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IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO: FAM 17/2010

**IN THE MATTER OF THE GUARDIANSHIP AND CUSTODY OF CHILDREN
LAW (1996 REVISION)**

**AND IN THE MATTER OF THE MINOR CHILD HAYDEN TYLER
PUNNEWAERT-WOOD (DATE OF BIRTH 9 JULY 2002)**

BETWEEN: PHILLIP PATRICK WOOD

Applicant

-AND-

DEBRA LYNNE PUNNEWAERT

Respondent

Coram: The Hon. Mr. Justice Foster, Q.C. in Chambers

Appearances: Mr. David McGrath of Samson & McGrath for the Applicant (the Father) and the Respondent (the Mother) in person

Heard: Thursday 4th February 2010

RULING

1. There are two matters before me. For convenience I shall refer to the parties as the Mother and the Father. First, pursuant to my order of 21st February 2008 following on my Judgment of the same date, by which the Mother's application for sole custody of the minor child ("C") and for leave to take C out of the jurisdiction to live with her permanently in Canada was refused (and day-to-day

1 care and control consequently then awarded to the Father), the matter was
2 directed to be listed for review in 2 years time. Accordingly the matter now
3 comes before me for review, this being the soonest most convenient date for the
4 Mother for a hearing. Secondly, the Mother has also now filed a further
5 application by summons dated 8th January 2010 again seeking care and control of
6 C and leave to remove C from the jurisdiction to live with her in Canada. Her
7 application includes detailed proposals for access to C by the Father should care
8 and control be granted to her. The Father's application for review of the matter
9 was supported by a detailed affidavit, the Mother's application for care and
10 control and permission to take C to live in Canada was supported by a lengthy
11 affidavit by her, to which the Father responded by a further detailed affidavit and
12 the Mother in turn has further responded with another lengthy affidavit filed only
13 yesterday. Since the facts, allegations and issues arising from both of these
14 matters are effectively the same I heard both matters together. Since the hearing I
15 have had the opportunity to review all of these affidavits and exhibits again.

16
17 2. The history of this unfortunate matter, at least up until 27th November 2008, that
18 is shortly before the Mother in fact went to live permanently in Canada, is set out
19 at length in my Judgment dated 21st February 2008 following a 2½ day trial of the
20 same issue, and also in my Ruling dated 27th November 2008 following the
21 Mother's second applications for leave to take C to live with her in Canada. I do
22 not therefore think it necessary for me to rehearse that lengthy and detailed
23 history; suffice it to say that after anxious consideration of the matter on each

1 occasion I refused the Mother's applications for leave to take C to live with her in
2 Canada. The detailed reasons for my doing so are also fully set out in my
3 Judgment of 21st February 2008 and again in my subsequent Ruling dated 27th
4 November 2008. I should perhaps also mention that in April 2008 the Mother
5 appealed against the Judgment of 21st February 2008 and the Court of Appeal
6 dismissed the appeal and affirmed the Judgment (or rather the consequent order)
7 by their order dated 10th April 2008.

8
9 3. This is therefore the third application (or arguably the fourth if her appeal in April
10 2008 is taken into account) made by the Mother for leave to take C to live with
11 her in Canada in just over 2 years. Since late December 2008 the Mother has
12 been living in Ontario, Canada and C has been living with the Father in Grand
13 Cayman but regularly visiting the Mother in Canada for residential access.

14
15 4. As was the case in her application in November 2008, the Mother's principal
16 allegation is that she continues to feel excluded from C's life, from knowledge of
17 and participation in his day-to-day activities, his health, education and general
18 welfare. She continues to be critical of the Father's care of C and maintains that
19 C is unhappy living with the Father because he greatly misses the Mother and her
20 young daughter, C's half sister. She also asserts that there have been significant
21 changes in her circumstances, both physically and psychologically.

22
23 5. The physical change is that the Mother has now moved to live in a different and
24 rural area of Ontario, albeit 5 hours drive away from her parents where she was

1 living before. She says she has established herself with new friends and
2 neighbours and has a good job with particularly supportive employers. She
3 argues that the place and general area in which she now lives is a particularly
4 good and appropriate environment for C to live in and that C very much enjoys
5 and benefits from his time spent on access visits to her there. She contends that
6 this environment is better and more favourable to C's welfare than the
7 environment in which C presently lives with the Father in Cayman. She
8 specifically mentioned the low level of crime where she lives and the absence of
9 risk from hurricanes and earthquakes.

10
11 6. The psychological and attitudinal change in the Mother's circumstances, which
12 she contends has occurred, is that she says she has now, over time, come to accept
13 and acknowledge the importance for C of his maintaining a close relationship
14 with both his parents and, in particular, if C lived with her, of his maintaining
15 such a relationship with the Father. She accepts that she created difficulties in the
16 past with regard to the Father's access to C when the parties were both living in
17 Grand Cayman but she contends that her attitudes in this respect have now
18 changed. She says that there is no way she would not follow absolutely and to the
19 letter the terms of any Court order regarding access to C by the Father. She also
20 said that she now understands and accepts the views of the child psychiatrist, Dr.
21 Hughes, who gave evidence at the trial in December 2007 and that she is
22 endeavouring to follow his advice. She is not attending any regular counseling
23 but she reads self-help books. In all these circumstances the Mother argues that it
24 is now in the best interests of C for him to go to live with her in Canada on the

1 basis that the Father could have regular access to C, which she says she would
2 support, so that C would maintain a good relationship with both his parents.

3
4 7. The Father categorically denies the Mother's continuing allegations that he is not
5 complying with the terms of the order of 21st February 2008 or that he is
6 otherwise excluding C from the Mother or excluding the Mother from C's life.
7 He exhibited to his affidavits a large volume of email correspondence in particular
8 which satisfied me that he is genuinely seeking to ensure that C maintains as a
9 close a relationship with the Mother as is practical in the circumstances and that
10 he is complying with the provisions of the order. Indeed with regard to physical
11 access to C by the Mother in Canada, the Father has gone over and above the
12 requirements of the order. He has taken C to Canada regularly and frequently so
13 that the Mother has significant periods of physical access each time C has a
14 school break, including at Christmas and Easter, at mid-term and during the
15 Summer holidays. This has, of course, all been at the Father's sole expense. The
16 Mother suggested that this expense could be saved and used to further C's welfare
17 in other ways and to pay for access visits to Canada by the Father if C lived with
18 her. I did not find that particular argument persuasive in the context of assessing
19 C's best interests.

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21
22 8. The Mother, in her submissions to me, freely and frankly accepted that her
23 personal relationship with the Father remains very poor and she expressed the
24 view that they would never be able to "get along". Certainly, some of the email

1 correspondence produced demonstrates that the Mother has, on occasion, been
2 hostile, difficult and unreasonable with the Father as far as C is concerned and her
3 dislike of the Father is very evident.

4
5 9. A particular issue which both parties identified as being problematic concerns the
6 communication between C and the Mother using the computer with a webcam
7 (which enables the parties involved to see each other). The Mother complained
8 that often C did not communicate this way at the times she anticipated and that
9 she and her daughter sometimes found themselves waiting for communication
10 from C which never came. I remain of the view and, I believe the Father accepts,
11 that there should be as much communication between C and his Mother as is
12 reasonably practicable and such “missed calls” should be avoided as far as
13 possible. The Mother stated herself that she and her young daughter lead busy
14 lives and are obviously not always near the computer when C attempts to contact
15 her. Equally, however, she must acknowledge that C (and the Father) also lead
16 full and busy lives and C is not always able to contact the Mother at a time which
17 might suit her convenience. Part of this problem is created by the fact that the
18 Mother does not have and has apparently declined to get a mobile phone despite
19 the Father’s suggestion that she do so to assist with the difficulty. In my opinion
20 this communication problem could be solved to a large extent if the Mother did
21 acquire a mobile phone and C, who already has a mobile phone (which he uses to
22 communicate with the Father when he is on access visits to Canada), could call or
23 text the Mother to agree a particular time in advance for their computer

1 communication which suited their mutual availability. The Mother suggested that
2 specific times for C to contact her should be fixed but in my judgment that would
3 not really assist since inevitably it will not always be possible for C, or indeed the
4 Mother, to be available at such fixed times. As I have said previously, I am very
5 much of the view that C should speak to the Mother using the computer and
6 webcam as frequently as reasonably practicable and both parties, the Mother as
7 well as the Father, should do everything possible to assist C to do so. I also
8 suggest that the Father and the Mother use Skype or an equivalent program on
9 their computers so that C and the Mother may communicate in that way without
10 or with minimal cost.

11

12 10. I should mention a matter arising from the evidence before me which causes me
13 considerable concern. It appears that in late June 2009 C, who was in Cayman
14 with the Father at that time, became extremely upset as a result of his
15 understanding from what the Mother had just told him on a computer call, namely
16 that he could or should not call her anymore. According to the Father's affidavit
17 C told him that this was because often when he speaks to the Mother he gets
18 stomach pain which in turn upsets the Mother so she had told C not to call her
19 anymore. The Mother denied that she had told C not to call her and said only that
20 she did not like to see C in pain or upset. However, it seems that C was clearly
21 sufficiently worried and upset by what the Mother had said to him that the Father
22 felt it necessary as a result to take C to see Dr. Antonia Hawkins, the child
23 psychiatrist who C had been seeing previously, for emotional support. It was

1 some time before the Mother, at the Father's prompting, spoke to C again. I must
2 say that I am appalled by this incident which does not seem to me at all
3 compatible with a mother who truly has the best interests of her child always at
4 heart. To tell a young child anything which clearly gives him the understanding
5 that he should no longer call his mother is truly inappropriate and contrary to the
6 child's best interests in my opinion.

7
8 11. The evidence is, and the Mother herself also volunteered this, that the
9 computer/webcam conversations between C and the Mother are frequently highly
10 emotional and often result in tears on the part of the Mother and C. This must be,
11 in my opinion, attributable to the Mother and is very clearly not in the best
12 interests of C. In my judgment of 21st February 2008 I specifically said (albeit in
13 the context of the Mother's then anticipated impending departure from Cayman to
14 Canada) at paragraph 104:

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16 *"I should also say that the Mother must try to grasp and appreciate the fact that*
17 *the decision that C should remain in Cayman living with the Father is considered*
18 *to be in C's best interests, however painful for her that may be. It is clearly*
19 *desirable that in the interests of C she should do all she can to keep her emotions*
20 *concerning this decision from him and the Court would hope and expect that she*
21 *will do so for C's sake."*
22

23
24 In my view if the Mother truly has the best interests of C at heart and genuinely
25 wishes to help and support him, as she should, she must now change her attitude
26 and her approach to her communications with C and what she says to him and the
27 way she speaks to him. She must make it as easy and attractive as possible for C
28 to speak to her and she should be supportive and encouraging to him of the

1 current arrangements for his care and welfare. She must continually express
2 positive enthusiasm and appreciation to C of the things he does with the Father
3 and what the Father does for and with him. She should desist from telling C that
4 she wishes C was living with her permanently in Canada and not with the Father
5 in Cayman or that she is trying to arrange for him to move to live in Canada,
6 thereby causing uncertainty and insecurity in C's mind. She should do all she
7 possibly can to ease what is clearly a very difficult situation for any young child.
8 She should not exhibit distress to C or discuss with him issues which are highly
9 emotional for her and consequently also for him. It is hardly surprising that C
10 should have stomach pains when engaging in conversations with the Mother if she
11 constantly exhibits to him emotion about the current arrangements for his care and
12 shows sadness, disappointment or depression, with the result that he feels she is
13 always "sad", as he has said. It is obvious that any young child would be
14 apprehensive and emotional about having such fraught conversations with his
15 dearly loved mother. This emotional attitude and conduct on the part of the
16 Mother when communicating with C is inappropriate and must cease in the
17 interests of C and his welfare. In future her conversations with him must be
18 positive and supportive of his situation, of course naturally enthusiastic about his
19 next visit to her in Canada, but nonetheless entirely uncritical and unemotional
20 about and accepting of C's living with the Father and the current arrangements. If
21 the Mother truly has the best interests of C at heart she will do this.
22

1 12. It is trite law that in deciding any question concerning the custody or upbringing
2 of a child the Court must regard the welfare of the child as the first and paramount
3 consideration. The Guardianship and Custody of Children Law also makes it
4 clear that in respect of the custody and upbringing of a child the claim of the
5 father is not superior to that of the mother and the claim of the mother is not
6 superior to that of the father. The sole issue is what is best for the child in the
7 view of the Court having regard to all the circumstances.

8

9 13. It was submitted on behalf of the Father that since he is now to be considered C's
10 primary caregiver, the burden of satisfying the Court that it is in the best interests
11 of the child to change that status quo lies with the Mother. However, at least in
12 the circumstance of this particular case, I prefer and have endeavoured to have
13 regard to solely what in my judgment is in the best interests of C's welfare in all
14 the circumstances of this matter.

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17 14. In my Ruling dated 27th November 2008 at page 6 I said:

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19 *"In my opinion what C needs at this time is a lengthy period of stability and*
20 *security, of familiar routine, and as far as possible, freedom from the uncertainty*
21 *and confusion created by his parents continually fighting and arguing over*
22 *him....In my opinion and in the exercise of my discretion, there is nothing so*
23 *substantially new in her [the Mother's] allegations and there is no such*
24 *significant or material change in circumstances as to make it appropriate, or*
25 *desirable having regard to the best interests of C to re-litigate the issue of*
26 *whether C should leave his home in Cayman and go with the Mother to live in*
27 *Canada."*

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1 I consider those comments about C's need for stability, security, routine and
2 freedom from the uncertainty and confusion caused by to his parents' continual
3 arguments over him to have been consistent with my views and conclusions
4 expressed in my earlier Judgment dated 21st February 2008.

5
6 15. The general tenor of the evidence put before me at this hearing was that the
7 decision made in February 2008, as reaffirmed by the Court of Appeal in April
8 2008 and again by this Court in November 2008, that C should live and continue
9 to live in Cayman with the Father with relative stability and security, familiar
10 routine and freedom, at least day to day, from uncertainty and confusion, supports
11 the view that from the perspective of C's welfare those decisions have been
12 largely vindicated. There have clearly been significant improvements in C's
13 school work and conduct, his stability, routine and general welfare and, perhaps
14 most importantly, his mental health. His need for psychological counselling has
15 now ceased. Of course, it is inevitably very difficult for him, at his relatively
16 young age, to live with an absent parent, particularly one who is, to him, so far
17 away and to him it would obviously be far preferable to have both of his parents
18 living where he lives and physically available to him at any time. Unfortunately
19 for him that is simply not, and it seems not likely to be, a practical proposition so
20 he has no alternative but to adapt to having an absent parent wherever he lives.
21 Naturally he misses the Mother and she naturally misses him, although even C
22 himself is on record as perceptively acknowledging that this would be no different
23 if the current position was reversed and he lived in Canada where he would

1 equally miss the Father. The question, however, is always what is best, or
2 perhaps realistically, least harmful, for C overall and the current arrangements
3 seem to me be that. I understand that it is hard and difficult for the Mother, as no
4 doubt it would be for the Father if the situation was reversed as she again seeks,
5 but that is ultimately not the issue.

6
7 16. As was pointed out by counsel for the Father, since the Mother did not eventually
8 leave to go to live in Canada until late December 2008, the present arrangements
9 have in practical terms only been in place for just over a year. That is not the
10 lengthy period of stability and familiar routine which I had in mind in my Ruling
11 dated 27th November 2008. Even in that relatively short period and
12 notwithstanding some of the emotional upset which the Mother in particular has
13 been causing to C as outlined above, the decision that C that should live with the
14 Father does appear to have been largely justified and appropriate.

15
16 17. I do not consider that the Mother's latest criticisms or her suggestions of change
17 in circumstances are such as to make it in C's best interests to now change the
18 present arrangements. In my view, from the perspective of C's welfare there is
19 nothing to be gained by my endeavouring to determine whether the place where
20 the Mother now lives is or is not superior to the place where the Father lives. As I
21 have mentioned, the Mother painted a glowing picture of life where she now lives
22 but C is well able to and can take advantage of the amenities there on his frequent
23 access visits. Much more important, in my assessment, is the need for C to
24 continue to benefit from the familiar environment and routine which he has under

1 the present arrangements and which are clearly beginning to help him. I consider
2 that a change from that now would be detrimental to his welfare and would risk
3 undoing the good done over the past year. As far as the psychological changes
4 which the Mother claimed she had undergone, these are not borne out by some of
5 the emails she has sent over the past year nor, in my view, by the manner in which
6 she conducts communications with C as I have explained. Her acrimony towards
7 the Father remains obvious. Her refusal, for example, to make communication
8 easier for C by acquiring a mobile phone does rather look like an attempt simply
9 to make life more difficult in order to further her criticisms of the Father rather
10 than being in C's interests. Her claim of such change is not objective and was not
11 supported by any other evidence, indeed it is contrary to the evidence as a whole.
12 While I accept that people's attitudes can and do change, I regret that I am not
13 convinced, particularly having regard to her evident implacable animosity towards
14 the Father, that the Mother has changed to the extent which she claims. In her
15 oral submissions the Mother frequently said that she intended no criticism of the
16 Father but then proceeded to launch into a number of such criticisms which were
17 largely repetitive and seemed to me unreasonable, unjustified or unsubstantiated.
18 If the Mother's attitude and approach have changed as she contended that is
19 obviously to be welcomed although, as I have said, I am not satisfied that there
20 has, underneath it all, been much change. Neither that nor the physical change in
21 her living arrangements amount in my opinion to matters which, in the best
22 interests of C's welfare, make it desirable to change the current arrangements. C
23 must, in my judgment, be allowed to continue to settle down in the present routine

1 and allowed freedom from anxiety and insecurity about his living arrangements.
2 The Mother must demonstrate in practice that she does indeed have C's interests,
3 particularly his emotional well-being, foremost in her mind, rather than her own
4 emotional interests.

5
6 18. As already mentioned, this is now the third, or arguably the fourth, application by
7 the Mother for leave to take C to live with her in Canada in the past 2 years. The
8 present arrangements have only been in place for just over 1 year. In my opinion
9 it is now time for the Mother to cease her repeated attempts to persuade the Court
10 that C should go to live with her in Canada with the psychological damage which
11 her continual litigation, and her attitudes behind that, clearly cause to C. She
12 must control her inappropriate emotions and hide them from C and instead
13 support C in a positive and enthusiastic way so as to promote and enhance his
14 stability and security, well-being and happiness and accept and encourage his
15 loving relationship with both of his parents, to which he is so clearly entitled. I do
16 not consider that to change the present arrangements would be the best interests of
17 C's welfare and I therefore refuse the Mother's latest application.

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19 19. As far as the order dated 21st February 2008 is concerned, that order shall stand
20 but shall be varied by the addition of a further sub paragraph 3 b) vi) as follows:



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22 vi) The Applicant shall regularly provide to the Respondent photographs of
23 Hayden not only at special occasions such as parties, school occasions and
24 on holiday but also undergoing his day-to-day activities from time to time.
25 The Respondent shall, as soon as practicable acquire a mobile phone and
26 provide the number to Hayden to enable him to contact her to arrange

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times for computer communications with her. The Respondent shall also provide the number to the Applicant but the Applicant shall only use that mobile phone to communicate with the Respondent in situations of extreme urgency or emergency if no other effective means of communication is available.

20. In the circumstances I make no order for costs.

Dated 5th February 2010



Hon. Mr Justice Angus Foster, Q.C.
Judge of the Grand Court