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IN THE GRAND COURT OF THE CAYMAN ISLANDS
HOLDEN AT GEORGE TOWN, GRAND CAYMAN

CAUSE NO. D62 OF 2002

BETWEEN: WADSWORTH COOLIDGE CONOLLY

Petitioner

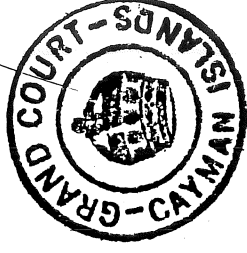
AND: DAWN MARIE CONOLLY

Respondent

Appearances: Mrs. Sheridan Brooks of Brooks & Brooks for the
Petitioner
Mr. Lee Freeman of Priestleys for the Respondent

Before: Hon. Justice Henderson

Heard: March 9, 2009



RULING

There are three applications before me. Mrs. Conolly applies for leave to take the child of the marriage, Lewis, age 13, with her to Florida on a permanent basis. She also asks for variation of the access and custody arrangements to recognize what would be her new living arrangement. Mr. Conolly has filed what I will describe as a "defensive summons" seeking sole custody, care and control of Lewis. Finally, Mrs. Conolly has applied for the adjournment of the first two summonses until her appeal in the Cayman Islands Court of Appeal is heard at the next sitting.

I have reached the conclusion that all three applications must be dismissed.

The procedural history is relevant.

The parties were married in April 1996. The petition for divorce was filed in January 2002. A ten-day hearing on the ancillary issues was heard in May 2003. In the

following month this court ordered, amongst other things, that Lewis is not to be removed from the jurisdiction of the Cayman Islands. Notwithstanding that ruling, Mrs. Conolly applied in August 2004 for another order that she be permitted to remove Lewis from the Cayman Islands. That second application was refused. There was a third such application in July 2006 and it was refused. On all three occasions, this Court gave lengthy and considered reasons why Lewis should not be permitted to leave the Cayman Islands.

The application before me now is the fourth application for an order to that effect. I put to counsel that there had been no material change in circumstances and asked him to convince me otherwise. The only change of significance which could be pointed to was this: Lewis has been attending the First Baptist School, but has been notified that he will not be permitted to study there commencing in September 2009. Apparently the school has changed its regime so that boys of Lewis's age can no longer be accommodated. It will therefore be necessary for him to find a new school in the Cayman Islands, which might be more expensive. However, the significance of that is minimal when one considers that previous orders of this court have established that Mr. Conolly is to pay the cost of Lewis's education.

The general rule is that an order of this court, when made and entered, renders the matter at issue *res judicata*. In family matters there is an important exception. The same subject matter may be reopened, and indeed a contrary decision may be arrived at, if the court is satisfied on the balance of probabilities that there has been a material change in circumstances since the making of the last order. This rule has an important purpose. It is designed to avoid repetitive applications to the court for the same relief

which can be unfairly consumptive of court time and prejudicial to a respondent who is called upon again and again to defend the same position.

This is a case in which the rule against successive applications on the same facts must be applied. For that reason Mrs. Conolly's application is dismissed. Mr. Conolly's defensive application is dismissed as well.

As for the adjournment application, I have been satisfied by Mrs. Brooks that previous directions orders given by this court contemplated that both applications would be heard together and would be heard this month. I must refuse an adjournment.

The dismissal of this application does not prejudice Mrs. Conolly in the long run. At any time, if there is a material change in circumstances she may apply for permission to remove Lewis from the Cayman Islands. The evidence of a material change should be put before the court in affidavit form. It is conceivable that the result of Mrs. Conolly's forthcoming appeal will amount to a material change in circumstances. I say no more about that because it would be for the judge hearing her next application to rule on the question.

Lewis is now 13 years of age. He is approaching the age at which a Court will take into account his wishes as to where he would like to live, and indeed is approaching the age at which an access order with respect to him would be set aside on the ground that he is fully capable of making his own decisions in his own best interests concerning spending time with either parent. When he reaches the age at which it would be appropriate to allow him to choose his place of residence, I expect that a judge of this court would view that as a material change in circumstances.

I am not without sympathy for Mrs. Conolly's current position. She has so far been unable to find employment here and is having very considerable difficulty supporting herself in the Cayman Islands. She no longer wishes to live here, but remains here for the sake of her son.

I would like to add my voice to what was said by the Chief Justice in an amended ruling in this case pronounced November 5th 2008. He said:

“It is the firm view of this Court that it is in the interests of the child of the marriage (which are paramount) and therefore in the interest of the Administration of Justice that Mrs. Connolly (Conolly) should be allowed to remain in the islands at least until the conclusion of the applications which are now pending in relation to the custody, care and maintenance of the child, who is a Caymanian.”

Later, at paragraphs 3 and 4, he said:

“The Court is informed that she has been offered basic employment but that is an offer which she is unable to accept without the grant of a work permit. In light of her long residency in the islands, her former marriage to a Caymanian, and her responsibilities as the mother of a Caymanian child; the Court urges the Immigration authorities to consider favourably her application in that regard.”

The situation appears the same to me as it did to the Chief Justice a few months ago and I endorse his hope that the Immigration authorities will give favourable consideration to any application by Mrs. Conolly for a work permit. For these reasons the applications are dismissed.

Dated this 9th Day of March, 2009

Henderson, J.

Henderson, J.
Judge of the Grand Court

