



18-06-08

1 IN CHAMBERS

2 IN THE GRAND COURT OF THE CAYMAN ISLANDS

3

CAUSE NO: D159 of 2006

4

5 BETWEEN: ANDREW TYSON PETITIONER

6

7

8

9 AND: ANNA TYSON RESPONDENT

10

11

12 Before: The Honourable Madame Justice Levers

13

14 Appearance:

15 Mr. McGrath and client Mr. Tyson

16 Ms. Zena Merren and client Ms. Elverson

17

18 Heard: 27th June 2008

JUDGMENT

19

20 Levers J.

21

22 This application is by way of summons for the following relief:

- 23 1. The child of the marriage James Henry Campbell Tyson date of
24 birth 19th April 1997 do attend Horris Hill School, England
25 commencing September 2008 and the cost of his schooling and all

1 associated ancillary costs should be paid pursuant to the provisions
2 of paragraph 6 of the consent order dated 17 July 2007.

3 2. The parties should have equal access to the child of the marriage
4 during periods when he is not in boarding school.

5 3. The court provide for the costs of his application.

6 4. Liberty to apply to vary.
7

8 The brief history of the background to the application is as follows:

9 Both parents Mr. Andrew Tyson and Ms. Anna Elverson the mother having
10 reverted to her maiden name after the divorce are English by birth. Mr.
11 Tyson has Caymanian Status. They were married in 1993 and the union
12 produced two children Campbell now 11 and Hugo now 9. They separated
13 in 2003 and eventually finalised their divorce on the 17th July 2007.
14

15 For purposes of this application the consent order signed to settle the
16 ancillary matters is of extreme importance. It read as follows:
17

18 **UPON** the parties by their signatures, agreeing that the terms of this Order
19 shall extinguish all claims against one another in this or any jurisdiction and
20 the terms of this Consent Order represent a full and final settlement of any
21 claims under the Matrimonial Clauses Law;

1 AND UPON the parties agreeing that they have divided their personal
2 property;

3 It is hereby ordered by consent:
4

5 **CHILDREN OF THE MARRIAGE**

6 1. That the Petitioner and the Respondent do have joint custody of
7 the children of the marriage, James Henry Campbell Tyson (date of
8 birth 19th April 1997), and Hugo Edmund George Tyson (date of birth
9 20th March 1999).

10

11 2. That the Petitioner and the Respondent do have joint care and control
12 of the children of the marriage on terms presently agreed and
13 operative and in the event of disagreement liberty to either party to
14 apply to the Grand Court.

15

16 3. That each of the Petitioner and the Respondent shall receive liberal
17 access to the children of the marriage to be agreed between the
18 parties.

19

20 4. That the Petitioner shall pay to the Respondent the sum of CI\$250 per
21 month per child in respect of child maintenance for the two children
22 of the marriage with effect from the date of this Order until such time
23 as the children commence education outside the Cayman Islands.

24

1 5. That the Petitioner be responsible for paying the schooling costs of the
2 children of the marriage during such time as the children are being
3 educated within the Cayman Islands, together with health insurance.
4

5 6. That in the event that the children attend school and or university outside
6 of the Cayman Islands the parties do share the costs of education and all
7 ancillary costs in the proportion of 75% of the total cost being paid by the
8 petitioner and 25% being paid by the Respondent.
9

10 ASSETS

11 7. That the remaining financial assets of the marriage held in joint
12 names, comprising a portfolio of shares and cash at Cayman National
13 Securities, a portfolio of shares and cash at Rensburg Sheppards,
14 England, and cash at Barclays Bank, Guernsey, be divided *in specie*
15 with the Petitioner receiving 40% of the assets and the Respondent
16 receiving 60% of the assets.
17

18 8. That all assets and liabilities which are held in the sole name of either
19 the Petitioner or the Respondent as at the date of this order, including
20 for the avoidance of doubt all assets and liabilities arising after June
21 30, 2003, shall remain the sole asset or liability of the individual in
22 whose name it is held.
23

1 9. That the Petitioner do make a single, one-off lump sum payment of
2 GBP15, 000 to the Respondent in respect of the Friends Provident
3 educational savings plan.
4

5 10. That the Petitioner do retain sole ownership of the Friends Provident
6 educational savings plan and the Respondent do relinquish any
7 interest therein.
8

9 11. The parties do bear their own costs in these proceedings.
10

11 As can be seen paragraph 5 was dealing with the costs of local education and
12 the responsibility related thereto as long as the children were studying in the
13 Cayman Islands. Paragraph 6 envisaged that the children may perhaps go to
14 boarding school but in the event that they attend school and or university
15 outside the Cayman Islands the parties do share the costs of education and
16 all associated and ancillary costs in the proportion of 75% of the total costs
17 being paid by the petitioner and 25% being paid by the respondent.
18

19 The present application

20 The present application is related to Campbell now 11. The father Mr.
21 Tyson wishes the child to be sent abroad to boarding school. The mother
22 has no objection to boarding school in principle but believes he should wait

1 until he is 16 before he is sent away. At that stage he will be taking his A
2 levels.

3 In support of the application the father has filed an affidavit with extensive
4 research and information attached thereto about the proposed boarding
5 school that the child is going to be sent to if permitted by the court. He has
6 further filed a letter from his parents, letter from Sarah Georgina le Blanc,
7 and a letter from Winfred Sykes. He was also cross-examined after giving
8 viva voce evidence.

9
10 The mother on the other hand in opposition has also filed an affidavit with
11 some information as to the adverse effects that a boarding school can have
12 on children (an article in fact) and also given viva voce evidence and cross-
13 examined.

14 It must be stressed at this stage that although the mother has filed an article
15 she admitted on oath that she has no objection to boarding school at the age
16 of 16 but not at this age in view of the child's particular characteristics.

17 One of the most important pieces of evidence in this case is the two
18 evaluations from the pediatric neuropsychologist who is familiar with the
19 child and also familiar with children with this particular characteristics that
20 the child

1 is alleged to possess and who have gone abroad from the Cayman Islands
2 and are now leading lives in boarding schools in the United Kingdom.
3 I believe a brief word about the child himself is appropriate, before I discuss
4 the merits of the case.

5
6 Campbell Tyson

7 Campbell as I write this judgment is approximately 11 years old has been
8 evaluated for now some two years by the pediatric neuropsychologist Dr.
9 Yianoula Alexakis – Lanigan, Psy.D. Licensed Psychologist and Pediatric
10 Neuropsychologist who is stationed at Five Harvard Circle, Suite 109, West
11 Palm Beach, Florida. She was declared an expert by the court with the
12 parties having no objection. Campbell was a child that the parents
13 apparently could not manage in his early years. He has been diagnosed with
14 ADHD and co-morbid processing/neuropsychological discrepancies as well
15 as specific learning disabilities in Reading and Written language. He also
16 had significant fine motor deficits but having been assessed by Dr.
17 Akeexakis - Lanigan and having been treated by psychologist Dr. Antonio
18 Hawkins, Campbell at the second evaluation endorsed himself as falling
19 within non-clinical levels on both CDI and MASC tests (the particular kinds
20 of tests that are done to evaluate a child). Campbell from the evidence

1 before me is allegedly quite aggressive but since he is on medication at
2 present, he is said to have improved considerably at home.

3 Mr. Tyson had taken Campbell to the various schools that he wanted
4 Campbell to see in the United Kingdom and Campbell is aware of the nature
5 of life there and has seen the advantages and disadvantages that he would
6 face. I believe that both Mr. Tyson and his mother have spoken with him at
7 length as has the expert about going to boarding school.

8

9 Where the interests of the children do not coincide with the interests of the
10 parents the court must be prepared to further the cause of the child with the
11 proviso that such a cause must be in the best interest of the child. There
12 seem to have been in recent times applications of this nature due to
13 globalization and cross border access arrangements.

14 The final statement on the issue on parent child conflict seems to be that the
15 court has a very broad discretion to determine this issue and to decide the
16 matter from the child's view point if this course is in the best interest of the
17 child. Of course each case must be decided on its own particular facts and
18 the welfare of the child is the crucial yard stick in all cases. While the
19 welfare of the child gives the court a broad discretion to determine its own

1 views as to what is best for the child, I am acutely aware that I must balance
2 the two competing interests.

3 That in this case means the rights and wishes of the mother and the father
4 and the protection of the best interest of the child.

5 In most of the research I have done I find the best principles to adopt in this
6 case is that the first such right (that is the rights and wishes of the mother) be
7 given way to the most important principle and that is the promotion of the
8 best interest of the child. It is indeed a sad day that two adults who appeared
9 in cross-examination to be very intelligent albeit completely different in
10 personalities could not agree on a solution to this problem and had to come
11 to this court for a decision to be made about their own flesh and blood and
12 the future prospects of the child.

13 Be that as it may, I will be guided by the principle that I must act in the best
14 interest of the child considering all the evidence before me. It would be easy
15 for this court to make a short decision by saying that the court must be
16 guided by the expert and simply follow her recommendation. I do not
17 intend to do that because an expert is the same as any other witness. Their
18 recommendations must come properly grounded and must be predicated on a
19 family assessment. The expert witness especially in a case involving a child
20 with an intellectual disability may not be or have any forensic training but

1 rather it is my belief in such a situation must be a community educational
2 psychologist who is best placed to access and report on the child.

3 In this matter the expert has not only made a family assessment but she
4 teaches at St. Ignatius on a visiting basis and is familiar with Campbell over
5 a period of two years.

6

7 This court having to make this very serious decision interviewed Campbell
8 with the two attorneys in the back of the court and the expert witness
9 present. It was an informal conversation as opposed to a formal interview.

10 I found that Campbell was very small in stature and the nature of his
11 answers was slightly timid. One would expect that having been taken out of
12 school and brought straight to court to see a judge. He was composed and
13 answered the questions very well. He was quite certain in his mind that he
14 would be willing to give it a try at boarding school. Indeed he gave the court
15 information about his grandparents being close by, his extended family in
16 the United Kingdom being in that area, and more importantly, his cousin
17 going to the same school. I have no doubt in my mind that Campbell wants
18 to go to boarding school but as I have stated previously it is not his views
19 alone that this court must decide this application on.

20

1 Campbell's relation with his father seems to be one which is fairly normal.
2 Campbell's relationship with his mother needs slightly more examination.
3 His mother is extremely unhappy at the situation, especially as Campbell's
4 father married her best friend. She is also in a relationship but is not
5 married. She has given evidence that she is extremely happy and is only
6 now developing a relationship with Campbell who was extremely difficult to
7 handle especially as her emotional state when she was with Mr. Tyson was
8 very unhappy. She and Campbell now seem to get on better especially since
9 he is taking his medication. If I may quote her very words, she says: "My
10 relationship with Campbell is good I make every effort to play with him now
11 when he is with me". She then goes on to say "I am being threatened by
12 being made to feel lesser because of this better education, better opportunity
13 and better academics that is being thrown in my face". She says that she
14 now realises Campbell is a very sensitive child and she was not all that good
15 with children. She was not happy as a result; she was not able to relate to
16 the child.

17 The expert's report on Campbell's relationship with his mother is both
18 revealing and informative. Campbell as recently as March 2008 related to
19 the expert that at times: "He feels like killing himself". When asked to
20 elaborate, Campbell describes situations where "mom gets angry with me

1 and shouts, she sends me to my room, sometimes I answer back to her". He
2 says that he has these feelings/thoughts "rarely". He also expressed the fact
3 that going to boarding school may result in him not seeing his mother very
4 much. He added that he had been thinking about that and stated "I will tell
5 her something to solve the problem a little bit, if she comes over and visits
6 she can see me and her relatives like her mom and sister".

7 It was clear even to the court as it was to the expert, that Campbell has been
8 told about this diversion of opinions about boarding school. His anxiety to
9 please both parents seems to have caused him some concern. It is sad that
10 negative thoughts are put in a child's mind but the court hopes that it was
11 purely with a view to expressing concern and love and in a mistaken
12 moment where emotions got the better of common sense. A positive united
13 front is extremely important especially to a child who is at the tender age of
14 eleven separated from a home where both his parents lived.

15

16 Father's position

17 The father's position is simply that:

- 18 1. The child is of English background
- 19
- 20 2. Both parents have families in the United Kingdom

- 1 3. Whilst they have Cayman Status the mother, the brother and the
2 father are the only family they have here.
3
- 4 4. St. Ignatius is simply not in a position to provide for Campbell
5 what Campbell needs now.
6
- 7 5. Campbell is an extremely intelligent child and seems to have with
8 medication overcome his problems.
9
- 10 6. The chosen school is Horris Hill School which I will deal with
11 later. It is an excellent school, aware of Campbell's problems and
12 is rated as one of the best in the United Kingdom.
13
- 14 7. The expert who teaches at St. Ignatius readily admitted she does
15 not see any other options but boarding school for a child as bright
16 as Campbell even if there were no acrimony, between the parents.
17 The school St. Ignatius does not have an occupational therapist,
18 someone who can train him with this problem. The father believes
19 that St. Ignatius academically is just not that challenging and the
20 standard is not as high as the school in England and if Campbell
21 goes away at 16 he will be at a great disadvantage.
22
- 23 8. That the expert has said that children with ADHD need a
24 structured environment. Campbell lives at the moment for one
25 week with his mother and one week with his father and Campbell
26 himself has said that he loses his things on occasions because he

1 is not sure which house he has left it at and he goes into clinical
2 depression.

3
4 9. That the only thing that Campbell is suffering from now is his
5 writing skills and there is simply no one here to help him and this
6 has been corroborated by the experts.

7
8 10. That he has been to the various schools, studied the schools and
9 that he has had a discussion with the Headmaster who has
10 advised him that it is better to come in and start early.

11
12 11. Campbell in fact was always registered to go to a boarding
13 school and that in 2003 both he and the respondent registered
14 Campbell at Dragon school. (This point now however does not
15 arise because it is not a question of whether he should go to
16 boarding school it is a question of when he should go to
17 boarding school).

18
19 12. That Campbell's relatives live all around the school and the
20 mother's brother lives only 45 minutes from the school. That
21 Campbell goes back every year to see his extended family and
22 are close to them, but more importantly Campbell's cousin is at
23 same school and has done exceptionally well with similar
24 problems.

25
26 13. Although he himself is scared and anxious that he is making the
27 right move, he believes that in order to give Campbell a

1 brighter future and a fighting chance in life if something
2 happens to his parents, that this is the best decision that he can
3 make.

4
5 14. That Campbell's mother got CI\$1.3 million when she left the
6 marriage and she is well able to afford 25% of the boarding
7 fees. (This court has not heard any complaints from the
8 respondent as to the fact that she cannot afford the costs).

9
10 In cross-examination he more or less endorsed all the above points. Dr.
11 Lockhart was against Campbell going away to boarding school but he has
12 not seen Campbell recently. It is the expert who gave evidence and Dr.
13 Hawkins in fact who are presently caring for Campbell.

14
15 I have read the letters that have been filed by Mr. Tyson and I am aware
16 that his father is a very experienced advocate of boarding schools having
17 worked in the system himself. I take their positions into consideration. It
18 is important in making any decisions of this kind to ensure that Campbell
19 is not thrown into a strange world without any emotional support. The
20 letter from his cousin's mother is extremely important in the making of
21 this decision. The fact that Campbell has a cousin there reassures the

1 court and must reassure the parents that Campbell will not be thrown into
2 the deep end.

3
4 The mother's position

5 The mother as I have stated is not against boarding school but is against
6 Campbell going at this tender age. She makes the following points.

- 7 1. She is concerned about his weight (although being concerned
8 about his weight the court notes that she has not taken him to a
9 Pediatrician nor has she taken him to a Pediatric nutritionist)
10 Campbell's mother has neither taken him to a doctor nor an
11 Optician).
- 12
13 2. She complains that the father brings up the children
14 with military precision. There are certain things that the children
15 must do at a particular time. (The court is not so sure that this is
16 a problem especially when it has been recommended by the
17 experts).
- 18
19 3. She says that she has now just now started developing a
20 relationship with Campbell, and that she was unable to relate to him
21 previously due to her own emotional unhappiness. She does not
22 call it a problem but that as she was so unhappy with Mr. Tyson
23 (who was a cold fish), she could not relate to her child.
24
25

1 4. She says that Campbell is rather immature.

2

3 5. She said that St. Ignatius is a very good school and has recently
4 had one child go to Eaton. (The court has looked at the
5 information as to this and it is clear that child was very bright
6 with no problems and that in fact the teachers had to take extra time
7 out to train the child for the various scholarships that he had
8 taken).

9

10 6. That Campbell is a sensitive and needy child.

11

12 7. She agrees that the Cayman Islands curriculum is not what it
13 should be at present but that she has got assurances from St
14 Ignatius that it will be varied next year. However she does agree
15 that there are no specialists that can guide her son at present.

16 8. She his mother and she has a motherly instinct that he is not ready
17 to go. She said that she herself went to boarding school and as a
18 result was a stranger to her own family.

19

20 9. She says she cannot bear the thought of allowing Campbell to go at
21 this young age.

22

23 In cross- examination she says as follows:

24 1. Yes she says there is better education, better opportunity
25 academically at Horris Hill but she feels threatened because she

1 may be allowed to feel lesser if Campbell comes back from
2 boarding school with a certain attitude.

3
4 2. She has done no research comparing the two, but she just has a gut
5 instinct that Campbell should not go.

6
7 3. She says despite what the expert say she does not feel it is right for
8 Campbell to go.

9
10 4. She agree that Horris Hill School in the United Kingdom may be
11 able to provide better than St. Ignatius at present but that boarding
12 schools in England do not necessarily make you socially well
13 rounded nor do they maximize your social skills.

14
15 5. That she is aware of the limited cultural exposure here but that he
16 joins the choir. When in cross-examination she was asked about
17 the orchestras, the music, the various plays and the opportunities
18 afforded him in the United Kingdom, she says that that does not
19 particularly matter; the better position is to keep the child here.

20
21 6. She says that the child needs to be brought up by his parents and
22 no child should ever go to boarding school if it can be helped at
23 such a young age. She is doing what she considers is best for her
24 son, but she concedes that her view could be wrong.

25
26 7. She says she fears she will lose him, and that it is not too late at
27 16.

1 Generally I get the impression that Ms. Elverson is extremely sensitive and
2 that she is genuinely scared she will lose her son. That her priority is family
3 albeit she agrees that it is a dysfunctional environment in which she now
4 lives especially where the relationship between the two households is bad.
5 She agrees for example that she wrote a letter to Mr. Tyson that he should
6 not attend the second son's hockey game because to see his face would be
7 repugnant to her. When it was pointed out that that might have upset Hugo
8 she agreed that on hindsight it was probably not the best thing to do. I find
9 that Ms. Elverson was immature herself and emotionally weak.

10

11 The expert

12 I have already touched on the expert's evidence but her recommendation is
13 clearly that he goes to boarding school in England for these important
14 reasons:

- 15 1. That a child of his character who is exceptionally intelligent
16 needs a structured environment.
- 17
- 18 2. That at present the household arrangements here are very dysfunctional.
19
- 20 3. But that does not mean that he should sent to boarding school as an
21 option to remedy that, because the court could remedy that with access
22 orders. But she feels that for his welfare and the expertise he would need,

1 the United Kingdom schooling system would best serve him.

2

3 4. She has in fact flown out being aware of the cultural differences in the
4 United Kingdom and examined the schooling system in that jurisdiction.

5

6 5. She says that she has four other children whom she recently visited
7 with the same problem that Campbell has and that they are doing well at
8 boarding school.

9

10 The conclusion

11 Campbell is an 11 year old child who has certain problems. All agreed that
12 he is exceptionally bright. All also agreed that he has problems with writing
13 skills which will not be able to be remedied here due to the lack of a
14 particular expertise in teaching.

15 Campbell at present lives between his parents. The court having seen
16 Campbell is convinced that Campbell is not happy with the situation and that
17 he is willing to give boarding school a try. Horris Hill School is apparently
18 one of the best in the United Kingdom, having recently got several
19 scholarships to leading schools such as Winchester, Eaton, Radley,
20 Marlborough etc.

21 This court is also aware that boarding schools provide a structured
22 disciplined environment. There is no doubt that Campbell will miss home

1 especially in the winter and will be upset on occasions. But equally there is
2 no doubt every child feels that way when first sent to boarding school, and
3 that if the court was to make that decision it would be up to both parents to
4 be positive in their approach and to encourage him in the advantages that he
5 is getting by being away from them.

6 The success of this venture will depend entirely on the maturity and the
7 approach of both parents.

8 This court however has to decide on the welfare of the child. What consists
9 of his welfare? His welfare is the upbringing, his home background, his
10 education, his needs being met, the love and affection that is given to him
11 and supplying of his requirements. The world is a hard place to live when
12 you are normal but if you did not have writing skills and you had medical
13 problems in communication, without help at this young age what would
14 young Campbell face in the future. It is perhaps the most heartrending
15 decision a parent has to make to send a child away. How much worse it is
16 for the court to have to take a decision by stepping into parental shoes.

17 Jurisdiction derives from the prerogative power of the state as Parents
18 Patriae. The words of Lord Esher M.R. in The Queen v Gyngall 1893 (2)
19 QB 232 at page 241-242 is most appropriate in this case:

20 “The court is placed in a position by reason of the prerogative of the

1 crown to act as supreme parent of the children and must exercise that
2 jurisdiction in the manner in which a wise affectionate and careful
3 parent would act for the welfare of the child. The natural parent in the
4 particular case may be affectionate and maybe intending to act for the
5 child's good, but may be unwise and may not be doing what a wise
6 affectionate and careful parent would do. The court may say in such a
7 case that although they can find no misconduct on the part of the
8 parent they will not permit that to be done with the child which a wise
9 affectionate and careful parent would not do. The court must of
10 course be very cautious in regard to the circumstance under which
11 they will interfere with the parental right.

12
13 The court must exercise this jurisdiction with great care and can only
14 act when it is shown that either the conduct of the parent or the
15 description of person he is or the position in which he is placed is such
16 as to render it not merely better but - I will not say "essential" but -
17 clearly right for the welfare of the child in some very serious and
18 important respect that the parents rights should suspended or
19 superceded; but that where it is so shown the court will exercise its
20 jurisdiction accordingly".
21

22 Having considered all the evidence and taking those words into account and
23 taking the welfare principle of the child into account, I believe that it is right
24 that Campbell is sent to boarding school as of September this year. I so
25 order with the proviso that after a year or so if Campbell is not happy either
26 parent can bring the matter back for review.

27
28 The payment of the school fees and related expenses should be shared in
29 accordance with the Consent Order.

1 No Order as to costs.

2

3

4 Judge of the Grand Court.

5

6 Dated this 18th day of June 2008

7

8

