

IN THE GRANT COURT OF THE CAYMAN ISLANDS

CAUSE NO: 283 OF 2004



IN THE MATTER OF THE GUARDIANSHIP AND CUSTODY OF CHILDREN
LAW

BETWEEN D.M. APPLICANT
AND F.P. RESPONDENT

IN CHAMBERS
THE 22ND SEPTEMBER 2009
BEFORE THE HON. CHIEF JUSTICE

Appearances: Mr. D.M. in person
 Ms. Vanessa Allard of Brooks and Brooks for the respondent mother

RULING

1. This is yet another of the growing number of cases in which the Court must decide whether to allow a child to relocate outside of the jurisdiction with one parent against the wishes of the other.
2. All such cases are inherently difficult primarily because of the inevitable separation and disruption which the proposed change in circumstances would impose upon the child. This case is no exception, but is made even more difficult by the complexities of the condition and circumstances of this particular child.
3. B. is a 13-year-old boy, of two Caymanian parents whose mother has determined that it is in not only his best interests, but also in the best interests of her other three children, that she should relocate with B. and his siblings to live permanently in England.

4. B.'s mother and father were never married. This matter came before the Court pursuant to the Guardianship and Custody of Children Law on the basis of an application by the father, D.M., in 2004. He was granted interim custody care and control of B. in June 2004 but, in what can fairly be described as a fit of pique and exasperation, surrendered care and control of B. to his mother in March 2007. His accompanying letter (dated 28 March 2007) speaks volumes about his state of mind at the time and reveals what in my view continues to be a deep misconception and lack of understanding of the real psychiatric and psychological challenges with which B. must contend and which are manifest in his behaviour, but for which Father largely blames Mother's over-indulgence:

"B.'s bad behaviour has escalated over recent weeks and he has been under punishment for almost six weeks now as he continues to get into trouble at school, such as kicking in doors, cursing bad languages and insulting his teachers, and you, his mother, have continued to do nothing, even after my asking for your help. I have had to deal with these issues alone, and take time away from my job to address the concerns of the school and B.'s teachers.

B. is now age 10, and has been attending primary school for the last 5 years, and to date, his teachers claim that you have only once enquired about your son and his progress even though your daughter attends the same school and you obviously find the time to check up on her.

I have sat and spoken with my son and when asked what his bad behaviour is all about he tells me he wants to live with his mother,

which would obviously be his first choice, as there are apparently no consequences for his actions in your home.

I do not think it is acceptable for me to continue to be the only parent to be concerned about B., issue any discipline and take responsibility for his well being and development. I have tried every avenue possible to try and teach my son the right way and obviously in his eyes, I am the "bad" one, and you, his mother can do no wrong when you continue to ignore what is happening and encourage him to be defiant when he returns to my household after spending the week-end with you.

Although I do not think that living with you is in his best interest, I can no longer continue to bang my head against a brick wall."

5. So it came about, despite the interim order made in June 2004 that B. was, without further recourse to the Court, unilaterally "handed over" to his mother. He has resided with her ever since and, on 14 August 2009, she obtained an order of this Court by which she was granted the sole custody care and control of B., with reasonable access to father.
6. Complicated by his diagnosis as a child suffering from Attention Deficit Hyperactivity Disorder ("ADHD"), B.'s upbringing has been particularly challenging. Although seen as a bio-psycho-social disorder, B. has responded only moderately well to medication and Dr. Lockhart, his psychiatrist, regards B.'s condition as being less biological than it is psycho-social. As he puts it in his report of 14 September 2009 presented at the request of this Court:

"This is a disorder that is found on a spectrum – children can present such a set of care symptoms but all with different levels of severity.

B. is a bright child, very perceptive, but the behavioural component, the oppositional component (resistance to control), the deficient component predominates his diagnosis; in my opinion, the emphasis here is not on the biological but more on the psycho-social aspects."

7. That being the view taken of his underlying problem, Dr. Lockhart goes on to express the firm view that B.'s relationship, especially with his father at this stage of his life, is crucial.

"I feel that the young male needs structure, he needs limit setting. His mother has done a very good job at that, but part of the developmental issues that young males go through – rebellion etc. (show) that they require the input of a male figure – a father. The literature confirms this; as well as contact with B. and his response over the last several months to our sessions involving his father."

8. There is no doubt that B.'s behaviour has become detrimental to his own well being and to the ability of his mother, teachers and other care-givers to respond to the demands of his condition.
9. So disruptive has his behaviour become that he has been removed from the main-stream class room and placed in the Alternative Education Programme ("AEP").
10. There have been encouraging episodes of compliance more latterly and as observed by Dr. Lockhart, attributable mainly to the involvement of father over

the past few months. These episodes have however been all too sporadic and no sooner had B. returned to school from the summer holidays two weeks ago, than he had to be referred again to the AEP. Regrettably, even within the AEP he has failed to behave within acceptable bounds and his teachers there are not persuaded that he will do better eventually. His case is still further complicated in light of his academic potential which can only be realised if he returns to a mainstream programme. It is recognised by his teachers that the AEP is therefore in any event, not a suitable long-term programme for his academic or behavioural development.

11. B.'s mother points to his needs and to the existing situation as compelling reasons for his relocation to England where more specialised schooling is available.
12. She also cites other strong reasons which, from her point of view, must be accepted as being at least equally compelling.
13. Another of her other three children, 10 year-old A., also suffers from ADHD. His prognosis is described as being even more complicated than B.'s.
14. He is also treated by Dr. Lockhart and has been evaluated by Dr. Antonia Hawkins, the child behavioural psychologist. The following extract from Dr. Lockhart's report of 21st September 2009 describes his condition:

"A. Minzett Jr. was evaluated for the possible initiation of medication treatment for features of Attention Deficit Hyperactivity Disorder on 12th June 2008. This evaluation was initiated after A. had completed a complete psychological evaluation by Dr. Antonia Hawkins, psychologist. Her findings indicated the following: 'observations and test data suggest several factors may be

impacting A.'s presentation. While there was certainly sufficient evidence to suggest the presence of ADHD, there was also reason to suspect that A. may be experiencing specific learning problems that may elicit disengagement, avoidance, or emotional acting out...."

A. was prescribed the psycho-stimulant Adderall in June 2008 after his initial evaluation with this writer. This was done after clinical features of hyperactivity, decreased attention span and impulsivity were observed and, taken along with information from Mother and his psychological report, the diagnosis of ADHD was confirmed in my professional opinion."

15. It is apparent that with A.'s diagnosis, there is to be placed at least as great an emphasis upon the bio-pyscho as upon the psycho-social aspects. Even though behaviourally more compliant than B., his apparent inability to adjust to the educational environment available here has led to, in Dr. Lockhart's report:

"Multiple recommendations for structured behavioural and psychological interventions (being) also recommended with the suggestion for a "psycho-structural" evaluation to rule out specific learning disabilities and to evaluate his cognitive processing capabilities...once the above interventions were implemented."

16. At present A. is described by Mother as being completely disengaged from the teaching process, spending his time in the classroom "under the desk tearing up paper" and still not yet, at age 10, able to read.

17. She says that programmes were recommended by the Student Services Co-ordinator at A.'s school – a Mr. Holt – but the school could not respond by way of providing them.
18. Even more so than in B.'s case, she is convinced and has decided that A. must be relocated to the U.K. if he is to have a chance at acquiring any academic competency. His father, who is also the father of F.M.'s two other children – two daughters – has given his consent for their relocation.
19. The Court's intervention is required only in B.'s case because his father withholds consent.
20. Mother's determination is that it is in B.'s best interest to be allowed to relocate with her and his siblings to England where, she has been assured; there is a better prospect of their educational needs being met with at least an equal expectation for their ongoing psychiatric and psychological treatment.
21. She has simply not been emotionally prepared to confront the Hobson's choice of relocating without B. or of depriving A. of his better prospects for education, by having to remain here for B.'s sake.
22. She has made the plans and I am satisfied that they are fully in place, for the housing, schooling and general relocation of herself and her four children to England.
23. As to their schooling in particular, an email – received on 17 September 2009 from the Stockton-on-Tees Borough Council, Pupil Support Division – reconfirms that placements have been reserved for all four children.

24. In B.'s case, the Special Educational Needs Section, while confirming his space availability, will need to convene a multi-agency meeting to consider the best placement and programme for him, having regard to his behavioural problems.
25. As to the medical and psychological treatment for B. and A., Mother reports on the Borough Council's undertaking to assist with finding them the appropriate care and facilities once their needs can be fully evaluated in situ.
26. Having had the benefit of sitting throughout the very full enquiry undertaken in these proceedings, Father's position has apparently softened somewhat, towards the possible re-location of B. to England.
27. B.'s best interests are paramount but it is clear from Dr. Lockhart's evidence that that objective may be defeated unless Father continues to be a presence and influence in B.'s life.
28. It is therefore of particular significance that I am able to record Father's expressed intention made latterly in these proceedings; to continue to be in close contact with B., and to do so even if B. were to be allowed to relocate to England. His stated primary concern in having opposed B.'s relocation was that "*B. should have a proper structure.... I am a passionate man about rules and regulations, that was how I was brought up.*"
29. Even so, Father has acknowledged that he may continue to provide influence and guidance in B.'s young life by maintaining constant contact and by visiting him in England or bringing him to visit as often as resources will allow. Such as, of course, when B. might be able to return to spend holidays with him here in the Islands.

30. Given all the circumstances that this case presents, I am led to the conclusion that the Court should take Father at his word in this regard and proceed with the expectation that he will do his best to continue to support and guide B. by maintaining the relationship with him throughout his adolescent years and into adulthood. The order of the Court will be aimed at encouraging and facilitating that objective.
31. With all the foregoing in mind, the conclusion I reach is that it is in B.'s best interests that he should be allowed to relocate to England with his mother, brother and sisters. This conclusion re-affirms the earlier order of this Court which granted sole custody care and control to Mother, with reasonable access to Father.
32. B., his siblings and mother are all now citizens of the United Kingdom by operation of law by virtue of their status as British Overseas Territories (Cayman Islands) Citizens. As such it is to be expected that the arrangements for schooling and medical care will be available as mentioned above. While the social milieu will be new and different, the literature and online information on Stockton-upon Tees promises a safe, quiet and welcoming environment in Northern England where Mother already has close relatives residing not far away. Her sister's fiancée also hails from that part of England and they are soon to be married and relocating there as well.
33. All in all, there is at present, to my mind, no basis for concern that B.'s social, medical, educational and material needs will not be adequately met.
34. B.'s access to his father is to be as full as time and circumstances will permit. In particular, provisions are to be made so that Father can communicate with B. by

the internet (using the cost-effective "Skype" programme), or email on a daily basis. They will speak by telephone at least once per week on Saturdays.

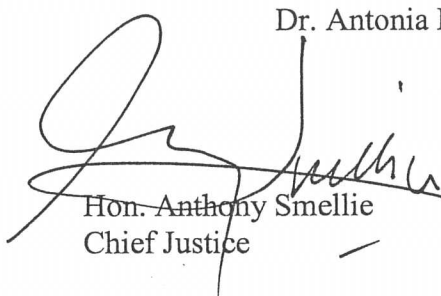
35. The following order is accordingly made.

- (i) That the Respondent mother of the minor child B.M. shall continue to have sole custody, care and control of the said minor child.
- (ii) That she has the permission of this Honourable Court to travel out of the jurisdiction with the child B.M., and to take him to reside with her in the United Kingdom.
- (iii) That the child's father D.M., shall have liberal access to the child B.M. while the child resides in the United Kingdom.
- (iv) That such liberal access shall be by means of e-mail, internet and "Skype" and telephone when available. Such reasonable times of access are to be determined between the parties, making allowances for the time differences between the Cayman Islands and the United Kingdom.
- (v) That further, the father D.M. shall have liberal access to the child B.M., whenever he is able to travel to the United Kingdom, and in particular, when he travels there, as planned, during December 2009.
- (vi) That the parties shall arrange in advance of D.M.'s visit to the United Kingdom in December 2009, for him to visit and meet with the child's teachers at his school in the United Kingdom, as well as the child's medical caregivers.
- (vii) That it is envisioned by this Court, that in time, and after he is fully settled in the United Kingdom, and where deemed advisable by his medical

doctors, that B. will travel to the Cayman Islands to spend time with his father.

- (viii) That the child's mother F.M. shall, as soon as possible after the child settles into school in the United Kingdom, request a report from the child's school on arrangements made for his placement, his school program, as well as the medical support arranged for his care. That this report is to be provided to this Court, and a copy provided to the father Mr. D.M..
- (ix) That before B. leaves the Cayman Islands, the child and his father, and if possible his mother, are to meet with and discuss his transition to the United Kingdom with Dr. Marc Lockhart.
- (x) That the Applicant father shall pay the sum of CI\$600 per month as to maintenance for the child B.M., commencing on the 23rd October 2009 and on the 23rd of each month thereafter, through the Court Funds Office. Such maintenance is to continue while the child remains in full time education until he is 21 years old, or until he ceases full time education, whichever occurs first; but in any event until he is 18 years old.
- (xi) That an Attachment of Earnings Order is made and shall issue to the Applicant's employers Bank of Butterfield, Grand Cayman, in respect of the aforementioned monthly payments.
- (xii) That the Court Funds Office is directed to pay these sums for maintenance into the Respondent mother's bank account at Bank of Butterfield, Grand Cayman account no. 0220111608700.

- (xiii) That the Applicant father D.M., is to maintain coverage for the child on his health insurance policy here in the Cayman Islands.
- (xiv) That both parties have liberty to apply for a review of the provisions of this Order after the expiry of 6 months.
- (xv) That Legal Aid is extended to allow the mother's attorneys to remain in contact with her, for the purpose of the intended review of the matter by this Court in 6 months.
- (xvi) That a copy of this Order shall be provided to both Dr. Marc Lockhart and Dr. Antonia Hawkins.


Hon. Anthony Smellie
Chief Justice

September 23 2009

