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IN CHAMBERS
IN THE GRAND COURT OF THE CAYMAN ISLANDS



CAUSE NO: 168/06

**IN THE MATTER OF THE GUARDIAN
AND CUSTODY OF CHILDREN LAW**

AND IN THE MATTER OF ALEJANDRA BELFOURE

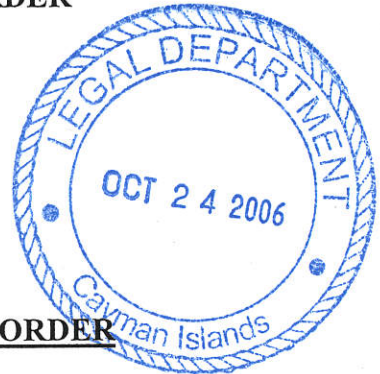
AND IN THE MATTER OF DANIELA BELFOURE

**AND IN THE MATTER OF THE CHILD
ABDUCTION AND CUSTODY (CI) ORDER**

Appearances:

Mr. David McGrath of L.A. Samson & Co. for applicant
Ms. Sheridan Brooks of Brooks & Brooks for respondent.

Dates of Hearing: September 1, 4 & 6, 2006



RULING ON SUMMONS FOR INTERIM ORDER

1. Before this Court for determination is a Summons filed on August 8, 2006 by Michael Belfoure (the father) seeking an interim order for custody, care and control of the children of the marriage Alejandra and Daniela who are girls born on August 16, 1996 and December 9, 1999, respectively.
2. Clariza Belfoure (the mother) had previously filed a summons on August 1, 2006 seeking approval of a "consent order" dated June 2, 2006 signed by the mother, the father and the mother's attorney-at-law. However, on the instructions of the father the "consent order" has not been signed by his attorney-at-law and consequently has not been approved by the Court.
3. In light of the summons brought by the father, the mother's summons was adjourned and the matter set down for hearing on its merits. The mother's summons for approval of the "consent order" is relevant only in respect of the circumstances in which the parties had signed an agreement, dated June 1, 2006 in New Jersey, which is reflected in the contents of her summons and in so far as the

mother's Attorney-at-law has urged this Court to make an order in the terms stated in the "consent order".

4. The circumstances giving rise to the summonses have been documented in four affidavits filed by the father (his fourth affidavit was filed on August 24, 2006) and an affidavit filed by the mother on August 10, 2006.
5. The father is Caymanian by birth and has lived in the Cayman Islands all his life except for 3 years when he studied in the United States of America. He is employed as a systems analyst with a bank in the Cayman Islands. The mother is an American citizen who lived in New Jersey and was employed at a casino, where she met the father.
6. The parties got married in the United States of America in 1996 and the mother has lived and worked in the Cayman Islands since that time. The union produced the two children previously named, who hold both Caymanian and American citizenship. The mother and father continued to live and work in the Cayman Islands along with the two girls save and except for a period of about 9 months from September 2004 after the devastating effects of Hurricane Ivan on the Islands' infrastructure. It then became necessary for the mother and children to leave the Cayman Islands for New Jersey where the children lived with the mother who enrolled them in school.
7. On the return of the mother and children to the Cayman Islands they continued to live in the family home at Savannah with the father.
8. In April 2006, the mother and father along with the children went on vacation to New Jersey. They were accommodated in the home of the mother's sister. They were due to return home on April 24, 2006. However, the mother informed the father of her intention to remain in New Jersey with the children. The father objected. On April 23, the mother took her sister's car and as she states in her affidavit, "on the spur of the moment took the children and ran". The father became concerned when he made futile attempts to contact the mother by cellular phone. A few days later he made contact with her by telephone, but, despite his pleadings to return with the children, she remained resolute in her decision to re-

locate to New Jersey with them. On May 12, 2006 he again made contact with her but was unable to persuade her to return.

9. The father then sought legal representation in the United States of America and hired a private investigator in an effort to ascertain the whereabouts of the mother and obtain the return of the children.
10. The father returned to the Cayman Islands without the mother and the children and commenced legal proceedings by way of an Ex Parte Summons, filed on May 5, 2006, under the Child Abduction and Custody (Cayman Islands) Order pursuant to the terms of the Hague Convention.
11. He sought the assistance of the Central Authorities in the Cayman Islands and the United States of America in his efforts to secure the return of the children to the Cayman Islands.
12. On May 5, 2006 the mother commenced legal proceedings in New Jersey in which she alleged physical and mental abuse by the father. That matter was set for hearing on June 1 2006. On May 25, 2006 the mother was served with the Order made pursuant to the Ex Parte Summons filed by the father. Having taken legal advice, the father signed the agreement the terms of which were embodied in the "consent order" referred to at paragraph 3.
13. After the mother and father and their respective Attorneys had signed the agreement, the mother handed over the 2 children to the father and he returned to the Cayman Islands with them. The Father has continued to reside with them in the matrimonial home. Under the terms of the agreement the children were to be returned to the mother in New Jersey on August 15 2006.
14. The mother's expectation that the children would have been returned to her in accordance with the terms of the agreement and "consent order" has not been realized. The issue of custody care and control of the 2 girls is now before me for determination by virtue of the summons filed by the father seeking an interim order.

15. Pursuant to a direction given by the Court on August 10, 2006, for disclosure of the psychiatric records of the mother, the mother has exhibited a report from Dr. Mark Lockhart. By consent, an order was also made for the father to be evaluated by a psychiatrist and he has exhibited the report to his fourth affidavit. In his report Dr. Lockhart states that he first saw the mother as a patient in October 2001 and after an evaluation he started her on medication which included Zoloft. The mother alleges at paragraph 3 of her affidavit dated August 10, 2006 that:

“My husband began beating me when I was three months pregnant and this physical abuse has continued intermittently throughout my marriage. I strongly believe that it is as a result of the events described above that I began to suffer from panic attacks and it is for those panic attacks that I have been taking the Zoloft...”

16. She has made allegations against the father of drinking, staying out late at nights and gambling, resulting in stress and anxiety on her part. She says that it was at his insistence that they went to New Jersey without any expectation that they would go as man and wife.
17. The father has denied the accusations of abuse. In his affidavit filed in support of his Ex Parte Summons for the return of the children, he described the mother as being a clinically diagnosed manic-depressive who has been taking medication under the care of a psychiatrist. Under cross-examination he said that his categorization of her as such was as a result of discussions held with her and her psychiatrist Dr. Mark Lockhart, as well as from research that he has conducted on the internet.
18. He agreed with counsel for the mother that the medical report of Dr. Lockhart states that she has been diagnosed as having a panic disorder. The father has described the mother as being emotionally prone to “highs” and “lows” He said that at one point she was his best friend and at another point she could not stand his presence and could not tell him why.

19. He is concerned about the children being in her care because of her mental state, despite the medical report of Dr, Lockhart which concludes in part that:

“She has been compliant with her medications throughout the treatment process from 2001. There have been isolated episodes of anxiety symptoms and reactions but they have all responded to her treatment. She has been able to hold a job which has been consistent. She has been a caring compassionate mother to her children”.

20. Between September 2004 and her return to the Cayman Islands the mother had been taking Zoloft. Under cross-examination she denied an incident concerning a mental health episode described by her husband, which occurred on the night of April 6, 2006. Her account was that she was verbally abused by her husband; felt threatened and as a result visited the doctor on April 7 2006.

21. Dr. Lockhart’s report states that on that visit the father was present at the mother’s insistence for him to explain the etiology or origin of her illness in order that the father could be more supportive. The allegation of “beating” appears in the doctor’s report of her visit on August 10, 2006. That visit by her was in compliance with the terms of the agreement signed by the parties in New Jersey. The mother has admitted sending a “valentine” card to the father professing her love for him. The card is exhibited to the father’s fourth affidavit but the mother has not admitted the date as being February 2006, as she has sent “boxes of cards” to him and him also to her. In March 2006 the father took the mother on a trip to Miami as an anniversary present and she admittedly had “a great time” at a beautiful expensive hotel. They engaged in sexual intercourse. The mother said in cross-examination that at that time her marriage was over and she wanted a divorce. She also said in cross-examination that at that time her marriage had been over for 9 years and the father “has never slept in my bed”.

22. During the course of cross-examination the mother was tearful and on occasions had to be allowed time to compose herself. At other times her demeanour could be described as being combative. She was at times flippant and dismissive in her answers under cross-examination when counsel sought to probe the arrangements she had in place in respect of accommodation, child care and employment. On

several occasions she tearfully said: "All I want is to return to New Jersey with my babies". She attributes her emotional state to the fact that she is separated from her children.

23. The Court is of the view that the mother is prone to exaggeration in respect of her marital difficulties. A photograph of the mother and father exhibited at WB4 of the father's fourth affidavit dated August 24, 2006 speaks for itself.

24. The father has also exhibited to his fourth affidavit, several references which describe him as being stable, reasonable, hardworking, dedicated, reliable, patient and conscientious in respect of the girls, with good parenting skills. These include a letter from his mother and other relatives who have stated their willingness to render assistance to the father in caring for the children.

25. In her second report the social work supervisor states:

"At no time during this worker's interaction with persons regarding this case have (sic) anyone alluded to Mr. Belfoure being other than a very nice person and good provider".

26. Of the mother she states:

"While Mrs. Belfoure has been described as a good mother, she has been referred to as being loud, a person who sometimes speaks without thinking, one who can be very nice but display (sic) mood changes in a spilt second."

27. The mother's closest friend has described Mr. Belfoure as a "good person" and a provider for his family. The mother has admitted in cross-examination that there have been times during her marriage when she could not cope with the children and had to ask her husband to do so. She states that this is the case with all mothers from time to time. At present she is not taking Zoloft and is not under any direct psychiatric care.

28. Ms. Brooks has strongly criticized the father for alleging in his affidavit which was filed in support of his Ex Parte Summons, which sought the return of the children, that the mother was clinically diagnosed as being manic depressive. She also deprecated his act of signing the agreement and "consent order" referred to, in circumstances where he had no intention of complying with the terms of those

documents. It was the signing of that agreement which led the mother to hand over the children to the father in New Jersey.

29. Ms. Brooks said that it was also on the basis of that document that the mother obtained the psychiatric report exhibited and supplied evidence that she had found housing and employment.
30. She submitted further that in light of Dr. Lockhart's report of the 9th August 2006 the concerns expressed by the father are unfounded. Counsel referred to the period spent by the mother in New Jersey in the aftermath of Hurricane Ivan and the mother's instrumentality in making all the necessary arrangements in New Jersey with regard to the welfare of the children.
31. She made reference to the report of the social welfare supervisor which states that the children wish to live in New Jersey with the mother and to the fact that the mother has relatives living in New Jersey.
32. Citing the case of **Mercer vs. Hermans** (2003) CILR 510 she referred to the special bond which exists between a mother and her young daughter. She asserted that the ages of the children and their emotional and psychological attachment to their mother should be given extra weight in any decision relating to their welfare.
33. The financial disparity between mother and father could be addressed by an appropriate order of the Court for maintenance. She noted that the financial assistance of the father had enabled the girls to be cared for in New Jersey during the post Ivan hurricane period.
34. Mr. McGrath has submitted that the mother's mental health condition is at present not the subject of psychiatric supervision in New Jersey and it is not clear what would happen in the event that her diagnosed stress and anxiety makes it impossible for her to cope. He said that with regard to schooling, housing, secondary care giver, the working day of each parent and the routine of the children, there is stability, suitability and certainty on the father's part. He said that the long term interests of the children will be best served by a preservation of the status quo and their remaining in the Cayman Islands with their father.
35. He maintained that in contrast to the father, the mother's plans change, and have changed, in significant ways on a fleeting basis. He strongly urged the Court to

decide in favour of “the stability of life and the proven and known commodities of Cayman over the uncertainties of all that life in New Jersey may encompass”. On this basis he submitted that it was in the best welfare of the children for them to remain with their father and continue their schooling in the Cayman Islands.

36. As both Counsel have urged, the Court must have regard to the legal principles contained in section 19 of the Guardianship and Custody of Children Law which states:

“Where in any proceeding before any Court the custody or upbringing of a child or the administration of any property belonging to or held in trust for a child or the application of the income thereof, is in question, **the Court in deciding that question, shall regard the welfare of the child as the first and paramount consideration**, and shall not take into consideration whether from any other point of view the claim of the father, or any right at common law possessed by the father, in respect of such custody, upbringing, administration or application is superior to that of the mother, or the claim of the mother is superior to that of the father.” (Emphasis supplied)

With the principles embodied in the above section as my guiding light, I turn now to consider what determination I should make, with regard for their welfare being my first and paramount consideration.

37. The evidence reveals that both mother and father love the children dearly. There is no evidence to suggest that either is unfit, notwithstanding the psychiatric report adduced on behalf of the mother. Both parents appear to be capable of dealing with the emotional needs of the children.
38. It is correct to say that with regard to employment, housing and secondary care giver, the arrangements sworn to by the mother in her affidavit dated August 10 2006, have changed in several respects. The children will not be attending the same school that they attended during their sojourn to New Jersey after Hurricane Ivan. The mother has stated that she has changed her mind regarding the employment of a teenager, named in her affidavit, who would take care of the children after school. She plans to “convince” her father, who has a disability, to

do so. On her return to New Jersey, she will persuade him not to pursue his stated intention to take up part-time employment. She has secured accommodation other than that referred to in her affidavit.

39. Questions were put to the mother in cross-examination on Friday September 1, 2006 concerning a document which is exhibited to her affidavit. This document, which is referred to as a "time sheet", shows that her working hours are on a shift basis and there is uncertainty with regard to future work schedules. She stated that if the children were to go back with her to New Jersey "I can't guarantee what my working hours would be". On Monday September 4 2006, at the resumed hearing she produced a letter offering employment at regular working hours. This offer had previously been made but was declined in favour of employment with the casino, which offered greater scope for advancement. At present she is still employed at the casino.
40. Of even greater concern to the Court is the mother's uncertainty in her response to questions posed as to whether or not she has moved into new accommodation, secured subsequent to the filing of her affidavit. As she has said, "it takes time to establish a lifestyle".
41. The Court is equally concerned about the position of Mrs. Guthrie the household helper who has been in the employment of the mother and father for approximately 10 years and is at present the childrens' secondary care giver. She has been described by the father and the social welfare supervisor as being admirably suited to take care of the girls. Indeed the mother describes her as "a second mother" to the girls and her services as being more than satisfactory. Both Counsel have made submissions in respect of the Immigration Law and her status in the Cayman Islands with regard to her continued employment after December 2006. Her work permit has been refused and she has appealed and has also applied for residency, which has not yet been granted. I find that Mrs. Guthrie's immigration status is uncertain.
42. In all the circumstances, with the uncertainties alluded to on the mother's side, the Court finds that it is not in the childrens' best interest for the status quo to be changed at this time. I have considered the evidence of the mother as well as that

of the father. I have given anxious consideration to the wishes of the children as expressed in the social welfare supervisor's report, bearing in mind that it is a significant factor to be taken into account.

The father has candidly admitted that the children have expressed a wish to be with their mother. I have regard to the reasons given by them as stated in the report of the social welfare supervisor. I accept the father's evidence that "the children have been told in telephone calls that "things" have been purchased for them and they are "looking at it as if it's a vacation".

43. I am of the view that having regard to the foregoing, with the welfare of the children being my first and paramount consideration, their best interest will be served by allowing them to remain with the father to continue their schooling in the Cayman Islands and allowing the passage of time until December 2006, to enable the mother to present to the Court with certitude, evidence of her proposed arrangements especially with regard to employment, living accommodation and secondary care. On a review of this matter at that time the Court will be in a better position to make an appropriate order.

44. Accordingly, I make the following orders:

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

(2) The said children shall not be permitted to leave the jurisdiction of the Cayman Islands, unless in case of emergency, without the prior written consent of the mother, such consent not to be unreasonably withheld, until December, 2006 or upon further order of the Court.

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

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

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

(6) Liberty to apply, to each party.

(7) Costs reserved to further hearing.



Hon. Justice Zaila McCalla
Acting Judge of the Grand Court

