making reduced maintenance payments by means of an attachment of earnings order. In addition, he has failed to make ordered medical co-payments as and when they arise for the children or to leave the $3,000 clear balance on a credit card for the wife's use if there is a child related emergency.

112. During the hearing it became clear that the father finally recognised the importance of the need to clear the arrears and he approached Scotiabank to see if he could obtain funds. It appears that following negotiations which took place between him and the Bank on days during the hearing, the father had reached the stage of successfully arranging borrowing with Scotiabank.

113. The father's immediate conduct during the hearing following many prior months was no doubt influenced by his recognition that the mother's case was being firmly put that she could not remain here due to financial difficulties compounded by his failure to comply with the court order. Ms. Dowse understandably referred to the recent developments as the father's *"offerings at the eleventh hour."* Although I do not necessarily agree with Ms. Dowse's characterisation of his actions as being *"too little, too late" or "lamentable"*, counsel was right to ask the Court to consider how he might discharge his financial responsibilities once proceedings have come to a close.

114. I am still left with an unanswered question of how the father was now able to raise a loan to pay off the arrears at this time, when in August 2012 he had told the Court that he had no borrowing capacity. I note that at paragraph 90 of my cost allowance ruling I stated:

> *"I accept Mr. McCann's submissions that it is unrealistic having regard to the husband's current circumstances, including his income, to expect that any lending institution would be willing to*

lend him monies against both or either of these properties. The husband would, in his application for borrowing, have to disclose all of his outgoings including the order for the maintenance pending suit and his current arrears in relation to that order. If giving full disclosure to (a) prospective lender he would also be expected to inform them about his liability to his attorneys for legal fees. It is hard to see how any lender would be satisfied that the husband would be able to make even interest only payments. Regrettably, the commercial lending is not a feasible option having regard to the husband's circumstances."

In the hearing before me, the husband did not make clear how his circumstances have changed, enabling him to borrow, since the submissions made by Mr. McCann at the hearing back in September.

115. Any credit that the father may seek to receive for this very late attempt to comply with the Court order is most certainly reduced by his apparent lack of recognition, over a considerable number of months, of the anxiety and distress caused to the mother due to her financial uncertainty flowing from his breach of the court orders. This was of course during an extended period of time when the mother, unlike the father, could not rely upon significant levels of financial and emotional support from her own family members.

116. Although I do not seek to elevate its importance, the purchasing of an expensive paddleboard for the father by the paternal grandfather and the father driving

around with it strapped to the roof of his vehicle was rather insensitive at a time when the mother was clearly struggling due to his non-payment of maintenance. The sums expended on such leisure equipment could have been put to far better use, namely supporting the mother and the children. During the hearing the father could have been left in no doubt about this Court's discontent arising from his breach of the Court's orders.

117. I accept that the father's financial position has become a precarious one during the course of these proceedings. At the outset of proceedings the father had realisable assets upon which he could draw on to support his family. As time has passed, and large sums have been realised to pay both attorneys, that financial security appears to have been seriously diminished. I trust I need not reiterate yet again my concerns set out at paragraphs 6 and 7 of my ruling on the costs allowance application delivered on 18th September 2012, in which I echoed the sentiments of Munby LJ (as he was then) in ***KSO v MJO and JMO*** [2009] 1 FLR 1036 at paragraph 77 on 1053.

118. At the costs allowance hearing it appeared to this Court that the father no longer had the ability to realise capital from any asset. His income has also reduced. It may only be at the final ancillary relief hearing that the true picture be gleaned concerning what is an appropriate level of maintenance payable by him due to these and his changing circumstances.

119. I must be careful not to seek to make punitive orders affecting the children due to the father's non-compliance with financial orders. The financial insecurity of the mother and the reasons for father's non-compliance with the order are important factors, amongst a number of others, to be taken into account. However, my discontent with the non-compliance with financial orders must not cloud my exercise of discretion which is to make the children's needs and interests paramount. I must determine whether the mother would be financially more stable and better able to meet the children's needs in Florida and, if so, whether this benefit is one of the factors outweighing the detriment caused to the children's relationship with the father which would be caused if they permitted to relocate.

120. When I consider the reasons for the father's non-compliance, it does appear that this has been brought on by a diminishing of the parties' realisable assets and his reduced salary. I note that he says that he is still attempting to find better paid work using his connections with friends.

121. Despite the obvious effect that the downturn in the economy has had on the husband's businesses and income, both parents need to take some responsibility for the financial predicament this family appears to now be in. Mr. McGrath, who represented the wife at the costs allowance hearing, then stated that:

> *"If parties decide to contest legal proceedings in the way that these parties have, legal representatives are entitled to be remunerated."*

Mr. McGrath then succinctly stated when dealing with the parties' approach to the litigation:

> *"They make these choices at their own financial peril and at the peril of their children's financial future."*

122. The Court is not in a position to determine at this hearing what financial ancillary relief orders will be made. The outcome of this hearing may well affect the nature of that order. In the Cayman Islands the mother from her two jobs earns approximately CI$700 to CI$1,000 per month. Despite the lower cost of living in Florida and the provision of housing by her aunt to the mother, she will still have to rely upon maintenance from the father. Her uncertainty as to the regularity would be the same whether it be in Florida or Cayman. If the mother were seeking better paid employment in Florida then this could offset any shortfall in maintenance.

123. It appears from the mother's evidence that she would not hold a particularly well paid job in Florida (US$960/month before tax during school term time or when the children are with the father), as it is intended that she would be employed as a part-time helper at a local care home. It cannot be suggested with any force that the move is motivated by taking up immediate better employment for financial or career enhancement reasons.

124. I note with some concern at paragraph 100 of her affidavit sworn on 6th November 2012 that the mother feels that if she were not to receive appropriate maintenance from the father, having regard to her monthly income, she feels that her finances might be such that she would have to receive financial aid from the government. It appears also to be her intention that she will at the same time be spending quite some time studying. The mother wishes to study to gain the requisite qualifications to enable her to become a pharmacist. Pharmacy is a career the mother states she has an interest in due to family members, but entry into which she does not appear to have comprehensively researched. I have concerns about her ability to study to the level required for such a qualification, whilst having sole care of the children and whilst holding down a potentially tiring part-time care job in Florida. Although I accept the mother was suffering from ill-health at the time, the mother struggled with the rigours of the law course which she failed to complete in the Cayman Islands. She does not have any interest on building on that year of study and I am left with a concern as to whether she is suited to such study.

The Impact on the Mother if the Application to Relocate is Refused

125. The mother indicates that when they moved to Cayman the intention was that at some stage the family would relocate to Florida. It is clear that the mother wishes to relocate to Florida not only because she feels it would be in the children's best long-term interests, but also because for quite some time she has no longer wished

to reside in the Cayman Islands. She expresses a great unhappiness about living and having to remain here.

126. The importance of the potential impact on the mother unsuccessfully seeking to relocate is an important factor when considering what may be in the best interests of the children. When considering the impact on the mother if her application to relocate is refused I have carefully considered the factors mentioned by her as well as specific representations concerning the effect. This is an important issue for me to address, so I make no apologies for repeating the mother's description of what she feels the impact will be in some detail.

127. The mother stated that she felt -

> *"Totally detached and trapped here which causes me considerable emotional damage and this will worsen if I am to remain here. I have no professional skill and I cannot make ends meet financially. I cannot go anywhere without being monitored or watched I have no support network. I feel totally alone and trapped; this is taking a major toll on me in general."*

128. She went on to say:

> *"If my application is refused I will be beyond devastated. Stefan will continue to isolate me and essentially monitor my every move. I will continue to struggle emotionally, financially and physically. As this will at some point affect the children. I cannot hide my*

feelings from our children forever. The quality of life we have would be significantly less than if he were to reside in Florida."

129. The mother continued:

"The children should be able to have fun activities instead of me searching around trying to find someone to watch them because I have to work to pay the nanny. This is extremely stressful and causes resentment in general. This is the life we lead in Cayman. The only reason I was able to get through this year and summer is because I knew I had the court date to look forward to. If my application is refused, I will have nothing to look forward to."

130. The mother also stated:

"I can't begin to stress the emptiness I feel inside when I am so isolated from my family and we not allowed to go and see them, nor even afford it. This would continue to have a huge impact on the children and myself. We will not be able to live another year in this current situation. My loneliness has become overwhelming... I will find the day to day challenges of life far more stressful."

131. She continued:

"I know I can be the best possible mother with support in Florida without being isolated, lonely, stressed, broke, trapped and miserable in Cayman. My stress will be considerably lower in Florida, while it will only continue to escalate in Cayman, as it has the past year. At some point this is going to affect my health again and with a blanket on my insurance and no doctor here, I do not

know what I'm supposed to do. I do not want to be forced into another possible situation."

132. The mother then concludes:

"I have tried very hard to properly express to the court how my life has been the past year. Even though it is quite detailed, I still do not feel it is properly expressed my life or how I have been treated. While working on this application, I have felt extremely nauseous. I have had time to think about if our life would continue in this manner and that makes me extremely ill. I've had to relive every horrible moment. The life we are leading is isolated, stressful, low quality and emotional and physically draining. This is the opposite of the building blocks of the filling and healthy life."

133. The mother's statements make it plain that she is very unhappy with her current situation. At different periods of the hearing, the Court could see the mother becoming emotionally distressed. Mr. Cusworth QC readily accepts that the mother is genuinely unhappy residing in the Cayman Islands. It is submitted on behalf of the father that a great deal of her discontent is caused by her financial position, the breakdown of her relationship with the father and because she feels the paternal family have turned against her. Mr. Cusworth QC calls this the "*real heart of her position.*"

134. I am satisfied that the mother's application is genuine to the extent that it is not motivated by some selfish desire to exclude the father from the children's life. I

am sure that the mother would try to facilitate court ordered access if she were given leave to relocate. However, her move is partly motivated by the fact that she would like to live a distance away from the father and by the fact that she feels that she would be happier living independently in Florida where the children could start to develop a meaningful relationship with the maternal family. On the other hand, the mother does not seem to fully recognise the detrimental effect of separating these young children from the father and his family who, as evidenced by the observations in the Court Welfare Officer's report, are an integral part of their lives.

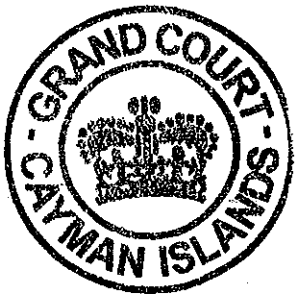
135. The mother has highlighted her health issues, having been diagnosed with ulcerative colitis. It appears that the condition has improved over the past two years despite the strain she appears to have been under. The mother believes that this improvement has benefited the children, as she has more energy to expend on them. The mother states that she is a *"better mom when I am healthy."* She feels that the living under the *"stressful"* and *"lonely situations"* she finds in Cayman will have a negative effect on health.

136. The mother adds that it is expensive to buy the type of food she requires in the Cayman Islands as well as her medication. It does appear though that if the mother is organised and has sufficient funding she would be able to continue the current routine, whereby her father buys the medication in Florida and ships it

here. It is clear that if the mother is to remain in the Cayman Islands that the father understands that she must have the opportunity to travel to Florida at least once a year to see her doctor to obtain her prescription.

137. On the more limited evidence before me at the hearing in December 2011 I stated that:

> *"The mother it appears, had only two visitors in Cayman in recent times, and it is clear to the court that she feels, rather isolated here.*



138. The mother summarises her position at paragraph 219 (xi) of her affidavit sworn on 6th November 2012 stating:

> *"I have no support of the children and I feel isolated, miserable, lonely and trapped."*

139. The mother in her affidavit indicates that since the divorce she has lost a number of friends here, primarily due to actions of the father. The mother highlights her feeling of greater isolation caused by a cessation of contact with two of her closest friends due to the divorce. She indicates, without any specificity, that many mothers at the school have started to distance themselves from her and this has reduced the play dates for the children. The mother indicates that the father is encroaching on her few remaining friendships with other mothers, seeking to

involve himself in their activities, which she characterises as the father being controlling.

140. I am not satisfied that she is as isolated as she portrayed in her written evidence. During the oral evidence it became clear that she does have a social life, albeit one tailored by the children living with her and her limited finances. It was accepted that she was seen at Luca restaurant on her birthday with friends by the paternal grandmother. The maternal grandmother's evidence given in cross-examination that she often sees the mother out in the evening with friends was not challenged.

141. DC in his oral evidence said that he had bumped into her in a social setting. He said that he also bumped into her at Eduardo's Restaurant on two occasions, one of which was a charity function. DC said that he knows that she feels "*lonely and trapped*" and said he "*understand she feels how (the father's) friends cut her off.*" DC said that he had invited her out socially for lunch and on a Friday night as well as sending her several messages. DC, although being the best friend of the father, came across as being someone sensitive to the mother's position and willing to offer emotional support and friendship when necessary

142. The mother says that she feels unable to "*date*" due to her fear of the father's reaction and suspects that the father keeps track of her movements. In her

affidavit she also states that the father persistently telephones her and overly uses online social networks to contact her. She says that there is still *"hostility"* between her and the father which she finds *"unbearable."* She concludes that she does not see how their relationship can improve for the sake of the children and that it will only get worse. The mother says that the husband does not accept that her life in Cayman with the children is of *"very low quality"* or that her *"unhappiness stems from him or his actions."* She feels that the father will not accept that the relationship is over and still wishes to reconcile. The mother feels that she cannot even hold a normal conversation with the father and that she is finding it difficult to cope with the situation. She feels that part of the father's motivation for opposing her application to relocate is that he wishes her to remain so that he can continue to control her.

143. I am unable to find that the father now wishes to oversee the mother in the way that she states. I have noted at previous hearings that in the past the father has acted in ways that have sought to restrict the mother's actions in relation to the children. This is partly by expressing his views to her concerning her care or also by making or changing arrangements for extra-curricular activities which his family is able to afford. I also noted that the mother was anxious that the father follow the child care routines which she felt were right for the children. I also have regard to inappropriate written exchanges between the parties.

144. In my ex tempore ruling given on 16th December 2011 I repeated what I had relayed at the hearing on 1st November 2011, namely:

> *"(F), take a step back, think about when the children are with another parent, you must give credence to that. Rely on the other parent to use their commonsense and give them a degree of freedom without having to continually ask are they doing this, are they feeding that, are they getting to bed at this time ... I would ask there is sensitivity to what the other parent feels is appropriate or not."*

145. On 16th December 2011 I then went on to say:

> *"I aimed these comments to both parents at the time, but I was keen that (F) understand that it is not his role to take it upon himself to oversee what (M) was doing. She is an adult and due to the maintenance orders in place she should be able to be independent regarding her day to day budgeting and as regards the running of her house and the children when they are with her. It was clear that she desired that independence....*
> *At some stage they will both need to recognize and accept that the other is entitled to act independently and that they must co-operate for the sake of their children without the almost continual involvement of the courts."*

146. I am satisfied that the mother has accepted that the father is responsible for the children's care and control when they are with him. The father has also given the mother greater freedom in this regard. Unfortunately, it is not as great as I had hoped, for the independence has been curtailed to the level of maintenance being

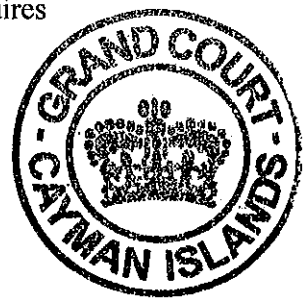
paid by the father. That said, I am satisfied that the father's opposition to the removal application is motivated by his genuine concerns about the welfare of the children and not by a wish to control the mother. He understandably feels that the separation would affect his close bond with his children and in turn their significant relationship with his family. He also has genuine concerns how the mother would be able meet the children's needs if her proposals for what will happen are put in place. He feels that the children are settled in Cayman which has been their home throughout their lives and are receiving a good education.

147. If the mother were to remain in Cayman the mother's independence will likely increase due to the financial certainty given once the ancillary relief proceedings came to an end and the marriage was dissolved. In addition, the mother would be in a better position to find more substantial longer term employment which would enhance her self- esteem as well as opportunities to develop friendships with fellow-employees.

148. The mother's case, already touched on herein, is that since making the application the good relationship which she previously enjoyed with the paternal grandmother has come to an end. She submits that they have cut all ties with her and do not respect her as a mother. The mother feels that the family is controlling and gives examples of the paternal grandmother cancelling the nanny's health insurance and changing the dates of the children swimming lessons for which the mother can no

longer afford to pay. She says that the family cannot comprehend that she requires support especially as she has lost friends. The mother says that:

> *"There are factors in life that are necessary to lead a healthy, happy, and fulfilling life. I will not have that in Cayman."*



149. Having reviewed the evidence I am satisfied that the mother would be greatly distressed if she were to have to remain In the Cayman Islands. This is a factor that I must take into account when considering the order and how it may have affect on the welfare of the children, which is paramount.

150. Although not required for the Court to determine that the mother would be very unhappy about remaining in the jurisdiction, there is a lack of helpful medical evidence in support of her contention that remaining will have a serious detrimental effect to her physical and possibly her mental health. I note that the mother states that she has been seeing a counselor to assist her with *"this unbearable situation."* I have also read the mother's exhibit at "NLB47" concerning the effect of loneliness extracted from the psychologytoday.com website, of course this does not amount to expert evidence. I am sure that the mother will be greatly distressed if she is unable to move, but I am unable to determine on the limited evidence before me the effect refusal may have on her health. I note that despite the inevitable strain of these overly protracted financial and children related proceedings that her health has been stable and her condition, if anything, has improved over the last two years. She feels that she has had more

energy and as a consequence been better able to care for the children. I note that a "*need for independence*" was the reason given by the mother for her leaving home aged eighteen. It may well be that the greater independence from the father, although not to the level the mother wishes, resulting from the parties' separation has been a positive factor.

The Mothers' Views about the Benefits for the Children of a Relocation to Florida and the Mother's Plans if She Relocates

151. The mother sets out her views concerning the benefits for the children as well as the details of her relocation plans between paragraphs 88 and 179 of her detailed affidavit sworn on 6th November 2012. At paragraph 57 of the said affidavit the mother states that she has "*researched and planned this proposed move in detail.*" Her motivation expressed therein is to give the children the best opportunities in life which she feels that the children would not receive in the Cayman Islands, limiting their experiences and educational development.

152. The mother has exhibited a number of documents to the affidavit including, but not limited to, extracts from Wellington's local websites, particulars of properties, photographs of the property where she would initially reside, photographs of the type of vehicle she would buy, details of utility costs, comparative prices between Florida and Cayman for children's gymnastics, details of leisure attractions in the area, details of private and public schools in the area, details of the educational curriculum in the area, correspondence from family and friends who will offer her

assistance with the relocation, employment details from Balmore Health Assisted Living Care Home and details of college plans for her.

153. I accept that, with a proposed move of this nature, a number of arrangements will have to be transitional and some details not firmed up. Although I can confirm I have studied all of the documentation, I need not go through the content in detail herein. There are a significant number of documents which might be termed as being promotional material and which are of little value. That said, I am satisfied that Wellington would be a suitable area for the children to grow up, as it appears to be a safe family environment with all the amenities that one might expect in Florida.

154. In relation to housing, the mother's plan is to provide housing in which the children would have their own bedrooms when compared to sharing a bedroom in a condo with no real garden. The mother accepts that she is not in a position to say whether she would be able to purchase such a property, recognising that such a decision may only be made when the ancillary relief proceedings are resolved. The mother refers to houses which are in the price range of US$174,000 to US$275,000. The mother contends that she would be able to take advantage of the First-Time Buyers Programme. The mother exhibits at "NLB 11"what she terms a pre-approval for a loan. In fact the exhibit is an email exchange indicating that

Academy Mortgage are seeking information to enable them to make a decision, rather than amounting to a formal pre-approval.

155. The mother's plan, if she is unable to purchase a house, is to rent. Her immediate plan upon arrival to Florida would be to live in a property offered to her by her aunt. The property in question is a two bedroom detached guesthouse which had been built for the aunt's mother. The aunt's mother has moved into the main property with the aunt and therefore the guesthouse is available. It appears that the aunt has very kindly offered the house rent free until the mother is in a position to pay her rent. The maternal grandmother in her oral evidence confirms the availability of the accommodation and its suitability.

156. Mr. Cusworth QC characterises the mother's plans as -

> *"She will be staying with relatives for an indefinite period, and does not know yet how she will fund the purchase or acquisition of a home."*

Although accurate, it is not a damning characterisation, because of course there will always have to be some transitional housing arrangements while the mother established herself in employment and if possible put herself in a position to purchase a modest property. The possibility of the mother being able to do so would rely greatly on the position the father took in relation to assets he may hold during ancillary relief proceedings. It would be wrong for me to criticise the

mother for not being able to show an immediate ability to purchase a property, when her ability to do so is being fettered by her lack of certainty prior to the determination of the financial proceedings. However, in the short term I can be satisfied that the children's needs regarding the provision of a suitable 'roof over their head' would be met by the property provided by the aunt.

157. I am unable to determine how well the children's long-term housing needs will be met, although I accept that rentals and house prices in the current housing market in Florida may be more economical than in the Cayman Islands. It does appear that the mother and children's housing needs, albeit not providing a separate bedroom for each of the children, would be met in the Cayman Islands, as the father has made an open offer in the ancillary relief proceedings that she and the children would remain in the former matrimonial home during the children's minority or her earlier remarriage. In the offer the father indicates that mother would be added to the title deeds and be given a 50% share in the equity of the matrimonial home, giving her a capital base. The husband values the offer to be in the region of CI$150,000 and is intended to give her a measure of security going forward, despite the relative shortness of the marriage, namely since 2008.

158. In relation to education, the mother's case is that she had always told the husband that her long term plan was to have the children educated in the USA. She felt that

the father who had himself been educated in North America, had until recently agreed.

159. The mother has significant concerns concerning the children's immediate educational needs being met in the Cayman Islands. She accepts that C is excelling under the Montessori system, but adds that he would at any school. The mother feels that the Montessori school is not a good fit for K, as she is not able to concentrate as much as C. She accepts, when reaching this conclusion, that K is still very young. However, there is nothing before the Court that persuades me to share her view that the Montessori school does not provide K with a good education. It is a reputable private school, and it is clear that to date it has served C's needs well.

160. As already mentioned, the mother's concerns about the children's education in this jurisdiction are heightened by the arrears of school fees which had accrued and were still outstanding at the commencement of this hearing. The mother is concerned that if fees fall into arrears that the children would have to leave the private school system.

161. The father in his evidence indicated that he had spoken to his mother concerning payment of the school fees and that she had indicated that she was prepared to pay. He indicated that there had not been payment as there had been a dispute

over the level of fees being charged and the confirmation was only received a short time before the final hearing. During the hearing it became clear that the paternal grandfather had brought the school fees up to date. During the hearing the paternal grandmother said the following during cross examination:

> *"I say I will pay the school fees. I will not sit here and say forever pay school fees, but as long as I can afford to pay them I will pay them. If needed. I hope sooner or later they both will be able to take over this responsibility."* She concluded "*I will never let them be deprived of attending school because fees are due."*

I found the grandmother to be a convincing witness and one who throughout the proceedings genuinely wished to do all she could to ensure that the children's needs are met. I repeat my earlier finding that I am satisfied that if the children are to remain in the jurisdiction that the paternal grandparents will assist financially to ensure that the children remain in private school. Therefore, the mother's concern expressed in her affidavit that the only alternative is for the children to attend a public school if they remained in the Cayman Islands is not well grounded, although I can understand why it was made at a time when there were arrears of school fees and no clear indication as to how they or future fees would be met.

162. Although the mother has researched private schools in Florida, and despite the grandmother's indication during cross-examination that she would assist by paying some school fees in Miami directly to the school, I am not certain that they would be able to attend such a school. It is clear that the maternal family does not

have the available financial resources to assist the mother with private school fees. The mother is not in a position to say with any degree of certainty which public school the children would be able to attend, and I am not able to make an informed determination as to whether those schools would be better than those which they currently attend or will move onto in the Cayman Islands.

163. I may take judicial notice that the Cayman Islands have good quality private primary school education, providing access to either the American or British curriculum. There are also private secondary schools in the Cayman Islands providing access to the American and British curriculum and which offer a more than adequate education, at least up to the age of 16. I do not share, on the evidence provided by the mother, her view that the children would receive a better education in schools still to be confirmed in Florida for the foreseeable future.

164. I do not feel that this is the time that the Court should be taking into account the type of university that the children may attend in Florida. However, some of the considerations mentioned by the mother in paragraph 139-141 in her affidavit would be ones I would expect the parents, as others have done in the Cayman Islands, to bear in mind nearer the time. I am concerned that, if the children were to relocate at this time, they would be leaving good quality private education in the Cayman Islands for uncertain schooling in Florida, probably in a public school.

165. Before moving on, I note that the mother took the children to visit two of the schools during their time with her in Florida. With hindsight, this may not have been a sensible thing to have done at a time when, upon reading the Court Welfare Officer's report, C is clearly unsettled due to his uncertainty as to where his future lies.

166. The mother rightly submits that the range of extracurricular activities may be wider and more affordable in Florida. I note that Wellington is a smaller community than some in Florida. Although the Cayman Islands may not offer the wide range of activities, the possibly more limited activities here are geared towards an open-air and healthy lifestyle. Children often live a relatively close distance away from their friends and this facilitates activities in leisure time outside of school. I am not satisfied that the children's stimulation from extracurricular activities cannot be met in the Cayman Islands. However I do accept, finances permitting, there would be a diversity of activities that they could involve themselves in Florida which they could not do so here.

167. The mother has also indicated that the move would be in the children's best interest because she has a supportive family and friends in Florida. She states that the family members and friends have told her in letter form, which although exhibited have limited evidential value, that they would offer support to the mother and children and be supportive of the father and his family during access.

The letters from the parents appear remarkably similar. Her sister resides three and a half hours away and AM, her friend, does not appear to have much contact. Having considered the letters, they do not satisfy me that the mother will inevitably have significant practical and emotional support from family and friends if she were to relocate. I have the impression that the mother, who clearly values her independence, including in the past from her family members, will have to develop her relationship with them, a relationship that was not close when she left to move to the Cayman Islands. The mother may be able to call upon family members at times of need, but on a day-to-day basis there is little substantial evidence to suggest that any support will be consistent and to the degree needed if she is solely responsible for the children, working and in a 3-4 days a week educational course. I say this, even though I accept that the aunt will be living on the same compound. I am unable to judge on the evidence before me how much support that the aunt, who has to also care for her mother, would be able to provide.

168. I have had the opportunity to hear from the maternal grandmother. Through no fault of her own, for reasons of distance and finances, she has been unable to travel to see the children and her daughter frequently. The result is that she, and other family members, are not as significant a figure in the children's lives as the paternal grandparents.

169. As already mentioned, the mother was not particularly close to her divorced parents and wider family during her teenage years. The mother left home finding employment at 18, as she stated that she needed independence. The maternal grandmother recalled how as a teenager the mother wanted to be independent and that there were *"ups and downs"* at that time. She said that:

> *"I would not say that we were not close, you might say we have had disagreements. She wanted to be independent."*

She said that she wanted her daughter to go to school, but that she did not want to go at that time. She said that the relationship was –

> *"Strained on and off for a little bit.... Might have a good month and then might have a bad month."*

170. It is evident that their relationship has improved and that the maternal grandmother is supportive of her daughter, both emotionally and, whenever the more limited circumstances permit, financially. The maternal grandmother told the Court that their relationship is now very good, and they had been very close for a year or so. She feels that once the mother had children that she took a different point of view to life, as she had more responsibility. She felt that this has brought them closer. The maternal grandmother told us that she speaks to her daughter once or twice a day. She rightly says how impressed that she is with how the mother has raised the children who she observes are smart and follow directions. She is impressed by how good the children's manners are.

171. Interestingly, having regard to the nature of their earlier relationship and the mother's then wish for independence, the maternal grandmother indicated that:

> *"The visiting relationship has worked well."*

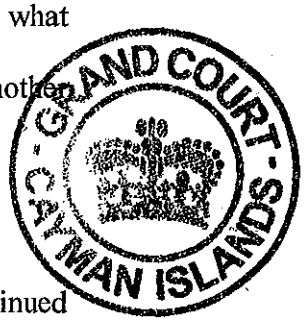
She went on to state that the mother –

> *"Will have her own home, and a separate area. That is why we thought it was best to have a separate home."*

172. Having regard to the mother and the maternal grandmother's evidence I am satisfied that their relationship has improved. Having considered the position of wider family members, I accept that they may be willing to offer support, but the level of that support is uncertain. What is clear is that family members in Florida, for financial and distance reasons, have not played a significant role in the children's lives hitherto. It is important that the children and the maternal family's relationship is developed. It is clearly in the children's best interests to better know and interact with the maternal side of their family. This should occur and be supported, and appears to now be accepted by the father, even if the application to relocate is refused.

173. However, I am concerned that if there is a relocation, even with support from the maternal family, the level of which is uncertain, the increased interaction with them will not outweigh the harm to the children that may come from a separation

from the father and his family commencing from this Summer. When I say this, I remind myself of the mother's concerns about the distance that has developed between her and the paternal family. Upon hearing the evidence of the paternal grandmother in particular, I am satisfied that real attempts will be made to include her in the wider family, if the mother is receptive to that. It is also clear from what DC is saying that there are friends who are willing to give support to the mother in the Cayman Islands.



174. The mother contends that the children would benefit from her continued education if she were able to locate in Florida. The proposed course of education may take four years to complete. The mother indicates a wish to study business and nutrition and develop that into a career in pharmacy, following in the path of her father and sister. As already raised herein, there is uncertainty as to whether the mother is well suited to continued education especially at a time when she would have to work as well as provide sole care for the children. It is accepted that the mother had health issues when enrolled at the Law School, however she has chosen to totally disregard and build on anything that may have been gained that year. She has no plans to do so in the future.

175. The mother's position is that she would not be able to embark on a course of education in the Cayman Islands due to the lack of resources. The mother indicates that she has signed up to Palm Beach State College, has been accepted

and would receive a financial aid grant of US$5,500. The mother wrongly refers to a document at "NLB31" to verify this contention. The exhibited document is simply an electronic student aid report summarising the information submitted by the mother in September 2011. The form simply indicates that, based on the information submitted, she may be eligible to receive a federal grant of up to $5,550 for the 2011 – 2012 school year. It does not say that she would receive it. It does not say that she might receive it for the academic year 2012-2013 or 2013 to 2014. There is no supporting evidence before the Court to support a contention that the mother has been accepted by the College to major in business and minor in nutrition. There is insufficient information before the Court confirming the days that she would be in study and how she could schedule that and her work around her care for the children. I am not satisfied that, on the limited materials before me, that her education plans are certain or have been well thought out and they appear unrealistic having regard to her working whilst having full time sole care of the children.

176. I am satisfied that the mother recognises the importance of the children having access with their father if she were to relocate. I am also satisfied that that the mother would assist with reasonable access arrangements for the paternal grandparents. Access arrangements could be made easier because the paternal grandparents have properties in Florida. I am conscious that Florida is not a great distance from the Cayman Islands.

177. The mother rightly accepts that the current level of access between the children and their father would change. The mother feels that the reduction in direct contact can be counterbalanced by indirect contact such as telephone and Skype. The mother undertakes to keep a calendar of activities which she will update and email the father, to enable him to be informed about things happening in the children's lives.

178. When I consider the mother's proposals for indirect access I note that Quin J in ***MB v JB*** felt *"greatly assisted"* by a paper presented by Professor Marilyn Freeman at "The Family Law Bar Association Conference" on 9th May 2010. Quin J repeated an extract from page 10 of the paper in which the Professor stated:

> *"Indirect contact is no substitute for the meaningful, ongoing relationship between a child and his or her parent, which allows for the development of a relationship through the minutiae of life, without the obligation of having to treat each meeting as a holiday excursion or an important event; having time to argue and differ with the opportunity of reconciling differences within a normal relationship and without fear that the distance and time lapse between visits will prevent the healing that occurs naturally in ongoing caring relationships; allowing the child to learn from the parent through regular observations in everyday circumstances, which builds understanding and familiarity with the issues that need to be faced in life."*

179. The mother suggests that he sees the children from Thursday evening to Monday morning twice a month in Florida, he would collect the children from school on the Thursday afternoon and take them to school on the Monday morning. The children could stay with the father during access visits at the grandfather or grandmother's properties in Florida. The mother also suggests that possibly the children could travel one week out of each month to Cayman and the father travel to Florida. The mother totals this up as eight nights per month access, the same amount as he is enjoying in Cayman. The mother recognises that this may only be able to take place once a month due to the father's circumstances. Also, it is questionable whether it would be in the children's best interests to have them travelling once a month between the Cayman Islands and Florida for long weekends. It would be very tiring for them and may well on each occasion affect their schooling on the return to Florida. The mother indicates that she would be willing to bring the children to Cayman to stay with the father over Christmas, Easter holidays and half of Summer. She agrees that the parties could alternate birthdays.

180. The mother submits that if this level of access can be maintained she does not believe that the impact will be so significant as to be harmful for the children. I am not satisfied that the father, for financial as well as employment reasons, would be able to travel as frequently as the mother suggests. In addition, the father would still have to work during the school holidays. Although I am

satisfied that the mother would do her best to facilitate access, due to the close bond of the children with the father and his family, the move, albeit with access, would still be detrimental to their relationship with the father. I am fortified in this view by some of the observations of the Court Welfare Officer.

Court Welfare Officer

181. The Court Welfare Officer, Ms. Lucille Bodden, submitted a written report dated 3rd July 2012 and later gave oral evidence. Regrettably, the report is not as helpful as one might wish. The reporter appears not to have approached the investigation as being one primarily dealing with a removal jurisdiction application, but one more akin to that in a custody dispute. This may be partly explained by the fact that the report is only the third one that she has written concerning a removal jurisdiction application. It is clear from the content of her report and her oral evidence that Ms. Bodden was not well versed in the general principles applied in such applications.

182. Ms. Bodden recommended in the report that there be a joint custody order. She went on to say that it was imperative, prior to consideration being given to permanently remove the children on the application to remove from the jurisdiction, that the parties resolve their own issues as they are creating insecurities for both children, C particularly. She recommended that both parties undergo a psychological assessment to determine treatment and attend co-

parenting classes. It is clear that the Court Welfare Officer had formed a view that it was not the time for her to consider the removal application and therefore failed to adequately investigate and address the issues one would have expected her to have done.

183. Although I accept there would be merit in therapeutic input for the parents, I do not find the conclusions of the Court Welfare Officer to be of great assistance to me. The Court Welfare Officer failed to fully consider the effect on the mother of not being able to relocate. I accept that in her oral evidence she did accept that the mother "*felt isolated*" was *"unhappy"* and "*wanted to leave."* The Court Welfare Officer also accepted that if the mother did feel "*isolated, trapped and lonely, with no real family support*", that "*her unhappiness may impact the children."*

184. If leave to remove were not granted it seems unlikely, due to her disappointment, that the mother would at this time be in a position to participate in the recommended therapeutic input. I accept that there is a need for both parents to receive counseling, and I note to the mother's credit that something that she has been open to for herself in the past.

185. Despite my comments above and the criticisms set out in paragraphs 11 to 17 of Ms. Dowse's closing written submissions, I would not go so far as to adopt counsel's invitation to disregard the report in its entirety. A part of the function of

the Court Welfare Officer is to act as the 'eyes and the ears of the court,' especially when meeting the children. Although not particularly helped by her recommendations, some of Ms. Bodden's factual observations are telling. Mr. Cusworth QC rightly draws the Court's attention to the effect of the parental conflict on C in particular. Ms. Bodden also presented insightful and vivid evidence in relation to the important and close bond that exists between C and his father.

186. At paragraph 43 of Mr. Cusworth QC's final written submissions he repeats the following observations found at page 9 of the welfare report:

> *"(i)...it appears (C) is taking the separation the hardest and is exhibiting signs of anxiety. He was a bit shy but able to open up to this worker. He stated that he does not want to move to Florida and would like to remain with his dad."*
> *"(ii)...he (C) was not confused and he consistently responded he wants to remain in Cayman with his father and visit his mother."*
> *"(iii) He also stated that if mom stays in Cayman he still would like to stay with his daddy and visit with mommy."*

187. Mr. Cusworth QC drew the Court's attention to the following observation made by the Court Welfare Officer at page 11 of her report concerning the time when she saw the father and (C) at swimming, namely that:

> *"C constantly looked back at dad for approval and was proud of his accomplishments. He would give his father thumbs up and smile."*

188. Finally, at page 13 of her report the Court Welfare Officer stated:

> *"Both (M) and (F) agree that the children should have regular contact with each other to encourage a positive bond with each parent. However this will prove very difficult if (M) is allowed to relocate."*

189. C is only five years of age, that makes it difficult ascertaining his wishes and feelings pursuant to the welfare checklist. K is too young. Any views expressed by C must be considered in the light of his age and understanding. It does appear that C is aware that there is a possibility that he may be relocating to Florida with his mother, whilst his father remains in the Cayman Islands. It is clear from the observations of the Court Welfare Officer and others that this has been unsettling for him. Of course, the consequences of the deteriorating relationship between the parents since the separation and their inability on occasion to handle their emotions in front of the children appropriately will have also had a significant unsettling impact on primarily C.

190. What is needed in the children's lives is a reasonable routine involving both parents, I fear that this may not be established if the mother relocates. It is clear that C has a close bond with his father and that he would be detrimentally affected by a relocation resulting in a separation from him and the paternal grandparents. Although I must be cautious not to place too much weight on his expressed

wishes and feelings due to his age, I should still have them in mind, especially when there is surrounding evidence indicating that he is currently unsettled.

Conclusion

191. Having already herein addressed the question set out in paragraph 86 above, I remind myself that the overarching principle must be that the C and K's welfare is paramount. To do so I turn now to the relevant parts of the 'welfare checklist' which is found at section 3(3) Children Law (2012 revision).

(a) I have addressed the ascertainable wishes and feelings of the children, but of primarily C in paragraphs 182, 183 and 185 above. When I do so, I am acutely conscious of C's very young age, but am assisted by the observations of the Court Welfare Officer.

(b) Physical, emotional and educational needs: I am satisfied that C and K's physical, emotional and educational needs are being met at this time. I make this finding despite having had concerns about the parties' financial positions, arrears of maintenance pending suit which I am told is to be discharged and recent arrears of school fees. The children are at good schools. Both parents have a loving relationship with the children and meet their physical need when under their respective care. Although the children spend less time with the father than with the mother and some of that time involves the paternal grandparents, I believe the quality of time that he

spends with them is more significant than the quantity. When considering C and K's emotional needs, I have considered whether there would be an impact on the mother's sense of well-being and whether that would be transmitted to the children.

(c) The likely effect of any change in circumstances: If leave were granted there would be a change of country for the children, to one which they have a degree of familiarity with, but have not lived in. They would have to move into an unfamiliar home. They would be living full time with the mother and there would be a detrimental change in the quantum and circumstances in which they would see the father and the paternal grandparents. These are a large number of changes, which if not necessary, would not be in the children's best interests.

(d) Age, sex, background and any characteristics the Court considers relevant: C is 5 and K is 4. C is doing well at school. Both children have dual nationality, Caymanian and U.S.

(e) Any harm which the children have suffered or at risk of suffering: I have expressed my concerns about the communication difficulties between the parties. I have also highlighted, with reference to the welfare report, the effect of the uncertainty on particularly C as a result of the application. The parties must sensitively handle the

outcome of the decision today, shielding the children from their resultant emotions.

(f) How capable are each of the parents in meeting the children's needs: In my ruling of November 2011 I made it clear that both parents were capable of meeting the children's needs. I still retain this view. They have both made a significant contribution to the welfare of the children since they separated. They both have played an important role in the children's lives at this unsettled time. It is in the children's best interests that the parents retain this significant role in their lives.

(g) Range of powers available to the Court: I have considered whether increased access to the father during school holidays would compensate the children's loss of regular time with the father. I have balanced this with whether it is in the best interests of the children by weighing up all the relevant considerations for and against a move to Florida.

192. Having carefully considered all the evidence, the guidance from the case authorities and the welfare checklist I have come to the conclusion that the welfare of C and K is met by the mother's application being refused. The children are settled into a way of life in the Cayman Islands in which they see a great deal of both parents and in which they are settled at school. A move to

Florida would involve a major disruption and significant loss. The children are comfortable with the arrangements that the parents have commendably put in place for their care. There would be a detrimental impact on their time and relationship with the father if they did move to Florida and direct and indirect access would not be sufficient.

193. I recognise the consequences of my decision for the mother, who will see herself as having been forced to remain against her will in the Cayman Islands. Although I have regard to the mother's reasons for moving, I am not satisfied that a move at this time would be in the children's best interests. I recognise that this decision, although reached for reasons that I find are in the children's best interests, will be devastating to the mother. I have carefully considered the long and short term consequences of my decision on the mother and how this may affect her care of the children. She is a dedicated and caring mother, and now that the uncertainty caused by this application is over, hopefully to be followed in the near future by the end of the ancillary relief proceedings, I am satisfied that she will be able to organise her life in a more structured manner, albeit here rather than Florida.

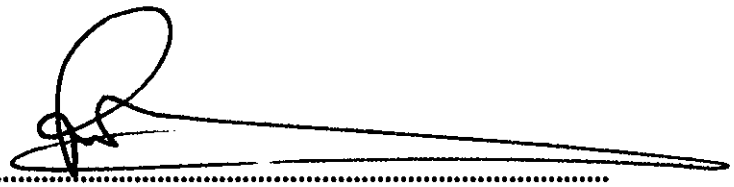
194. Accordingly, I refuse the mother's application to permanently remove C and K to Florida.

195. When I make the order I conclude with and echo what Theis LJ stated in the concluding paragraph of her decision in C v C (International Relocation: Shared Care Arrangement) [2011] 2 FLR 701 at 723:

> *"There are no winners and losers in this situation, all the court has endeavoured to do is reach conclusions on the evidence that are in the best interests of the children. Both these parents have to take responsibility to protect the children from their ongoing communication difficulties and take steps to improve their method of communicating with each other, which can only benefit the children."*

GRAND COURT · CAYMAN ISLANDS

Dated this 10th day of April 2013.



The Honourable Mr Justice Richard Williams
JUDGE OF THE GRAND COURT

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