

1 IN THE GRAND COURT OF THE CAYMAN ISLANDS  
2 HOLDEN AT GEORGE TOWN

Cause No: FAM 137/2010

6 BETWEEN:

7 F M N

9 PETITIONER

11 AND:

12 M P L

14 RESPONDENT



17 Appearances:

18 Mr. Trevor Burke Q.C. instructed by  
19 Ms. Francesca Dowse of Samson and  
20 McGrath for the  
21 Applicant/Respondent

22 Mr. Shaun McCann and Mr. Gary  
23 Hendrikse of Campbells for the  
24 Petitioner  
25

26 Before:

The Hon. Mr. Justice Charles Quin

27 Heard:

28<sup>th</sup> November 2011

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**Preamble**

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*This Ruling is distributed on the strict understanding that in any report of this kind no persons other than the counsel or the attorneys instructing them (and other persons identified by name in Ruling itself) may be identified by name or location and, in particular, the anonymity of the children and the adult members of the family must be strictly preserved.*

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**EX TEMPORE RULING**

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1. This is my Ruling following yesterday's hearing of the Respondent's application,

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dated the 21<sup>st</sup> November 2011, in which he sought the following relief:

- 1                   i. The Petitioner shall have Christmas access to DL from Friday  
2                   the 16<sup>th</sup> December 2011 until Friday the 23<sup>rd</sup> December 2011,  
3                   and from 7 p.m. on the 2<sup>nd</sup> January 2012 to the 4<sup>th</sup> January 2012;  
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- 5                   ii. The Respondent shall have Christmas access to DL from 9 a.m.  
6                   on the 26<sup>th</sup> December 2011 to 7 p.m. on the 2<sup>nd</sup> January 2012;  
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- 8                   iii. The Petitioner and the Respondent shall share Christmas Eve –  
9                   which is DL’s birthday – and Christmas day;  
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- 11           2. The Respondent’s application is grounded by his Fourth Affidavit, filed on the  
12           22<sup>nd</sup> November 2011, and the Petitioner’s Response is set out in her Affidavit  
13           filed on the 25<sup>th</sup> November 2011.
- 14           3. On the 8<sup>th</sup> December 2010 the parties had similar problems regarding access to  
15           DL over Christmas and the New Year. In my Extempore Ruling dated the 9<sup>th</sup>  
16           December 2010 I ordered that the Petitioner should have access to DL in the first  
17           week of the school holidays, prior to Christmas Day. The parties would share the  
18           24<sup>th</sup> December 2010, DL’s birthday, and the 25<sup>th</sup> December 2010, Christmas  
19           Day. The Respondent had access to DL for the period between Christmas Day  
20           and early in the New Year.
- 21           4. Again, not dissimilar to last year’s hearing, I have heard from leading counsel on  
22           behalf of the Applicant/Respondent, and counsel on behalf of the Petitioner, and  
23           it appears that both parties have again taken firm positions on the question of  
24           access to DL over the Christmas season. The issue in dispute is that both parties

1 would prefer to have access with DL during the week between Christmas and the  
2 New Year.

3 ***The Respondent's Position***

4 5. The Respondent contends that, as he is the Partner in charge of Funds at a large  
5 law firm, the period prior to Christmas is the busiest period of the year. The  
6 Respondent avers to the fact that the vast majority of Funds registered each year  
7 are registered with CIMA in the first week of January and therefore considerable  
8 work is undertaken during the weeks leading up to Christmas. Accordingly, the  
9 Respondent submits that he will not be able to spend as much time or as much  
10 quality time as he would like with DL on the days leading up to Christmas Day.  
11 Therefore the Respondent seeks to have the same access as he had last year,  
12 namely the period from the 26<sup>th</sup> December until early in the New Year.

13 6. Leading counsel for the Respondent has said that the Respondent has looked at  
14 ways to try and be more flexible, but given the workload faced at the firm at this  
15 time of year, he finds himself with an insurmountable difficulty.

16 7. In addition, the Respondent points to the fact that DL's half brother, G, will be  
17 with the Respondent from Christmas to the new year, and the Respondent is keen  
18 that G and DL spend as much time as they can with each other.

19 8. The Respondent contends that the Petitioner can be much more flexible with her  
20 time. The Respondent submits that the Petitioner can have the period leading up  
21 to Christmas to spend quality time with DL, whilst he, the Respondent, can only  
22 have the period after Christmas Day to spend similar quality time with DL.

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*The Petitioner's Position*

- 9. The Petitioner contends that her attorneys first wrote to the Respondent's attorneys on the 12<sup>th</sup> October 2011 with a proposal that the same access regime which the Court ordered for 2010 into early 2011, should be put in place – the only difference being that the weeks be exchanged, so that the Respondent has DL for the week prior to Christmas Day, and the Petitioner has DL for the week after Christmas Day.
  
- 10. The Petitioner maintains that the reason she would like DL for the week between Christmas and the new year, is that she can have quality and relaxing “down time” with DL and the other children, including G, if he wishes to visit. In addition, the Petitioner maintains that DL will be able to spend time with his maternal grandparents, aunt, uncle and four cousins over the same period.
  
- 11. The Petitioner contends that it is fair and reasonable to alternate the Christmas access arrangements each year.

*Conclusion*

- 12. Once again the parties have presented the Court with a difficult decision. Just like this time last year, the welfare of DL must take paramount importance. Yet, at the same time, the Court must endeavour to treat the parties fairly and equally, to allow them, each, to have as much quality time as they can with DL over this important period.
  
- 13. Whatever the Court decides will inevitably mean disappointment to one party.

1       14. Having read the Affidavits and heard the submissions made by both counsel, I  
2       find that the Petitioner is in the fortunate position of being more flexible, whilst,  
3       there is no doubt that the Respondent is, to some extent, constrained by his heavy  
4       work commitments.

5       15. Although there is a certain amount of logic in simply exchanging the periods of  
6       access to mirror last year's regime, the Court must look at the situation and the  
7       circumstances faced by both parties this year, and decide what is the best access-  
8       arrangement for DL.

9       16. Also, the week leading up to Christmas Day can be particularly exciting, and  
10       gives the parent who has access to DL the opportunity to attend all the Christmas  
11       events leading up to Christmas Eve and Christmas Day.

12       17. I am persuaded by the Respondent's evidence that he has limited time before  
13       Christmas and therefore I am minded to accede to his request to have the same  
14       regime as was put in place in 2010.

15       18. By acceding to the Respondent's application DL can have uninterrupted quality  
16       time with his mother on the weekend before, and in the week leading up to,  
17       Christmas, and have similar uninterrupted quality time with his father after  
18       Christmas and up to the New Year.

19       19. Although I understand that my decision will disappoint the Petitioner, I make this  
20       finding because it is my view that it is in the best interests of DL to be able to  
21       spend similar, if not the same, uninterrupted holiday time with his father as well  
22       as his mother. Accordingly, I make an Order in the following terms:

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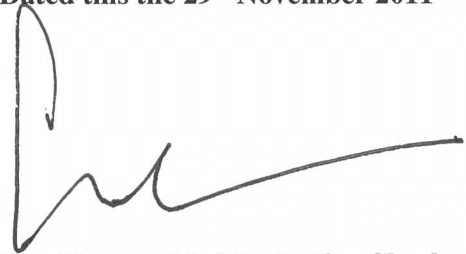
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- i. That the Petitioner shall have Christmas access to DL from Friday the 16<sup>th</sup> December 2011 until Friday the 23<sup>rd</sup> December 2011, and from 7 p.m. on the 2<sup>nd</sup> January 2012 to the 4<sup>th</sup> January 2012.
  
- ii. That the Respondent shall have Christmas access to DL from 9 a.m. on the 26<sup>th</sup> December 2011 to 7 p.m. on the 2<sup>nd</sup> January 2012.
  
- iii. That the Petitioner and the Respondent shall share Christmas Eve – DL’s birthday – and Christmas Day.

20. As I stated this time last year, it is obviously open to the parties to vary and adjust the terms of this Order by Consent and agreement.

21. I make no order as to costs.

**Dated this the 29<sup>th</sup> November 2011**



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

