

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

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5 **Cause No: FAM 0031/2013**  
6

7 **BETWEEN:**

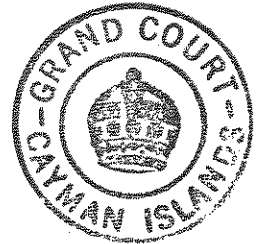
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10 PETITIONER

11  
12 **AND:**

13 TS

14  
15 RESPONDENT  
16



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18 **Appearances:**

19 **Mr. Michael Snape of Priestleys for the**  
20 **Petitioner**

21 **Mr. David Holland of Samson & McGrath for**  
22 **the Respondent**  
23

24 **Before:**

**Mr. Justice Alastair Malcolm (Actg.)**

25 **Heard:**

**26<sup>th</sup> -27<sup>th</sup> February 2015**  
26

27 **Preamble**

28 *This Judgment is distributed with the strict understanding that, in any report of it,*  
29 *no person, other than the attorneys (and any other person identified by name in the*  
30 *judgment itself) may be identified by name or location and in particular the*  
31 *anonymity of the children and adult members of the family must be strictly*  
32 *preserved.*

33 **JUDGMENT**  
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1 1. The petitioner ("F") and respondent ("M") were married in on 28<sup>th</sup> February 2004.  
2 They have three children together, aged 10, 9 and 6 years old ("A", "B" & "C").

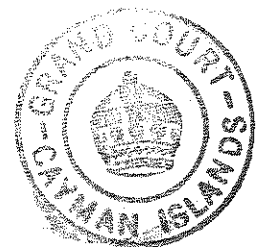
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4 2. In or around November 2012 F and M separated. F left the matrimonial home and  
5 returned to live with his parents. At that time the children remained living with M at  
6 the matrimonial home.

7  
8 3. On 12<sup>th</sup> February 2013 F filed a petition in the Grand Court seeking that the marriage  
9 be dissolved .On the same day F also made an *ex parte* application to the Grand Court  
10 seeking an interim residence order in his favour.

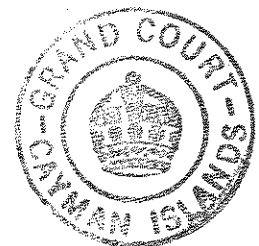
11  
12 4. On 14<sup>th</sup> February 2013 F's *ex parte* application was granted, and the children moved to  
13 F's parents' address. The court also directed that a welfare report on the issue of  
14 contact be prepared.

15  
16 5. There were delays in receiving the welfare report. As a result, on 14<sup>th</sup> March 2013 the  
17 matter was returned to court by M. An order was granted allowing M supervised access  
18 to the children pending receipt of the welfare report. Soon afterwards F returned the  
19 children to live with M at the former matrimonial home. No consent order to regularize  
20 this position was submitted to the court although the parties' respective attorneys had  
21 been in discussions regarding a draft Consent Order.

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- 1           6.       In late January 2014, M received a notice to vacate her rental accommodation by 30<sup>th</sup>  
2                    January 2014 from the landlord due to being in arrears with rent. On 27<sup>th</sup> January 2014  
3                    F, with the assistance of the DCFS and the police, had the children removed from M's  
4                    care. The children returned to F's parents' address and M temporarily moved to the  
5                    Crisis Centre.
- 6
- 7           7.       On 18<sup>th</sup> February 2014 F filed a summons seeking an interim residence order in his  
8                    favour, with M to have contact with the children as directed by the Court. On 11<sup>th</sup> June  
9                    2014 the matter came before Williams J. for the hearing to decide  
10                   interim residence and contact. On the morning of the hearing the parties were able to  
11                   agree the interim care arrangements by consent. The terms of the agreement were  
12                   formalized in a Consent Order of the same date.
- 13
- 14          8.       On the 4<sup>th</sup> September 2014 M filed a summons seeking to vary the terms of the  
15                    Consent Order made on 11<sup>th</sup> June 2014. Due to an allegation made by M against F's  
16                    father (GF) that he had physically disciplined child P, M sought to have the children in  
17                    her care whenever F was working a nightshift. On the 5<sup>th</sup> September 2014 M's interim  
18                    variation summons was dealt with by consent. F and M agreed to a schedule for the  
19                    month of September 2014 to work around F's nightshifts, and to try to agree a similar  
20                    schedule based around F's work.
- 21
- 22          9.       Since September 2014 there has effectively been a shared residence  
23                    arrangement in place which, for the most part, has seen the children in the care of each  
24                    party on a rolling 6-days-on/6-days-off basis.
- 25



1       10.     On 9<sup>th</sup> October 2014 a report was ordered from Dr Barnaby to assist the court in  
2             assessing any potential emotional/psychological impact on the children (child A in  
3             particular) in advance of making final children orders.

4

5

6       11.     The matter is now before me. In addition to various affidavits sworn by F, M and GF  
7             and the Reports by Ms. Robinson, the Welfare Officer, Dr Barnaby and Dr Lockhart  
8             who had treated M in the past, I have heard evidence from Ms. Robinson, F, GF and  
9             M.

10

11       12.     The following issues require determination:

12

13             a.     Should there be a sole Residence Order in favour of either party and if so, what  
14             should be the arrangements for contact with the other parent?

15

16             b.     Alternatively, should there be a shared residence order and if so, how should the  
17             children's time be split between households under that shared residence  
18             arrangement?

18

19             c.     Should spousal and/or child maintenance be payable to M and if so in what  
20             quantum?

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21       13.     It is agreed that I should decide on the Residence Order before there is any  
22             consideration of the question of spousal or child maintenance.

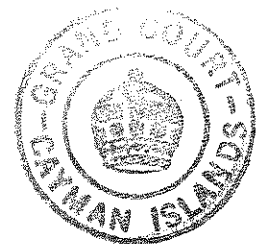
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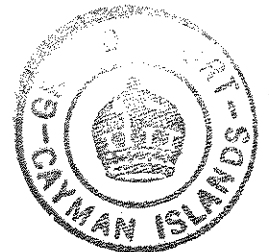
1       14.    The present living arrangements are as follows:

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3       a.    F lives in his parent's 3-bedroom house and the sleeping arrangements are that  
4            child C has her own room and F sleeps in another room with the two boys A & B.  
5            The grandparents occupy the third room. There is room to play outside and there is  
6            a pool. On the site there is another property occupied by F's sister and brother-in-  
7            law who now have 4 children, one who is 9 years old and triplets nearly 2 months  
8            old. The sister has two helpers so, with the grandparents, there is a good support  
9            network.

10  
11       b.   At work F is required to do a night shift, the hours of which are 3:30 p.m. to 1:00  
12            a.m. Depending on his duties there are occasions when he would be able to leave  
13            work for a period. When he is on night shift he returns home to bed and gets up at  
14            the same time as the children, gives them breakfast and drives them to school.  
15            However his start time of 3:30 p.m. is too tight to pick them up – at 3 p.m. for C,  
16            and 3 p.m. or 4 p.m. for A & B. He therefore has to rely on his parents to pick the  
17            children up from school.

18  
19       c.   When on day shift F cooks all meals for the children and if on night shift either he  
20            prepares the evening meal in advance or the grandparents cook it. The same  
21            applies to the children's homework.

22  
23       15.   From all I have read and heard I am satisfied that F's accommodation provides the sort  
24            stable environment where all the children's physical needs are met.



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16. M lives with her mother. This is a relatively recent move and, for various reasons, Ms. Robinson has been unable to inspect the whole house or properly canvass M's mother's views. Ms. Robinson in her most recent report (25<sup>th</sup> February 2015) states:

*"[M] shared that her relationship with her mother is unstable and that her mother is extremely miserable and generally she tends to keep her distance. She further stated that her mother would not agree to an assessment of living conditions and suggested it would be too invasive for her."*

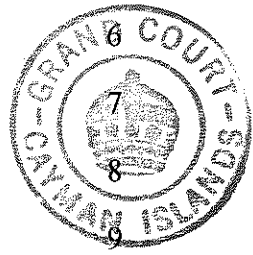
In evidence before me Ms. Robinson said she had now met M's mother and sensed "what M had said that she was very stand-offish"

17. In evidence M said that her mother was not miserable but would be strict that there should be no TV or iPads when eating. On Sundays her mother would cook and children would come over and "tear the place apart" – clearly implying that her mother was quite happy having boisterous children in the home.

18. F seeks a Residence Order, made in his favour, with the following contact with the children for M:

- a. Some but not all weekends during the school term; and
- b. During school term breaks on a more flexible basis.

19. This care arrangement would place the children in F's care during the school week and effectively F proposes that care of the children during other times (weekends and holidays) be evenly split between F and M.

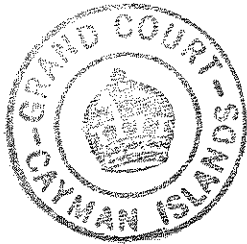




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24. M bases her submissions on the following:

- a. M has been the children's primary care giver for the majority of their young lives;
- b. The children have repeatedly stated their desire to live with and spend more time with M;
- c. GF accepted that he had administered what, by today's standards, may be considered inappropriate discipline to the children and Ms. Robison acknowledged in her evidence that A was '*fairly traumatised*' by the beating incident with his grandfather and was '*genuinely afraid*';
- d. F works an average of 12 nightshifts per month, which inevitably fall on a significant number of week days;
- e. F travels overseas for business and pleasure on a fairly regular basis;
- f. F relies heavily on the assistance of the paternal grandparents even to make the current shared residence arrangements work;
- g. There is not a real marked difference between households when it comes to completion of homework.





EXPRESSED WISHES OF THE CHILDREN

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4 25. I deal with this issue first as it is recognized both in the Law and indeed the report of  
5 Dr. Barnaby as a fundamental factor that I must consider in reaching my decision.  
6

7 26. In every report Ms. Robinson has indicated that at least A and B have expressed strong  
8 desires to live with M. F however points out that in her reports of 9<sup>th</sup> June 2014 and  
9 19<sup>th</sup> August 2014, Ms. Robinson an experienced social worker, said:

10  
11 *“It appears that both B and A have been coached into what they say to this worker.*  
12 *There is a strong possibility based on the investigation done by this worker that*  
13 *[M] may be responsible for coaching or influencing what the children say to this*  
14 *worker” and “I remain concerned that [M] is coercing the children and they feel*  
15 *obligated to assist her in having them return to her care. Worker believes that*  
16 *there is a lot of undue pressure being placed on the children to assist her which*  
17 *should not be their primary focus.”*  
18

19 27. Further in her October Report Ms. Robinson said:  
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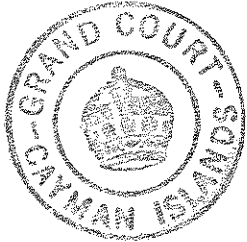
21 *“Worker is convinced that the children are opposing structure and are able to*  
22 *distinguish between the two homes and choose the environment that suits them*  
23 *best. In worker's opinion the children prefer to be in the care of their mother*  
24 *because they tend to get their own way. Worker believes that [M] subscribes to a*  
25 *more lenient parenting style.”*  
26

1 28. M strongly denies influencing the children and submits the only real evidence of any  
2 perceived coaching comes from the social worker's opinion on the issue. Further any  
3 suggestion that Ms. Robinson's personal opinion on this renders the children's  
4 expressed wishes as unreliable evidence, is a statement which should be treated with a  
5 great degree of caution.

6  
7 29. In circumstances where the children have repeatedly and forcefully expressed their  
8 desire to be living with their mother over the course of 4 welfare reports spanning  
9 almost a two year period, the Court must take notice.

10  
11 30. In particular, M says the suggestion in Ms. Robinson's report dated 9<sup>th</sup> June 2014 that  
12 A and B had been coached, should be carefully examined. Until May 2014, M was  
13 only having supervised contact with the children, which would have greatly limited  
14 any opportunity for her to coach or coerce the children.

15  
16 31. Ms. Robinson in August 2014 reported the boys being 'emotional' and that B admitted  
17 to telling M that he would be willing to run away if he is not returned to his mother.  
18 Further she remarked that "it appears that A is in fear of his grandfather". Indeed in  
19 evidence Ms. Robinson described A as being "quite traumatised" and in "genuine fear"  
20 of GF. It is submitted by M that these comments do not tend to suggest that the  
21 children have been coached but rather this was their natural and open reaction to how  
22 they felt at that time.

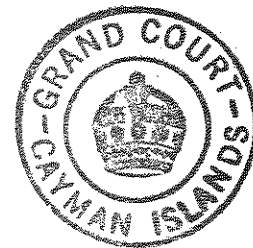


1 32. To see a true and balanced reflection of the children's true wishes, M suggests one  
2 needs only to look at B's comments to Ms. Robinson as set out in the October 2014  
3 report:

4 *"When discussing the living arrangement with B he was able to share his concerns*  
5 *in a more composed and balanced manner. He said openly that he prefers to be*  
6 *living with his mother. He said that GF hit him because he thought he and his*  
7 *brother were fighting. He insisted that he was not fighting but they were playing.*  
8 *He said that there were times when they do things that merit them being*  
9 *disciplined but insisted that this was not one of those times".*  
10

11  
12 33. These, M submits, are the considered words of B (the less emotional of the two boys  
13 and perhaps the voice of reason amongst the children) giving his balanced view on  
14 things but still openly stating that he prefers to live with his mother.

15  
16 34. As to M. Ms. Robinson's suggestion that the children are opposing the more structured  
17 environment in F's household, it is submitted by M that the children's response was in  
18 fact perfectly natural and understandable in circumstances whereby they were being  
19 exposed to inappropriate (and perhaps unjustified) discipline and they were dealing  
20 with the fallout of the family unit and being apart from their historical primary carer,  
21 M.



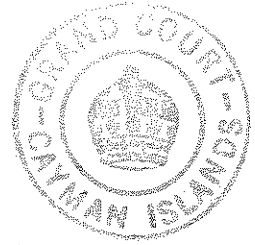
1 35. Having observed M giving evidence it is clear to me that she blames F for the breakup  
2 of the marriage and, in her view, deserting her and the 3 children. In the course of her  
3 evidence her underlying feelings were demonstrated by her repeated derogatory  
4 comments about F which had very little if any relevance to the question she had been  
5 asked. If she could not resist making those comments when giving evidence and  
6 having been reminded to answer the question I am quite satisfied that she could not  
7 resist making similar comments to the children.

8  
9 36. Until the hearing, the complaint against GF was based on two incidents. The first  
10 involved the killing of an Iguana with a machete where it was said by A that GF had  
11 hit him on the leg with the side of the blade. The second involved the infliction by GF  
12 of corporal punishment with his belt on B as recited above.

13  
14 37. GF provided an affidavit and gave evidence. He denied that he had touched A with the  
15 machete saying it was his hand on A's bottom to attract his attention. In relation to the  
16 use of the belt he accepted he should leave matters of discipline to F in the future. Ms.  
17 Robinson had spoken to GF concerning the disciplining of the children and she said he  
18 had assured her that he realised he should leave all questions of discipline to F.

19  
20 38. Undoubtedly the boys had in the past expressed fear of GF but I note that Ms.  
21 Robinson's view was that the fear was reinforced by M reminding the boys of the  
22 incidents. As a result of what she observed on a recent unannounced visit to F's home  
23 Ms. Robinson said in her February report that A:

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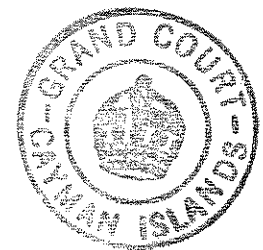


1           *"...appeared calmer about the idea of remaining with his father" and she*  
2           *attributed this change in attitude to GF's efforts "to make him feel more*  
3           *comfortable in the home".*

4  
5       39.     When she gave evidence M alleged that the boys had been punished because they had  
6           complained about GF and this is the reason for the apparent change. I reject that  
7           suggestion entirely for the following reasons:

- 8           a.     In the past M has not been slow in making allegations against F & GF.  
9           b.     She failed to keep appointments with Ms. Robinson when she was attempting to  
10           prepare her report for this hearing whereas if the allegations were true she would,  
11           in my judgement, have made sure Ms. Robinson knew at the earliest opportunity;  
12           c.     She made no mention of the allegation in her affidavit of 29<sup>th</sup> October 2014;  
13           d.     She did not mention it to Ms. Robinson when she finally spoke to her before the  
14           February 2015 report;  
15           e.     It was not put to either F or GF when they were cross-examined.

16  
17       40.     It was, in my judgement, an example of her embellishing her evidence in an attempt to  
18           support her case.



1 *EDUCATIONAL PERFORMANCE AND BEHAVIOUR OF THE CHILDREN*

2  
3 41. F submits when the children were moved from the care of M to F (which included  
4 Monday to Friday during the school term) the improvements in educational  
5 performance were marked. Ms. Robinson noted that there had been "marked  
6 improvements in B's overall performance at school" and that B's teacher was  
7 "amazed" with the level of improvement he had made recently. F relies on the  
8 following passages from Ms. Robinson June 2014 report outlining the comments from  
9 B's teacher:

10  
11 *"She mentioned that his assignments are complete in a timely manner and that he*  
12 *is now attending school on a regular basis as compared to a few months ago when*  
13 *he was not attending school regularly. She elaborated that attendance in the past*  
14 *was a real challenge and she had the same issue with his brother A when she*  
15 *taught him last year. She made special mention of the fact that B's behaviour has*  
16 *improved tremendously."*

17 and

18 *"[Ms. Robinson] is pleased with the level of the children's academics while in*  
19 *[F's] care. From the discussion [Ms. Robinson] had with the school there were*  
20 *occasions where the children did not attend school which had a major impact on*  
21 *their performance especially on B's performance. B's teacher as well as his*  
22 *father's support has allowed him to make major improvements in his grades. [F] is*  
23 *to be commended for the hard work."*



1 42. After June 2014 the children spent more time with M during the school week  
2 culminating with the alternating 6-day periods from September 2014. This, F submits,  
3 is the cause of the observations by Ms. Robinson in her October report that B and A  
4 were now "displaying behavioural issues" with a possibility that these may escalate  
5 and, although A's reading had improved, his penmanship was poor and B's behaviour  
6 was becoming "concerning" and he was engaging in risk-taking behaviour.

7  
8 43. M submits that F is overstating his argument in regard to declines in the performance  
9 of B and A. It is pointed out that in the June 2014 report Ms. Robinson  
10 only refers to having spoken with B's teacher and the only "marked improvements"  
11 observed were in relation to B specifically. There was no mention of A's academic  
12 performance.

13  
14 44. Further the reference to the children's attendance record the previous year would have  
15 coincided with the time of the marital breakdown and the subsequent *ex parte* court  
16 orders when there was a great deal of stress and upheaval in the family. There were no  
17 prior, and there have been no subsequent, complaints regarding the children's school  
18 attendance whilst in M's care.

19  
20 45. M points to Ms. Robinson's February 2015 report in which she states that, "the  
21 children generally appear to be happy in school" although none of the children appear  
22 to be performing particularly well academically. Further, A will inevitably face  
23 educational challenges on his diagnosis of ADHD.



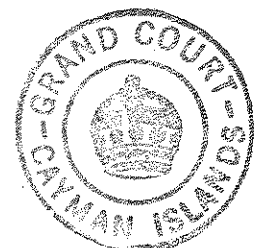
1 46. Finally M submits that perhaps the single greatest factor influencing the children's  
2 school performance has been the breakdown of the family which is the view apparently  
3 shared by Ms. Robinson and the school counsellor according to the February 2015  
4 report where it is stated:

5  
6 *“That there is also a possibility that the negative behaviour being displayed at*  
7 *school may be resulting from the break down in the family unit.”*

8  
9 47. Whilst in my judgement the regime at F’s house is more structured as far as home  
10 work is concerned, given Ms. Robinson’s evidence that the school did not seek to  
11 distinguish between the homework produced when the children are with M or F, the  
12 difficulties and decline in performance in education or behaviour are most likely the  
13 result of A’s ADHD and the breakdown in the parents’ relationship.

14  
15 48. F raised concerns in relation to M’s dependence on prescribed medications. In a report  
16 dated 21<sup>st</sup> February 2013 Dr. Lockhart states that M was seen in July 2009 for  
17 psychiatric evaluation due to a concern that she had a possible dependence on  
18 prescribed medications. M was prescribed Buprenorphine, a drug for the treatment of  
19 opioid addiction. From September 2009 M’s condition improved.

20  
21 49. As a result of F’s concerns with M’s difficulties with pain medications and the alleged  
22 concomitant effect on her behaviour and stability, it was agreed that M would arrange  
23 for an updated report from Dr Lockhart.



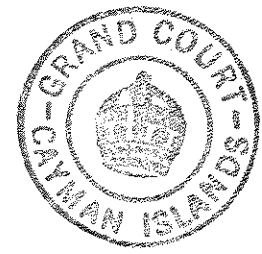
1 50. Dr. Lockhart provided an updated report dated 28<sup>th</sup> May 2014. Apart from the new date  
2 and a change in reference, the updated report was identical to the original report. It  
3 made no mention to M having undergone a recent assessment or that the Doctor had  
4 had any recent contact with her. In evidence M said she had had a consultation prior to  
5 the production of the second report.

6  
7 51. If M's evidence is correct, the only inference is that Dr Lockhart printed out the  
8 original report and changed the date. M is on legal aid and I am concerned that the  
9 Doctor is charging for a second report that required no more than pressing a few keys  
10 on his computer.

11  
12 52. F's submission is that one available inference is that M has downplayed her condition  
13 to Dr Lockhart and that would be consistent with how M approached the same issue  
14 with Ms. Robinson, telling her (incorrectly) that she "had never abused prescription  
15 medicine".

16  
17 53. Both parties have raised further issues. F complains that when the children are with M  
18 they are fed too much "fast food" which may be particularly unsuitable for A given the  
19 diagnosis of ADHD and M has shown serious lack of judgement in relation to the  
20 children, namely showing a picture of C's genitalia to a member of school staff. M  
21 complains that when F is on night shift the care of the children is dependent on 3<sup>rd</sup>  
22 party carers.

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*THE LAW*

54. The starting point is the Children Law (2012 Revision) and Sections 3(1) and (3) which provide:

“3. (1) *Where a court determines any question with respect to-*

- (a) the upbringing of a child; or*
- (b) ...;*

*the child's welfare shall be the court's paramount consideration.*

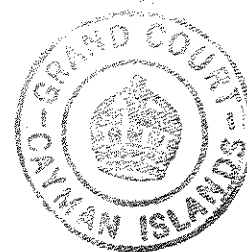
*(2) ....*

*(3) In the circumstances mentioned in subsection (4) a court shall have regard in particular to-*

- (a) the ascertainable wishes and feelings of the child concerned (considered in the light of his age and understanding);*
- (b) his physical, educational and emotional needs;*
- (c) the likely effect on him of any change in his circumstances;*
- (d) his age, sex, religious persuasion, background and any characteristic of his which the court considers relevant;*
- (e) any harm which he has suffered or is at risk of suffering;*
- (f) how capable each of his parents, and any other person in relation to whom the court considers the question to be relevant, is of meeting his needs; and*
- (g) the range of powers available to the court under this Law in the proceedings in question.*

26 55. As the welfare of the children is paramount it is settled law that no parent has a greater  
27 right to a Residence Order than the other. I stress this because during her evidence M  
28 suggested that the fact that she carried the children for 9 months and gave birth to them  
29 should be a reason, per se, for granting her a Residence Order.





**DECISION**

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4 56. A and B have obviously suffered from the effects of the breakup of their parents'  
5 marriage. Fortunately, and no doubt because of her age, C does not appear to have  
6 been similarly affected. Clearly A and B are at an age when a settled routine should be  
7 established. I agree with the words of Williams J. in the unreported case of *AP v. AP* to  
8 which I was referred, namely that:

9 *"Whilst emotional needs are best served by having regular interaction with both*  
10 *parents...this must not interfere with an established routine which is required to*  
11 *best meet [the child's] physical and educational needs"*  
12

13 57. I am satisfied that when the children are at F's house they are provided with the  
14 stable and structured environment they require. This is so even when F is on  
15 night shift when the care is supplied by the grandparents with the backup of  
16 their aunt and her helpers during the time between the end of school and  
17 bedtime. In reality it is not much different from M's position where, because of  
18 her work, she has to rely on the school breakfast service in the morning and the  
19 scouts or the Church between the end of school and 5 p.m. I accept that the  
20 relationship between GF, A and B has improved.

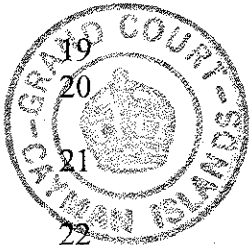
21  
22 58. I am not so sure when considering the regime at M's house and this is for two  
23 reasons: The first is as a result of her failure initially to cooperate with Ms.  
24 Robinson in the preparation of the report for this hearing, which prevented Ms.  
25 Robinson from being able to assess the conditions at her home. The second is  
26 her embellishments, if not straight untruths, in her evidence.

1 59. If it were not for s.3(3) of the Children Law the above finding would point to an  
2 order of the type sought by F. However I am satisfied that such an order would  
3 be contrary to the wishes and feelings of A and B who are the two children of  
4 sufficient age and understanding to express them. True it is that those wishes  
5 may well have been influenced by M consciously or subconsciously but they  
6 are the views they hold and I have to act on what the views are rather than how  
7 they were reached.

8  
9 60. Further I must take into account the recommendations of Ms. Robinson  
10 although I am, of course, not bound by them. Ms. Robinson is an experienced  
11 social worker and has produced four reports and an emailed update since May  
12 2013. The reports are comprehensive and unbiased. She has had the advantage  
13 over that period of observing the children and their parents.

14  
15 61. Ms. Robinson's recommendation, both in her February 2015 report and in  
16 evidence, is that the existing access arrangement should continue. She does  
17 express concerns particularly at paragraph 21 of her February report where she  
18 says:

19  
20 *"It is evident that there is still some level of disunity between [F and M].*  
21 *Co-parenting is the only option for this family and [I] do not see any*  
22 *semblance of them working together". She goes on to say "that if the trend*  
23 *continues it will have more of a negative impact on the children"*  
24



1       62.     That is a view that I wholeheartedly endorse as would all right-minded parents.  
2  
3       I hope that now that the position of the children is settled, both M and F will  
4       realise that it is the interests of A, B and C which are paramount, and that the  
5       children will suffer further damage unless M & F cooperate in a civilised  
6       manner. F has shown that he realises this by his actions in returning the children  
7       to M despite there being a Residence Order in his favour. I am not sure that M  
8       realises it yet.

9       63.     Wall LJ's comments in *Re P (Shared Residence Order)*<sup>1</sup> are worth repeating.

10       He said a shared residence order:

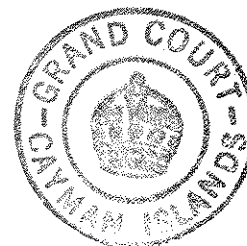
11  
12       *"...emphasises the fact that both parents are equal in the eyes of the law*  
13       *and they have equal duties and responsibilities as parents. The order can*  
14       *have the advantage of conveying the court's message that neither parent is*  
15       *in control and that the courts expect parents to co-operate with each other*  
16       *for the benefit of the children"*  
17

18  
19       64.     In reaching the conclusion that the existing pattern of residence should  
20       continue, I accept that it is neither party's first choice. However having  
21       considered the welfare checklist set out in s.3(3) of the Children Law [2013  
22       Revision] I am satisfied that a continuation of the present alternating 6-day  
23       Residence Order best meets the criteria as long as M and F co-operate in the  
24       interests of their children.

25  
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<sup>1</sup> [2005] EWCA Civ 1639



1 65. Ms. Robinson suggests that that co-operation can be best achieved if there is  
2 family counselling. I agree with that suggestion as it will mitigate any future  
3 harm [3(3)(e) of the Law] and enhance the capability of M and F in meeting the  
4 children's needs [3(3)(f) of the Law].

5  
6 66. So under the provisions of s.13(7)(b) of the Children Law the order I make will  
7 be coupled with a condition that both M and F participate in family counselling  
8 as directed by Ms. Robinson.

9  
10 67. Both parties in their fallback proposals and, indeed, Ms. Robinson, support the  
11 status quo of a 6-day rotation. The period of 6 days was reached by agreement  
12 in September 2014 on the basis that it fitted in with F's shift work. That may  
13 well be the case still. However on the basis that a settled pattern is best for the  
14 children I raise the question of whether a 7-day rotation would make it is easier  
15 to work out where the children will be in the months to come.

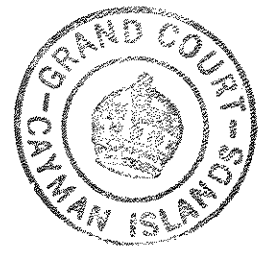
16  
17 68. The order I will make will be for a 6-day rotation but, if and only if, the parties  
18 agree that a 7-day rotation is more convenient, the order can be amended to 7  
19 days.



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69. M has submitted that if F is away then the children should be with her rather than in the care of the grandparents. Whilst I am satisfied that the care and support available at F's home meets the needs of the children when F is on night shift or away for short periods, if F is going to be away from home for a period in excess of 36 hours, the children should reside with M until F's return.

70. On the evidence before me I am not satisfied that there is sufficient support at M's home if she is not there and so if M is away for any night the children should reside at F's home until M returns.



*THE ORDER*

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3 71. The Order therefore that I make is that:

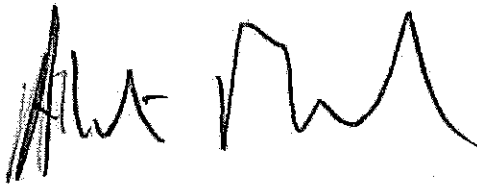
- 4 a. The Petitioner and Respondent shall attend family counselling;
- 5 b. There will be a Shared Residence Order on a basis of a 6-day rotation;
- 6 c. If the Petitioner is away from home for a period in excess of 36 hours the  
7 children shall reside with the Respondent until the Petitioner returns;
- 8 d. If the Respondent is away from home over night the children shall reside  
9 with the Petitioner until the Respondent returns;
- 10 e. Save for the condition to attend counselling, the length of the rotation and  
11 other conditions can be varied by agreement between the parties.

12

13 72. As this judgement is being delivered off island, the parties' Attorneys should draw up a  
14 draft final order in which they have liberty to alter length of rotation. If there is  
15 agreement, I will approve the order. If there are matters they wish to raise in the first  
16 instance, they should be dealt with by short written submissions in electronic form. If it  
17 then appears to me that there should be an oral hearing, a video link hearing will have  
18 to be arranged.

19

20 **Dated this the 31<sup>st</sup> day of March 2015**

21 

22 **Mr. Justice Alastair Malcolm (Actg.)**  
23 **Acting Judge of the Grand Court**

