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

- Civil

CAUSE NO. D137 OF 2002

8 BETWEEN: ANGELLA WILLIAM-MYERS

PETITIONER

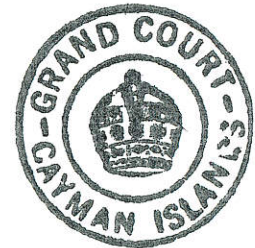
12 AND: DAVID RUSSELL MYERS

RESPONDENT

16 Appearances: Ms. Karin Thompson of Karin M. Thompson Attorney-at-Law for the
17 Petitioner
18 Ms. Linda DaCosta of Myers & Alberga for the Respondent

21 Before: Hon. Justice Henderson

24 Heard: March 23, 2007



26 RULING

28 The parties to this matrimonial action have been divorced for several years. There is one child of
29 the marriage, Gabriella, born on June 11, 1992. At the time the ancillaries were settled, the parties
30 agreed they would share joint custody of Gabriella. Mrs. Williams-Myers was granted primary
31 care and control. I take that agreement to represent the settled determination of the parties that
32 joint custody was in the best interests of their daughter at the time it was agreed upon.

34 Gabriella is now almost 15. The application before me is that Mrs. Williams-Myers "be permitted
35 to leave the jurisdiction of the Court with Gabriella, to take up residence in Curaçao, Netherlands
36 Antilles".



1 Over the years Mrs. Williams-Myers has always been the primary caregiver for Gabriella. Mother
2 and daughter enjoy a close relationship. It is conceded that Gabriella prefers to live with her
3 mother.

4
5 Mr. Myers has exercised access on a regular basis, although he has not had overnight access. I am
6 satisfied that he has been involved to a reasonable extent in his daughter's life and has taken a
7 sincere and beneficial interest in her.

8
9 After Hurricane Ivan, Gabriella went to Houston for a period just less than three months. Upon her
10 return, she announced that she did not want to live in the Cayman Islands anymore. She felt that
11 the social environment which she had encountered in Houston was more attractive to her and the
12 Cayman Islands suffered by comparison. The announcement is somewhat unusual in that Gabriella
13 was born and has lived all her life in the Cayman Islands. Her mother has Caymanian status.

14
15 Mrs. Williams-Myers is a senior trust officer at American Express here. For reasons she explained
16 in her oral evidence, she believes the company is likely to contract and has concluded that her
17 upward mobility in the company is essentially at an end. To progress in her chosen career, she
18 feels she must change to another employer. After considering Gabriella's strongly expressed
19 preference to live outside of the Cayman Islands, Mrs. Williams-Myers hired a recruiting firm to
20 find a job for her in another country. She provided that firm with a list of acceptable countries, one
21 of which was Curaçao.

22

1 She has now entered into a contract with an employer in Curaçao. She considers the opportunity a
2 good one. She would be moving up to the position of trust account manager and increasing her
3 interaction with clients. While the salary would be roughly the same after deduction of income tax
4 as her present salary, the cost of living in Curaçao is much lower. Mrs. Williams-Myers therefore
5 expects, based on her own research, that her standard of living will be higher.

6
7 Gabriella has been attending Cayman Prep and is now in grade nine. Her school records can only
8 be described as exemplary. In addition, she pursues a number of beneficial extracurricular
9 activities here, some of which she is taken to by her father when he exercises access during the
10 week.

11
12 I was troubled by the fact that little, if any, thought appears to have been given by Mrs. Williams-
13 Myers to the consequences of removing Gabriella from the school environment here, in which she
14 has done so well, and placing her in another environment in a Dutch-speaking country in a school
15 with a different educational system. The proposal is to place Gabriella in the International School
16 in Curaçao, which is an American-style school. It is a notorious fact, of which I can take judicial
17 notice, that students transferring from the English system to the American system of education and
18 vice versa experience considerable adjustment difficulties. Cayman Prep is firmly based on the
19 English system.

20
21 No thought appears to have been given to leaving Gabriella in Cayman Prep at least until she
22 finishes grade nine and then having her move to Curaçao this summer. The proposal is to remove
23 her from Cayman Prep within ten days or so and take her to Curaçao to put her in the International

1 School and have her finish up the remainder of this academic year there. I think that proposal is
2 fraught with danger. As I say, no real consideration appears to have been given to alternatives. I
3 have no expert evidence which would permit me to conclude that Gabriella is likely to succeed in
4 passing her year at the International School after spending only some six to eight weeks there.

5
6 Neither Mrs. Williams-Myers nor her daughter have ever lived in Curaçao before. Neither of them
7 speak Dutch, although it should be noted that English is very widely spoken as a second language
8 in that country. The school is an American school and therefore the language of instruction will be
9 English. Neither Mrs. Williams-Myers nor her daughter has relatives in Curaçao. The petitioner
10 said she has friends there, but I infer from her oral evidence that these are really casual
11 acquaintances.

12
13 In her oral evidence she made considerable reference -- some of it gratuitous -- to difficulties
14 allegedly occurring between Gabriella and her father. I think it fair to infer, as I do from the oral
15 evidence of the petitioner, that she really has two motives for wishing to leave the Cayman Islands.
16 The first is, as she has said, to improve her career prospects and standard of living. The second,
17 which I infer to be equally important, is to frustrate the joint custody arrangements by removing
18 Gabriella from her father.

19
20 Gabriella's only motive for wanting to move appears to be that she is bored with life in the Cayman
21 Islands and dislikes some of the social cliques she has encountered at Cayman Prep.

22

1 My decision must be based solely on the best interests of the child of the marriage. Many of the
2 authorities cited deal with situations where a parent with sole permanent custody of a child of the
3 marriage wished to move to a foreign country. I think all of those decisions have to be
4 distinguished. This is a joint custody arrangement. Whatever may be the case where the parent
5 proposing to move has sole permanent custody, I consider that in a joint custody arrangement there
6 is a significant burden on the applicant. Before permission to move will be granted, there should
7 be reasonably cogent evidence to demonstrate that the joint custody arrangement previously agreed
8 to is no longer in the best interests of Gabriella.

9
10 I have considered the oral evidence I have heard from both parties and the submissions in light of
11 the test I have just enunciated. In my view this petitioner has failed to discharge the burden upon
12 her of showing on the balance of probabilities that the joint custody arrangement is no longer in her
13 daughter's best interests and that it would be in her daughter's best interests to be removed
14 immediately from this jurisdiction to reside in Curaçao.

15

16 For those reasons the application is dismissed.

17

18 I wish to say a little more about Gabriella's future. As I read the provisions of our *Matrimonial*
19 *Causes Law*, Gabriella will no longer be a child of the marriage on June 11th, 2008, when she
20 reaches 16 years of age. At that point, the joint custody order will terminate. This Court will have
21 no jurisdiction to make any other custody order and, as a consequence, there will be no constraint
22 on where Gabriella may reside. On that date, she will be free to choose to live wherever she

1 wishes. Until that date, it is my view that her best interests are served by remaining here in the
2 Cayman Islands and attending Cayman Prep.

3

4 Dated this 23rd day of March, 2007

5

Henderson, J.

6

7 Henderson, J.
8 Judge of the Grand Court

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