

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

Civil

10 freshman 4/1/07  
to see and the  
K Latham  
20/1/07

Cause No. 168 of 2006

4  
5  
6  
7  
8 IN THE MATTER OF THE GUARDIANSHIP AND CUSTODY OF CHILDREN LAW

9  
10 AND IN THE MATTER OF ALEJANDRA BELFOURE (August 16, 1996)

11 AND IN THE MATTER OF DANIELA BELFOURE (December 9, 1998)

12 AND IN THE MATTER OF THE CHILD ABDUCTION AND CUSTODY (CAYMAN  
13 ISLANDS) ORDER

14  
15 APPEARANCES: Mr. David McGrath of L. A. Samson & Co. for the Applicant  
16 Ms. Sheridan Brooks of Brooks & Brooks for the Respondent

17  
18 BEFORE: Madam Justice Levers

19  
20 HEARD: 28<sup>th</sup> December 2006

21  
22  

---

JUDGMENT

---



23  
24  
25 Levers, J.

26  
27 This matter comes before me for a final order pertaining to the custody, care and control  
28 of the children of the union. Both parents want care and control of the children and in  
29 particular the mother wants a consent agreement previously negotiated to be made a  
30 Court order. The matter is being heard now because the interim order made in October  
31 2006 after a full hearing will expire in December 2006.

32 It is convenient to examine the interim order at this stage: -

- 33 (1) Joint custody of Alejandra and Daniela awarded to the mother and father with  
34 care and control to the father until December 2006.



1 (2) The said children shall not be permitted to leave the jurisdiction of the Cayman  
2 Islands unless in case of emergency without the prior consent of the mother. Such  
3 consent not to be unreasonably withheld until December 2006 or upon further  
4 order of the court.

5 (3) The mother is to have access to the children at any time during her visits to the  
6 Cayman Islands.

7 (4) The mother is to have telephone access to the children on a daily basis.

8 (5) The social welfare supervisor is to continue monitoring the children until  
9 December 2006.

10 (6) Liberty to apply to each party.

11 (7) Costs reserved to further hearing.

12 It is clear from the ruling above that the order lasted till December 2006. My role in this  
13 matter is to review it and make a final order as to the custody, care and control of the two  
14 children.

15

#### 16 **Factual background**

17 The parties William Michael Belfoure and Clariza Belfoure were married in 1996, in the  
18 Cayman Islands. Clarissa Belfoure is a US citizen and William Michael Belfoure is a  
19 Caymanian, although he also holds a US passport. They lived in Cayman for the duration  
20 of their marriage except for nine months when they were forced to leave the island after  
21 Hurricane Ivan. They have two daughters of the union, Alejandra born on the 16<sup>th</sup> of  
22 August 1996 and Daniela born on the 9<sup>th</sup> of December 1998. The children hold dual  
23 citizenship, that is United States and Caymanian citizenships. The parties had (at the

1 time of the application) been married for ten years. The marriage has broken down and  
2 was breaking down according to Mrs. Belfoure for a considerable number of years. In  
3 April 2006 the family left for New Jersey, (which is where Mrs. Belfoure is from) on  
4 holiday. During that time, Mrs. Belfoure apparently unbeknown to Mr. Belfoure, was  
5 extremely concerned about having to return Cayman and during the final days of the  
6 holiday she informed Mr. Belfoure of her position. On the spur of the moment she took  
7 the children and ran away with them and went into hiding. She alleges that she was  
8 physically and emotionally abused during the marriage and just simply could not face life  
9 back in the Cayman Islands. It is perhaps noteworthy that she checked into a shelter for  
10 abused women. She contacted her husband on the cell phone and he was able to contact  
11 her on the cell phone. He was most anxious to meet with her and have her and the  
12 children return to the Cayman Islands. She refused on the basis that she could not face  
13 life with him again. He consulted a lawyer and hired a private investigator to trace his  
14 wife and children. He returned to the Cayman Islands via Miami and she remained in  
15 New Jersey. On his return to the Cayman Islands he instructed a lawyer to take out a  
16 summons under the Hague Convention on the Civil Aspects of International Child  
17 Abduction and applied for an order from this Honourable Court that Alejandra and  
18 Daniela be returned to the jurisdiction of the Cayman Islands forthwith and that they are  
19 not to be removed from the jurisdiction of the Cayman Islands without the express  
20 written consent of their father, William Michael Belfoure. The order was given by this  
21 court on an ex-parte basis. In order to support his application, he filed a fairly detailed  
22 affidavit that I will refer to as the "first affidavit" later in the judgment. This affidavit  
23 contains many allegations and remembering that it was exparte it will play a role in my

1 decision making on the question of full and frank disclosure to the court. In any event,  
2 armed with this order he returned to New Jersey. By that time his wife had been served  
3 with the order. In New Jersey the parties underwent a mediation proceeding and a  
4 consent agreement was achieved. Of course the notion that many family disputes could  
5 best be resolved by mediation or counseling has strongly influenced the reforms of  
6 divorce law in many jurisdictions. And it is in good faith that these agreements are  
7 reached. The agreement reached was:

8 (1) The minor children shall be returned to the jurisdiction of the Cayman Islands  
9 and shall physically reside with William Michael Belfoure in the Cayman  
10 Islands Until August 15, 2006.

11 (2) Until a final agreement or until a Court decides such, the parties shall have  
12 joint interim custody of the two minor children, Alejandra Belfoure and  
13 Daniela Belfoure.

14 (3) On or about August 15, 2006, the children shall be delivered by William  
15 Michael Belfoure to Clariza Belfoure who shall be residing in the United  
16 States in either Atlantic or Cape May Counties in the State of New Jersey.

17 (4) The children will reside in the United States with their mother for the 2006  
18 school year.

19 (5) During the school year the children will be returned to their father for his  
20 parenting time, if he chooses to exercise it, for the children's vacation and  
21 holiday times (i.e. New Jersey Teachers Conference weekend, Thanksgiving,  
22 Christmas and Easter breaks).

23 (6) Prior to August 15, 2006 William Belfoure and Clariza Belfoure will each

1           undergo psychological evaluations for the purpose of determining whether  
2           either of them is unfit to parent the children.

3       (7)   Both parties agree to sign whatever medical releases are necessary to transfer  
4           their medical records to the examining psychologist and each agrees to allow  
5           the other person to speak with the other psychologist should the psychologist  
6           request it.

7       (8)   Beginning August 1, 2006 William Michael Belfoure agrees to pay Clariza  
8           Belfoure U.S.D. \$1,000.00 per month, without prejudice, in temporary child  
9           support until January 1, 2007; Thereafter, if the parties cannot agree on an  
10          amount of continued child support either party is at liberty to apply to the  
11          Grand Court to fix the appropriate level of child maintenance.

12      (9)   Spousal support issues are reserved for future proceedings.

13      (10)  Nothing in this Order shall imply that the Courts of New Jersey have  
14          exercised or retained jurisdiction over the custody issue involving the two  
15          minor children or any other issues between the parties as the parties agree that  
16          the Grand Court of the Cayman Islands has exclusive jurisdiction over all  
17          issues between the parties.

18      (11)  Clariza Belfoure and William M. Belfoure agree to talk to each other only as  
19          to issues involving the health, education, and welfare of the children or the  
20          financial issues regarding the marital property or support issues and they agree  
21          not to harass each other in the future.

22      (12)  Each parent agrees to immediately notify the other of any need for emergency  
23          medical treatment for either of the two minor children.

1 (13) Both parties agree to continue to abide by a no violence policy in disciplining  
2 the two minor children.

3 (14) William Belfoure agrees not to dispose of Clariza Belfoures' personal  
4 belongings within the home, such as her mother's heirlooms and the  
5 childrens' sentimental objects.

6 (15) Before William Belfoure returns the children to the State of New Jersey,  
7 U.S.A., on August 15, 2006, Clariza Belfoure shall supply proof of adequate  
8 housing for herself and the two minor children as well as proof of  
9 employment and proof of adequate psychological testing/therapy results  
10 pursuant to paragraph 7 herein.

11 (16) William Belfoure agrees to make the minimum payments on the parties joint  
12 credit card debt through August 1, 2006 and thereafter the issue of the credit  
13 card debt shall be reserved for any future proceedings between the parties.  
14

15 The agreement is one that clearly was reached as appropriate to resolving issues about the  
16 arrangements for the children whose parents no longer wish to live together. Based on  
17 this, Mrs. Belfoure gave the children to Mr. Belfoure. On his return to the Cayman  
18 Islands with the children he changed his mind and refused to sign the consent order that  
19 was required to be filed in the Caymanian Courts, incorporating the terms of the  
20 mediation agreement. He explains his refusal by stating that he was advised by counsel  
21 to do anything that was required to get his children back.

22 In other words, Mr. Belfoure used the Hague Convention and its procedures as a tool to  
23 achieve his own end. Mr. Belfoure states "*at a meeting on the 31<sup>st</sup> of May, my wife*

1 *agreed that I could return to Grand Cayman with the children if I signed the agreement*  
2 *which is the subject matter of this application.” I was not prepared to sign any document*  
3 *which would result in the children going back to New Jersey after the summer. However,*  
4 *given my desperation and my overriding objective to get the children back I adjourned*  
5 *the meeting to seek advice and counsel from the Cayman Islands central authority and*  
6 *the US central authority. Based on their advice I decided that I should get the children*  
7 *back here at all costs and have the issues in relation to their custody and care dealt with*  
8 *by the Grand Court of the Cayman Islands, the Court which was obviously seized of*  
9 *jurisdiction in relation to the children. I agreed that I signed the 2<sup>nd</sup> of June document*  
10 *but it was always my intention to go back before the Grand Court in order to determine*  
11 *what was in the best interest of the children as it had previously done on an interim*  
12 *basis.” Of course, this is not the case. The court had not adjudicated on the children’s*  
13 *best interest, but only on the question of residency on an ex-parte basis. Be that as it*  
14 *may, this action shows Mr. Belfoure’s thinking when he signed the agreement that was*  
15 *negotiated in good faith by his wife.*

16  
17 On his return the matter came before the Courts only in September of 2006. He did not  
18 send the children back as he should have done in August 2006. After the hearing in  
19 which Mr. and Mrs. Belfoure were cross-examined Justice McCalla made an interim  
20 order which I have referred to above. It is regrettable that at that time The Court did not  
21 hear from Dr. Lockhart. However, as it was not a final order the omission was not of too  
22 much moment. The children as a result stayed in the Cayman Islands living with the  
23 father in the matrimonial home and were looked after by the helper who had been with

1 the family for ten years. The helper is of Jamaican origin and she has been referred to as  
2 a “second mother” by the family. Her present position however, is that her job is not  
3 secure as the Immigration Department has not renewed her work permit after July 2007.  
4 She has applied for permanent residency but the outcome of that is unsure. The mother  
5 has only had contact by telephone and has been extremely concerned with the children’s  
6 reaction during her telephone conversations. All parties agree that the children have  
7 expressed a desire to live with their mother. Though the social worker has been  
8 overseeing the situation, the children are babysat on occasions by a 16-year-old young  
9 man. The children attend Savannah Primary School. There have been no provisions put  
10 in place whatsoever for the mother to have physical access to the children. But I’ll  
11 remind myself that the order was made for review in December 2006. The father, even  
12 now, makes no proposal for the mother to have access to the children. The mother has  
13 now settled in New Jersey and she is working at Eckerd Pharmacy earning over US  
14 \$1000.00 every two weeks. She lives in a 3-bedroom apartment with her father and  
15 seems to have settled down in accordance with the requirements made of her under The  
16 Consent Agreement.

17

18 **The mother’s mental condition**

19 I have on purpose left this out during my review of the factual background of the case  
20 because it plays an important and fundamental role in the decision making process of this  
21 case. I have, therefore, given it the importance it is due by dealing with it on it’s own. I  
22 wish to make a general remark before dealing with the specific question of the wife’s  
23 mental state. The Court has a duty to consider all the circumstances but is not obliged to

1 become a “forensic ferret.” On the contrary, its role is restricted to a broad appraisal of  
2 the parties without descending into detail. In particular the Court is entitled to assume  
3 that parties represented by solicitors know what they want, know what they are doing and  
4 the Court is entitled to rely on the lawyers help to determine whether the allegations have  
5 been investigated to ascertain the truth. Unfortunately, this is not always the case and it  
6 is most important that full and frank disclosure is made especially in ex-parte  
7 applications. The frank disclosure that is expected is a truthful disclosure giving the  
8 Court a well-balanced view of both sides of the matter.

9

10 I now turn to the question of the wife’s mental capacity. It is alleged by the husband that  
11 the wife has a mental problem. He alleges that she has been having highs and lows and  
12 has not always been the most logical, reasonable human being during the course of the  
13 marriage. The wife admits she has had bouts of depression and that she has been under  
14 Dr. Lockhart’s care for some six years. She states that the cause of her depression was  
15 the abuse that she has suffered in her relationship. There is not a scintilla of evidence that  
16 her condition has harmed the children in any way. There are no specific allegations about  
17 any harm or injury to the children and indeed the husband was quite happy to leave the  
18 children with the wife for nine months in New Jersey after the advent of Hurricane Ivan.  
19 However, during the course of these proceedings and from commencement, the husband  
20 has made these allegations of mental problems that till this hearing in December 2006  
21 have not been tested.

22

23 In his first affidavit he states as follows

1

2 At paragraph 5: *"I should state at the outset that my wife is a clinically diagnosed*  
3 *manic-depressive. She has suffered from this condition for the past six years that I know*  
4 *of. She has been under the care of a psychiatrist for at least six years and has been under*  
5 *the care of Dr. Lockhart at the Chrissie Tomlinson Memorial Hospital since at least*  
6 *2001. She is prescribed medication for her condition. Until recently she was taking*  
7 *Zoloft. When she is compliant with her medication it seems to work well and there are*  
8 *relatively few problems."* And at paragraph 29 he says *" Perhaps this situation can be*  
9 *reviewed when she has addressed her medical or mental health concerns and has*  
10 *probably made suggestions or arrangements in respect of all the important aspects of our*  
11 *daughters' lives."* These two paragraphs show that he has wanted the Court to believe  
12 that she is a manic-depressive, and that she's taking medication for it. That in fact this  
13 court should review the question of care and control with this in mind. Dr. Lockhart, the  
14 psychiatrist who's been dealing with the wife since 2001 was called to give evidence and  
15 he said as follows:

16 (1) He has seen the wife regularly once in April, August, and multiple dealings in  
17 November and finally on the 18<sup>th</sup> of December 2006.

18 (2) That his client was scared of her husband.

19 (3) That in fact, his client had a recognized psychiatric condition called "Anxiety  
20 Disorder."

21 (4) That Mr. Belfoure did at his wife's insistence come to see him once  
22 accompanied by Mrs. Belfoure as she felt he did not understand her problems.

23 (5) That she is an anxious person but nothing more.

1 (6) When The Court read the allegation made in the first affidavit by Mr. Belfoure  
2 as to Mrs. Belfoure being a manic-depressive, to Dr. Lockhardt his answer to  
3 that was that it was a blatant lie.

4 (7) She was never diagnosed, he says, as a manic-depressive and that Mr.  
5 Belfoure called him and tried to make him say that she was a manic-  
6 depressive but that he constantly advised Mr. Belfoure that she had nothing  
7 more than an anxiety disorder, but he kept insisting that she might be manic or  
8 have bipolar problems.

9 (8) That Mrs. Belfoure is and can be a good mother to the children. That he has  
10 never doubted her ability to mother her children. She is eloquent and  
11 intelligent.

12

13 The Court is left with expert evidence that says Mr. Belfoure lied about Mrs. Belfoure's  
14 condition. The Court doesn't penalize a person for lying when it comes to the issue of  
15 custody, care and control of children (as the most important factor is the welfare of the  
16 children). What is important is that Mrs. Belfoure's mental condition was made a  
17 fundamental plank of Mr. Belfoure's anxiety to retain care and control of the children on  
18 the basis that she was a manic-depressive. That has been proven to be not so by the  
19 evidence of the expert, Dr. Lockhardt, whom Mr. Belfoure himself relied on to confirm  
20 his allegations.

21

22 Justice McCalla in her finding states at paragraph 34, "*Mr. McGrath has submitted that*  
23 *the mother's mental condition is at present not the subject of psychiatric supervision in*

1 *New Jersey and it is not clear what would happen in the event that her diagnosed stress*  
2 *and anxiety makes it impossible for her to cope.”* In making the interim order the judge  
3 placed emphasis on the mother’s mental condition. Regrettably, she did not hear from  
4 Dr. Lockhardt. But the entire premise and atmosphere in which this case was conducted  
5 was that Mrs. Belfoure was mentally unstable. The judge makes many references to Dr.  
6 Lockhardt and the mother’s condition. She places reliance on the father saying the  
7 mother could not cope with the children and had to ask her husband to do so. In any  
8 event, as I stated previously, it is for me to review this *de novo* and as such I have done so  
9 hearing from the expert. I have to conclude that the mother does not have manic-  
10 depression. That she does indeed suffer from anxiety and that she is under treatment and  
11 she is regularly seen by a counselor in New Jersey and Dr. Lockhardt. And as stated by  
12 Dr. Lockhardt these anxiety attacks are probably on the decrease as the stress of the  
13 living conditions improve.

14 **The Present Application**

15 The Court will take regard of the legal principals contained in Section 19 of the  
16 Guardianship and Custody of Children Law which states “**when in any proceedings**  
17 **before any court the custody or upbringing of a child or the administration of any**  
18 **property belonging to or held in trust for a child or the application of the income**  
19 **thereof is in question, the Court in deciding that question shall regard the welfare of**  
20 **the child as a first and paramount consideration and shall not take into**  
21 **consideration whether from any other point of view the claim of the father or any**  
22 **right of common-law possessed by the father in respect that such custody,**  
23 **upbringing, administration or application is superior to that of the mother or the**

1 **claim of the mother is superior to that of the father.”** Hence, if any of the proceedings  
2 are commenced relating to the child’s upbringing, questions of entitlement, and the  
3 parental rights become largely irrelevant. The child’s welfare will override the wishes of  
4 that natural parent and even override considerations of bringing justice to the parents.

5

6 In any dispute affecting a child the first and paramount consideration is the welfare of the  
7 child, a principle rigidly upheld by the Court in its rule on behalf of the State as *parens*  
8 *patriae*. In Re O’Hara [1900] IR 232 at page 235 the jurisdiction of the court is described  
9 “*the court of Chancery from time immemorial has exercised another and distinguishable*  
10 *jurisdiction, - a jurisdiction resting on the parental authority of the Crown by virtue of*  
11 *which it can supersede the natural guardianship of a parent, and can place a child in*  
12 *such custody as seems most calculated to promote it’s welfare.”*

13

14 In determining what is in the best interest of the child the Court pays attention to the  
15 physical, mental material and religious well being of the child. While the welfare of the  
16 child is paramount, it is not exclusive as other considerations may be relevant in assisting  
17 in the determination of what is best for the child. In Durity v Benjamin (unreported 30<sup>th</sup>  
18 July 1993, High Court of Trinidad and Tobago (#1596 of 1993) Basdeo Persad –Maharaj  
19 J. sets out his formula for the considerations to be applied in custody cases which include  
20 the following:

21

(a) Behaviour and characteristics of the parties

22

(b) Child’s education

23

(c) Whether the child is suffering from any serious illness

- 1 (d) Accommodation and material advantages
- 2 (e) Satisfaction of the child's basic needs
- 3 (f) Whether the custody application is bona fide or not
- 4 (g) Wishes of the parent and if possible wishes of the child
- 5 (h) Sex and ages of the child and ages of the parents
- 6 (i) Religion of the child
- 7 (j) Happiness of the child
- 8 (k) Future prospect of the child if granted to one parent
- 9 (l) Question of access to the unsuccessful party
- 10 (m) Whether the new partners of the parents will be amenable to
- 11 looking after the child

12

13 In the case of *Re Husbands Crane J* stated (1968 law reports of Gyana at page 227). “ *In*  
14 *considering the child's welfare I must do so on the widest possible basis. I must take into*  
15 *account a wide range of subjects viz it's moral, spiritual, social, education, material and*  
16 *medical welfare; but it would be useful to consider some of these together and my*  
17 *approach to the matter will be to consider the respective merits of each party with regard*  
18 *to each of them and decide the contest on what I think is the best thing to do in the*  
19 *interests and welfare of the child.*”

20 While it is undisputed that in most jurisdictions decisions as to custody of children is  
21 governed by the paramount consideration being the welfare of the child, the 1980 Hague  
22 Convention on Civil Aspects of International Child Abduction does not make the  
23 paramount consideration the welfare of the child, different principles apply. In cases to

1 which these conventions apply the Courts do not apply the principle that the welfare of  
2 the individual child is paramount. Under The Hague Convention for example the main  
3 question is whether the child has been wrongly removed or retained. If so the child  
4 should be returned so that the Courts of the country of the child's residence can make  
5 decisions about the long term arrangements. In this case the father appears to have gone  
6 under The Hague Convention and this Court quite rightly applied "the residency  
7 principle," as opposed to "the welfare principle." It is my duty now to apply the welfare  
8 principle at this stage.

9

10 In view of the evidence in support of the application, the behaviour and characteristics of  
11 the parties I find the father has not been truthful to the Court. He has been shown to have  
12 lied about the mother's mental condition; lied about the conversations he had with Dr.  
13 Lockhardt and furthermore lied about the family support he is alleged to have on this  
14 island. A good example of this is that he attached a letter from his mother who he says  
15 supports him to look after the children. The evidence is that she has not since the  
16 children returned to the island, looked after the children or babysat them. She has not  
17 (according to the social worker) been seen at the home on the occasions the worker  
18 stopped by and there is no evidence that she has interacted with the children or taken part  
19 in the children's life. The purpose of attaching such a letter is to convince the court that  
20 there is family support to enable him to be a single father. The subsequent evidence  
21 shows that this is not the case. His behaviour too is concerning to the Court in that in  
22 making the application the Court inquired of his lawyer on several occasions what his  
23 proposals were for access and there were no proposals forthcoming for physical access in

1 the USA. The father made no proposals whatsoever for the children to visit the mother  
2 abroad whilst he said he would allow the mother to see the children whenever she is in  
3 the Cayman Islands. The mother, on the other hand, has taken all steps to comply with  
4 the arrangements by finding suitable accommodation, by finding a suitable job and is  
5 willing to pay half the airfare to allow the children to come for holidays to visit the father.  
6 Like all human beings, the mother and the father have their good characteristics and their  
7 bad characteristics and the social welfare report speaks of both being good parents. The  
8 inadequacy of the investigation of the social inquiry report will come out when I address  
9 the question of the children's welfare at home.

10

11 I shall now review the evidence based on the considerations listed above; -

12 (1) In assessing the **behaviour and characteristics of the parties** there does not  
13 appear to be anything that is detrimental or that puts the children's life in any form  
14 of danger. Mr. Belfoure himself apparently relies on the helper, Ms. Guthrie and  
15 his employers to support his life style as a single father, and it appears he will say  
16 anything to have the children.

17 (2) The next consideration must be the **children's education**. The children have done  
18 well both in New Jersey and the Cayman Islands. This Court met with the  
19 children and found them to be intelligent and well spoken and forthright. At all  
20 times their position was that they preferred school in New Jersey. It would appear  
21 that both the schools in New Jersey and the Cayman Islands provide for extra  
22 curricular activities and the children, as intelligent as they are, have excelled in  
23 both jurisdictions.

1 (3) Whether the child is suffering from any **serious illness**. Neither child appears  
2 to be suffering from any serious illness.

3 (4) **Accommodation and material advantages**. Both parents are able to provide  
4 accommodation. It is true to say that the father can provide material  
5 advantages in the sense that he is the wealthier parent but as was said in  
6 Mercer v Hermans (CILR 2003 at page 510) a maintenance order can address  
7 the discrepancy between the parties as far as that is concerned.

8 (5) **Satisfaction of the child's basic needs**. It would appear that both parents are  
9 in a position to provide basic needs for the children.

10 (6) **Whether the custody application is bona fide or not**. It is undoubtedly true  
11 to say that both parents love their children and both parents probably make  
12 this application out of a desire to be with their children. But during the course  
13 of the application the father has not been shown to be as truthful as he could  
14 be. The basis in which he wants to deny physical access to the mother is that  
15 she's a manic-depressive which has been proven to be a lie. I find it difficult  
16 to say that his is a bona fide application. His demeanor and his credibility, in  
17 my view, are questionable.

18 (7) I have to take into account the **wishes of the parent and if possible the**  
19 **wishes of the child**. As I stated previously, this Court saw the children and  
20 the following are the salient points that emerged: -:

21 (a) They both love their parents

22 (b) They are anxious to live with their mother and visit with  
23 father

- 1 (c) They are not particularly close to any member of the
- 2 father's family
- 3 (d) That they miss their maternal grandfather
- 4 (e) That they wish to be in New Jersey and go to school there
- 5 which they loved previously
- 6 (f) That they do not like their school here
- 7 (g) On occasions they are not fed as they should be because
- 8 their father is late
- 9 (h) That he brings dinner for them when he is late but by that
- 10 time they are well and truly hungry
- 11 (i) That the fridge is frequently bare or only has snacks
- 12 (j) That the person who baby-sits them most is the male cousin
- 13 of 16.

14 (8) **The sex and age of the child and ages of the parents.** The children are female  
15 and the ages are 10 and 8. The parent's ages for purposes of this case matters not.  
16 But the children's age and sex does matter. In the case Stephenson v Stephenson  
17 and Johnson (1980 to 1983 CILR 93 Cayman Islands) Summerfield Chief Justice  
18 stated, *"there is no doubt that throughout the father has shown himself to be a*  
19 *good and devoted father. On many occasions he bathed the child at night,*  
20 *washed her clothes and diapers, fed her at night and put her to bed. The mother's*  
21 *insistence on improving her qualifications and taking employment to augment the*  
22 *family's home obviously caused some friction between the parties. However, her*  
23 *explanation for doing so is reasonable. This is a common pattern of living today*

1        *where a wife understandably asserts her independence and wishes to improve the*  
2        *quality of life for the family in material things. In all cases the paramount*  
3        *consideration is the welfare of the child and the Court must look at the whole*  
4        *background of the child's life and all the circumstances of the truth...more*  
5        *important, however, is the fact that the child is a female of tender years. There*  
6        *can be no doubt that all things being equal the interest of such a child are better*  
7        *served by placing her in the custody of her mother. A special relationship and*  
8        *bond between a very young child and his or her mother can rarely be duplicated*  
9        *by the father and as a girl is growing up, the example and home training of the*  
10       *mother is obviously better suited to her needs while maturing into a young*  
11       *woman." This is not to say that on occasions the father is not the better caregiver.*  
12       (See Mercer v Hermans 2003 CILR at page 115.)

13  
14       The court should not discriminate by gender necessarily. The distinction between the  
15       case of Mercer v Hermans and the case at hand is that in Mercer v Hermans, the mother  
16       was not stable in the view of this court. She was unemployed, she appeared to have a  
17       problem with drink, she was not the best role model, and therefore, the Court awarded the  
18       custody not necessarily on that ground alone but for many other reasons (including that)  
19       to the father. In any case the Court has to look to see if all things are equal. If indeed, all  
20       things are equal, then the case of Stephenson v Stephenson and Johnson in my view is  
21       still relevant. It is important that other things must be all equal.

1

2 (9) **Religion of the child.** - The evidence is that the father has not taken the children  
3 to church at all and that the mother does take the children to church. Upon being  
4 questioned, the father said he was embarrassed due to the breakdown of the  
5 marriage and therefore, he did not attend his regular church. When asked by the  
6 Court whether there were other churches in the island, he indicated that there were  
7 but he simply did not take them.

8 (10) **Happiness of the child** - The evidence is that both the social worker, the father  
9 and the mother have confirmed that the children cry when they speak to their  
10 mother. They miss their mother very much and more importantly the children  
11 have confirmed that they wish to live with their mother. There are two letters  
12 attached to the mother's final affidavit which indicate that the children wish to  
13 live with the mother. I personally saw the children, spoke with them and have no  
14 doubt that they were not coached. It was at the spur of the moment that the Court  
15 asked the parents to remain in Court and bring the children to Court. They were  
16 brought by the helper. Both attorneys sat in the back of the Court and the  
17 interview with the children was most pleasant and relaxed. It is my view that the  
18 children who have consistently maintained this position from September wish to  
19 live with their mother, and will be happy with her.

20 (11) **Future prospects of the child if granted to one parent** - It is my view that the  
21 children will develop in the care of both parents and that in view of the mother's  
22 proposal to send the children to the Cayman Islands for every holiday

1           there should be no problem with the children remaining in touch with the father's  
2           family while being in the mother's care.

3   **(12) Questions access to the unsuccessful party** - This is what concerns me. The  
4           mother, in my view, would be totally isolated and out of the children's life if  
5           custody, care and control was granted to the father. The one telling question that  
6           was asked by this Court of the father was what would he do if the children wanted  
7           to discuss a matter of a personal nature with a female, as the eldest child,  
8           Alejandra, is of an age where her puberty would be dominant in her mind. The  
9           father's answer to this question was that he would ask them to discuss the  
10          question with his mother. It is my view that he could easily have answered by  
11          saying that he would get them to call the mother or pay for a ticket for her to  
12          come down or send the children up to the mother at that time. His answer makes  
13          one conclude that he wishes the children to have nothing or very little to do with  
14          the mother. The mother on the other hand is anxious that the children interact  
15          with the father and is willing to pay half the airfare on her meager income to send  
16          the children down for every holiday.

17   **(13) The question of whether the new partners to the parents will be amenable to**  
18          **looking after the child.** - This does not arise at this stage.

19

20          When it comes to the care of these children, the father's arrangement is that he wishes to  
21          have the helper look after the children. She is Jamaican and her educational background  
22          is unknown to the father yet he deposes to the fact that she does homework with the  
23          children. The father apparently is quite content to allow the children to be brought up by

1 a helper. His mother appears not to support him with the children. There is no evidence  
2 of anybody else assisting with the homework but the helper or him and yet he is quite  
3 content to exclude the mother completely out of their lives. The evidence is that the  
4 mother is capable and has been shown to be capable in New Jersey when they were  
5 attending school in USA.

6

7 What I have not addressed in this judgment up to now is the moral welfare and the role of  
8 the unimpeachable parent in the decisions that has to be made by the Court. The moral  
9 welfare of the children is important in the Court's determination as to custody. I have to  
10 look at the father's habits, and the mother's habits. The father likes gambling, he plays  
11 dominoes, and he is a good sportsman. I must look at his attitude towards the law and his  
12 respect for it. I have found him to be lying about his wife. I have found him to have  
13 misled the court as far as his mother's role is concerned. I have found him to be  
14 misleading the Court, when it comes to even the smallest of matters. An example of this  
15 latter finding is that he has led the Court to believe that Mrs. Belfoure would call the bank  
16 where he works and make him loose his job. The bank's letter only confirms what he has  
17 told the bank, they make no allegations of direct contact in any unpleasant way. There is  
18 an allegation that the children are allowed by Jordan to watch pornography on the  
19 computer. I am assured, however, that if the father knew about this he would not permit  
20 it but the concern is that the children are being looked after by a teenager who is alleged  
21 to have a delinquent past and the father seems to find that acceptable. The mother  
22 appears to have a problem with depression but apart from that no allegations are made as  
23 to her behaviour. She also seems to have a friend with a questionable past but I have no

1 evidence of him being an influence on the children now or in the future. It now appears  
2 having regard to the welfare principle that there is no presumption of law in favor of a  
3 child's parents or even an unimpeachable parent. In this case, however, both parents  
4 have been guilty of a wrong to some extent. The mother took the children when the  
5 family was on holiday in the United States. Her explanation is reasonable. She said she  
6 could not face coming back to live in the Cayman Islands and so she took her children to  
7 a shelter for abused women. She did not check into a hotel, she did not go and live with  
8 her friends, instead she went into a shelter for abused women where the rule is that the  
9 address is not to be given out. The father on the other hand calculatingly used the  
10 goodwill of the mediation proceedings and brought the children back admitting that he  
11 would have said and done anything to get the children back to the Cayman Islands.  
12 Having got them back he has restricted contact with the mother. He now wants her to  
13 have supervised visits and is going down the path of eliminating the mother from the  
14 children. In this context of course, his lies to the Court must also be taken into account.

15

16 The Court has certain fundamental principles to safeguard in making this decision. One  
17 is that the Court should take into consideration only the best interest of the child as  
18 determined by reference to the conditions, needs and other circumstances of the child.  
19 Also in making an order the Court should not take into account considerations of the past  
20 conduct of any person unless of course that conduct is relevant to the ability of that  
21 person to act as a parent of a child. Also, in making an order the Court should give effect  
22 to the principle that the child of the marriage should have as much contact with each  
23 parent as is consistent with the best interest of the child, and for that purpose should take

1 into consideration the willingness of the person for whom custody is sought to facilitate  
2 such contact.

3 I must now look at the social inquiry report and take the recommendations into account in  
4 making my decision. The primary function of the report is to assist the Court by  
5 providing the Court with the factual information on which it can make a decision. The  
6 social worker has the power to inspect the Court file, interview all the parties, and visit  
7 the party's homes, see the parents, children and others involved. See the children with  
8 the parents in their homes and see doctors and teachers if that would be appropriate in the  
9 circumstances. A full welfare report should contain a statement of the different proposals  
10 made by the parties for the future care of the children concerned. The social worker was  
11 called as a witness and she conceded that she did not fully investigate the background of

12 Jordan, the babysitter. She also conceded that the mother told her Jordan had a  
13 delinquent past and she has not to date investigated that. Instead she looked into the law  
14 to see if there was a minimum age for babysitters. The report is inadequate. It states:

- 15 (1) That the children want to be with their mother.
- 16 (2) That the paternal grandmother is not a frequent visitor to the home.
- 17 (3) That the father does play dominoes, football and does come home late on  
18 occasions.
- 19 (4) That there has been an incident when the police were called because the  
20 mother was concerned that there was a young man of 16 looking after these  
21 children.

1 (5) That the social worker feels that it is appropriate that the parents discuss the  
2 puberty of the eldest child and decide on who is going to deal with discussing  
3 it with the child.

4 (6) The social worker does not make any recommendations.

5 The social inquiry report should make recommendations. This may be of great  
6 significance because it is well established that although the decision is for the Court not  
7 for the social worker, a Court which does not follow the social worker's  
8 recommendations must explain its reasons for not doing so. In this case I am of the view  
9 that the social inquiry report lacks the following:

10 (a) Interviewing of the mother in any depth.

11 (b) Interviewing of the mother's associates with whom she worked for many  
12 years at Thompson Shipping.

13 (c) It appears to be one-sided in that the report covers the father's interaction  
14 with the children but not the mother's.

15 (d) Does not make any recommendations.

16 (e) Does not appear to have interviewed the helper in any depth nor the doctor  
17 at all.

18 (f) Finally the report says "*the primary focus of these proceedings is to*  
19 *evaluate the children whose emotional well-being is at stake. It would be*  
20 *good if the petitioner and the respondent could develop trust in each other*  
21 *and come to a suitable resolution in the interest of their children.*"

1 The Court is not assisted by such a conclusion. Most divorce proceedings end up in a  
2 lack of trust between parents. All children are emotionally at risk when parents  
3 divorce especially when they love the parents and both parents love them.  
4

5 It is convenient at this stage to look at the list of reasons given by the husband why  
6 the mother should not have custody of their daughters especially during the school  
7 year. He refers to:

8 (a) His wife's mental state.

9 (b) Inability to hold a steady full time job that she deems as stress or  
10 pressure related.

11 (c) Extreme mood swings of anger, frustration and depression

12 (d) He has always been the buffer between the wife and children  
13 when she was not able to deal with them or became aggressive  
14 with them.

15 (e) The distance he would have to travel if a situation arose regarding  
16 the welfare of his children.

17 (f) His father-in-laws role being the role of bringing up his children  
18 especially since he has been accused of abuse of his daughter as a  
19 child as well as his police record.

20 (g) The role of Jordan Farrell both based upon his wife's statement as  
21 a partner and in his daughters' lives because apparently he is one  
22 of the reasons that his wife decided to reside back in New Jersey.

23 (h) The 15 year old babysitter that is proposed by the wife

- 1 (i) The education aspects of his daughters as he has always been the  
2 parent to stress and insure that his daughters are educated whereas  
3 his wife has little or no regard for their educational welfare as she  
4 allowed them to miss five weeks of school despite his pleadings.
- 5 (j) And finally the current revelations of lack of trust as disclosed as  
6 monies were withdrawn without his consent from his checking  
7 account. Therefore, highlighting her inability to provide without  
8 some other means to support herself in New Jersey.

9  
10 Dealing with one at the time-

11  
12 **1. His wife's mental state** has now been proven to be untrue. He is of the opinion that  
13 she is a manic-depressive whereas she only has anxiety attacks according to Dr.  
14 Lockhardt caused by the stressful situation in which she lived.

15 **2. The inability to hold a full time job is** now not the case. I have seen a letter from the  
16 employers and they have rehired her. Apparently she has now been trained as an  
17 assistant manager and is doing well.

18 **3. The extreme mood swings of anger, frustration and depression.** Dr. Lockhardt  
19 says there are no mood swings exhibited by Mrs. Belfoure and in any event Mr. Belfoure  
20 has stated that if she is compliant with her medication she is perfectly normal. So he  
21 appears to have taken the fact of the mood swings in a vacuum instead of in a context in  
22 which she is not compliant with her medication. Dr. Lockhardt confirms that she is a  
23 compliant person and has undertaken every exercise he has requested of her.

1 **4. That he has always been the buffer between his wife and children.** That is not  
2 what the children have told me because it is clear that the children wish to live with the  
3 mother and are not frightened of the mother. In fact one of the children has told the  
4 mother and the social worker that she was frightened of the father shouting at her and she  
5 was crying. She repeated this to the Court.

6 **5. The distance he would have to travel** Rapid and international travel greatly reduce  
7 the problem of international child relocation. One or two hours journey cannot surely be  
8 said to be of such great inconvenience if the father wishes to be in attendance on the  
9 children at a given time.

10 In his judgment in Payne v Payne Thorpe L J stated [2001 1 FLR at page 436

11 *“furthermore practicalities are all against this submission. International travel is*  
12 *comparatively cheap and more competitive than ever before, equally communication is*  
13 *cheaper and the options are more varied.”*

14 **6. His father-in-laws’ role in the upbringing and rearing of the children** he alleges is  
15 of concern to him. In evidence to this Court he said his father-in-law was a loving  
16 grandfather. When I questioned the children the first thing that came out of their mouth  
17 was that they missed their grandfather. The husband seems to have contradicted himself  
18 with his allegations of apparent concern.

19 **7. The role of Jordan Farrell** – The husband’s concern was that the wife was going to  
20 commence living with this man who had a background of drug abuse at that time. This  
21 was in August 2006. He has not produced any evidence even though the private  
22 investigator that he hired to say that she was or is living with this man and the evidence  
23 before me which is unchallenged is that the wife intends to live with the father.

1 **8. Babysitter** The wife has already confirmed that she has made other arrangements for  
2 babysitting in the event that she works late and that Ariel Farrell will not be babysitting.  
3 On the other hand, the wife's concern is that the husband lets his 16-year-old male  
4 nephew look after his children who are girls.

5 **9. The educational aspect** of the children I have already addressed. They have done  
6 excellently and got on the honor role in New Jersey. It is my firm belief that both parents  
7 are capable of overseeing their homework. Indeed the husband said that the only reason  
8 that they did well in New Jersey was that he was in contact with them by email daily.

9 Not even the fact that his wife could play a role in their homework was conceded.  
10 Further I am of the view that the husband could not have played a great role in their lives  
11 while the couple were living together as man and wife as the husband himself agrees that  
12 he did 2 and 3 jobs to maintain their standard of living. Coming in at 6:30 and leaving to  
13 go to the second job, shortly thereafter.

14

15 **Finally he alleges that because Mrs. Belfoure withdrew monies** without his consent  
16 she cannot provide for the children on her means. I've already addressed this question  
17 but for completeness I restate that any inability to provide for the children must be  
18 addressed in a maintenance order.

19

20 One of the reasons given by Mr. Belfoure as to why he should get custody is the fact that  
21 his domestic helper has played an active role in his children's life for ten years and the  
22 amount of family support available to him. It is indeed a tragedy that an applicant can  
23 actually ask this Court to hold that a domestic helper will be an adequate substitute for a

1 mother who has not harmed her children and who has played an active role in her  
2 children's life. He makes no proposals for physical access to the mother and in my view  
3 this is most telling as to the attitude of Mr. Belfoure. In *Balram v Balram* unreported 12  
4 April 1995 High Court Trinidad action (#S360 of 1995) Ramlogan J applied the law to  
5 the facts there " *it is well established that what is of paramount importance in cases like*  
6 *these is the welfare of the children. All the circumstances must however be taken into*  
7 *account. Each case has different circumstances. In this case the relevant factors are the*  
8 *education and intelligence of the parties, the ages, the character, the earnings, the*  
9 *employment, attitude to the children, the prospect of the parties, the prospects of the*  
10 *children in Trinidad or in the United States, the environment here as against the United*  
11 *States and the children's' happiness. There must be a balancing process, At the end of*  
12 *the day how will the children's interest be best served.*"

13 I am of the view that the children in the case at hand would be better off with the mother  
14 particularly because of my findings on the question of her mental state, the age of the  
15 children, the sex of the children and the father's anxiety to keep the mother out of the  
16 children's life and the wishes of the children. I am more impressed with the mother as a  
17 person determined to improve her life and that of her children. The scales tilt heavily in  
18 favor of the children being with their mother. I will therefore grant joint custody of the  
19 children to the parents and care and control to the mother with leave to take the children  
20 out of the country.

21 I make this final order: -

22 (1) Joint custody to the parents with care and control of the two children to their  
23 mother

- 1 (2) The father to maintain the children as per his agreement in the United States at  
2 \$1000.00 per month
- 3 (3) That the father shall have access in any time in the United States of America  
4 including overnight access if he should visit, giving the mother 24 hours notice
- 5 (4) He should have access in the Cayman Islands and half Easter holidays and all  
6 summer holidays except for two weeks and every other Christmas holiday. The  
7 father and mother to share fares required for the children to visit their father. The  
8 mother to consult the father in all major education and medical decisions.
- 9 (5) The mother to keep the father apprised of all major changes in the children's  
10 lives including education achievements and changes of address.
- 11 (6) The parents not to denigrate each other to the children
- 12 (7) The mother to file these orders in the Courts of New Jersey forewith
- 13 (8) The father to hand over the children's passports by 2:00 p.m. to Mrs. Brooks and  
14 the children are to be ready for collection by 5:30 p.m. today
- 15 (9) Liberty to apply
- 16 (10) Cost of this application to the mother to be agreed or taxed.
- 17 (11) Cost of this application ex-parte under the Hague Convention only to the father
- 18 (12) Stay refused

19

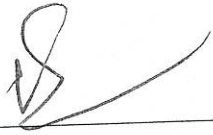
20 These are the reasons following the oral judgment which was delivered on the 21<sup>st</sup> of  
21 December 2006.

22

23 Dated the 4<sup>th</sup> day of January 2007.



1



2

---

3

Justice Priya Levers

