

1 **IN THE GRAND COURT OF THE CAYMAN ISLANDS**
2 **FAMILY DIVISION**

3 **CAUSE NO. FAM 180 OF 2011**

4 **BETWEEN:**

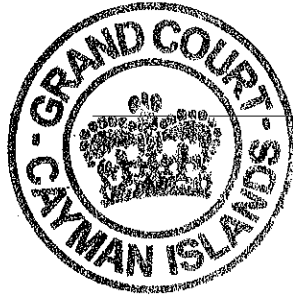
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Petitioner

7 **AND**

B

Respondent



10 **Appearances:** **Mr. Conor Fee of Samson & McGrath for the Petitioner**
11 **Mr. Clyde Allen for the Respondent**
12 **Mrs. Rosie Whittaker-Myles for the children through their**
13 **Guardian ad Litem Mrs. Maggie McCormac**

15 **Before:** **Hon. Justice Richard Williams**

17 **Heard:** **27 October 2015**

19 **Draft Judgment**

20 **Circulated:** **3 November 2015**

22 **Date of Judgment:** **7 November 2015**

25 **HEADNOTE**

27 *Family Law – Children - Application for Contact – Duty of attorneys to provide accurate time*
28 *estimates for hearings*

31 **JUDGMENT**

32 1. This extremely long running matter concerns C, an 8 year old boy born on 14
33 May 2007 and K, his 6 year old sister, who was born on 26 December 2008. Both
34 children reside with their father in the Cayman Islands and have contact with their
35 mother who resides in Florida. For the purpose of the issues to be addressed in



this ruling, as the long-running history has already been fully set out in a number of judgments, I see no need to again repeat that detail herein. I will, for convenience, refer to the parents as “the mother” and “the father” hereafter.

4

5 2. At the hearing I considered the Summons filed by the mother on 8 October 2015.

6 The contested Summons was urgently listed on the basis of a wholly unrealistic

7 30 minute time estimate and, in fact, the hearing took a full four hours. It is

8 important that accurate time estimates are given by parties to the Listing Officer,

9 it is highly inappropriate to give an artificially low time estimate in order to get an

10 earlier hearing date. In future such cases may be adjourned at the outset of the

11 hearing or adjourned part heard once the allotted time for the hearing has expired.

12 The length of the hearing was extended as the father failed to file an affidavit

13 although sufficient service had been given to him. It is inappropriate for counsel

14 to give evidence on behalf of their client. In future the Court will expect affidavits

15 to be filed containing the evidence the parties wish the Court to consider at the

16 hearing.

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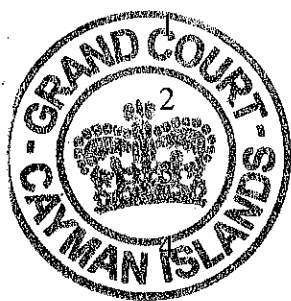
18 3. I was only asked by the mother to consider and rule on paragraphs 1(b) to (d) in

19 her Summons. The mother seeks orders for contact with the children: (i) in

20 Florida on the long weekend holiday from Friday 6 November 2015 after school

21 until Monday 9 November 2015; and (ii) in Florida for Thanksgiving from

22 Wednesday 25 November 2015 after school until Sunday 29 November 2015. In



addition, the mother seeks an order for the children to be with her for the entire Christmas vacation, namely from Wednesday 16 December 2015 after school until Sunday 3 January 2016, and an order granting her leave to travel with the children to Sweden during that period. The mother invited the Court to order that the parties equally split the costs of the children's return travel between Cayman and Miami.

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4. The mother had sought an order at paragraph 1(a) of her Summons for the children to stay with her in Florida for the current half-term holiday. As the Summons could only be given a hearing date midway during this half-term holiday, the mother did not pursue that specific application. Regrettably, the children are not having contact with the mother during this half-term week, as the parents yet again were unable to agree arrangements. Both parties blame the other for this unfortunate, for the children, state of affairs. I am not in a position to determine where the fault lies. What is important for the purpose of this hearing, apart from the lost opportunity during this vacation time for the children to have further meaningful contact with their mother, is that, as a consequence, by their return to school next week the children will not have seen their mother since the end of her six day visit to the Cayman Islands on 21 September 2015.

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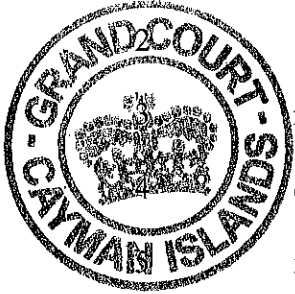
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5. At the hearing I received submissions from Counsel. I also heard very briefly from the Guardian ad Litem. The only recent evidence concerning the present



1 application placed before the Court was an affidavit sworn by the mother on 6
2 October 2015. I gave leave to the mother to attend the hearing by Skype from her
3 residence in Florida. Due to the lack of evidence and the nature of the factual
4 disputes, the Court is not able to make findings in relation to a number of them,
5 including but not limited to compliance or non-compliance by both parties with
6 the terms of the earlier Skype contact order.
7

8 6. At the hearing I informed the parties that I felt it to be in the children's best
9 interests for me to make orders in the terms of paragraphs 1(b) and (c) of the
10 mother's Summons, namely for the two contact visits in November 2015. I also
11 ordered that the parties equally split the costs of the return travel. The Guardian
12 supported the making of the said orders for November contact. Having regard to
13 the nature of issues surrounding how the children might spend Christmas, I
14 indicated that I would reserve my decision to enable me to give the matter further
15 consideration.
16

17 7. From the inception of these proceedings, the parties have had an annual dispute
18 about contact over the Christmas period. There have been hearings listed in
19 December in each of the past three years. The incapability of these parents to
20 reach agreement in relation to almost all contact arrangements without recourse to
21 the Courts is both concerning and frustrating to all involved.
22



1 8. The father did not oppose the application for the order concerning the 6
2 November 2015 contact. He did oppose contributing to the travel costs related to
3 the same. The order for that contact is therefore made by consent, but the travel
costs order is not. As the children have been unable to enjoy contact with the
mother during this half-term I would have ordered the 6 November contact even if
the father had opposed it. During the hearing I expressed a view to the parties that
if there had been contact over the past half-term, and as I was ordering contact
over the Thanksgiving holiday, in such circumstances I may not have then also
ordered the 6 November contact if it had then been opposed.

10

11 9. The father opposed the Thanksgiving contact on the basis that it would result in
12 the children missing two and half days of school. The father has a particular
13 concern about K, as he says that her school has highlighted that her reading level
14 has fallen behind that expected for a child of her age. The Court was told that a
15 relevant lesson would be missed as it takes place on Thursdays. The Court was
16 also told that the father has arranged extra reading classes with 'Reading for Life'
17 for K at a cost of CI\$950 per month and that there needs to be an assessment of
18 her due to possible ADHD issues at a cost of CI\$3,500. The reason for the father
19 raising this is twofold, firstly to highlight the child related expenses he is meeting
20 without any contribution from the mother and secondly to back up a submission
21 that K should not take any time off from school.

22



1 10. Before I turn to the application for contact during the children's Christmas
2 vacation time I remind myself of what happened last year, as there is a great
3 feeling of déjà vu in relation to the parties' positions and conduct. On 20
November 2014 the Court was again dealing with end of the year contact issues. I
was told at the hearing that, following discussions between the two parents, the
parties were hopeful that a comprehensive contact agreement could be reached. I
had formed the wrong conclusion, from what I had been told at the hearing, that
8 final agreement about the Christmas contact had been reached. Counsel informed
9 the Court that the parties would be submitting an order for the Court's approval
10 after Mr. Fee had taken the opportunity to take his client, who was not in Court,
11 through the order. At the November 2014 hearing I suggested that "*.... as the*
12 *mother is having the children over Thanksgiving, that they should split the*
13 *Christmas holidays, possibly with the children staying with the father until 27*
14 *December and then flying over to the States.*" I note that the father had indicated
15 that he was willing to pay for the flights.

16
17 11. The welcome news delivered to the Court at the November 2014 hearing did not
18 come to fruition. On 17 December 2014 the parties yet again came before the
19 Court requesting the Court to determine issues about Christmas vacation contact.
20 At the outset of the hearing the father had wished the children to stay with him in
21 Grand Cayman between 18 to 27 December and that the children would travel up
22 to the mother and remain with her until 4 January. The mother, supported by the



Guardian ad Litem, sought contact over the Christmas holidays as per her proposals submitted at the outset of the hearing on 20 November.

4 12. At the December 2014 hearing the Court had the benefit of reconsidering the
5 helpful report filed by the Guardian dated 3 November 2014. In that report she
6 noted that C had said that he wished to spend 50% of his time with each parent
7 and that he would be happy to attend school in either Miami or the Cayman
8 Islands if this could happen. I note that in 2014 the children were again not able to
9 go to Miami on the mid-term break and that C expressed disappointment about
10 that, as it was only on the day before he thought he was going to Florida that he
11 said he was informed that he was not. K expressed to the Guardian that she would
12 like to see both parents as much as possible. She again said that she would be
13 happier if both of her parents were together and that when she is with one of the
14 parents she wishes that she was with the other.

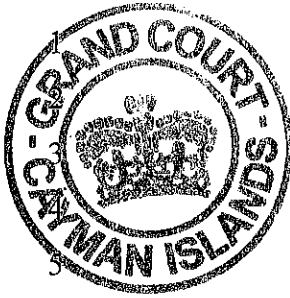
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16 13. In her November 2014 report the Guardian indicated that there should be regular
17 and consistent contact with the mother. She highlighted that the children continue
18 to be upset by the tension between the parents and expressed a view that she felt
19 that they were deprived of good quality contact with the mother and her wider
20 family. She reiterated that both of the children wanted good contact time with
21 both parents and that they were unsettled by changes that are made to
22 arrangements and all the uncertainty and disappointment that brings.



1 14. At the December 2014 hearing the Court was informed that the father, relying
2 upon discussions held at the November hearing, had already purchased the
3 children's flight tickets for flights on 27 December 2014 and returning on 4
4 January 2015. The father indicated that the children were expecting to spend
5 Christmas in the Cayman Islands and he disagreed with the Guardian's view that
6 C was expecting to spend Christmas with his mother. The Guardian had stated
7 that when she asked C what he would like to happen over Christmas in 2014 he
8 pointed out that as he had spent the last three Christmases in the Cayman Islands
9 it was only fair that they spent Christmas with their mother in Florida. The
10 Guardian stated that K had said to her that she and C were going to be in Cayman
11 over Christmas because that is what her father had told her.

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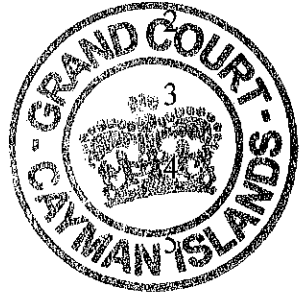
13 15. Having considered the welfare checklist at the hearing, which disconcertingly was
14 held on the eve of the last day of the school term, I decided that it would be in
15 both children's interest to have some time with the father but to spend an
16 extended period of time with the mother over the Christmas holidays, including
17 Christmas day. Despite the fact that the father had already purchased flight tickets
18 for different dates, I ordered that the children would leave to Florida to be with
19 the mother on 23 December 2014 and would return on 3 January 2015 before the
20 school term started on 5 January 2015. At the end of my judgment I said the
21 following:



1 *"Although I have made it patently clear to the parties that I (have)*
2 *concentrated solely on the contact arrangements for this year's*
3 *Christmas, the fact that the children are spending Christmas with*
4 *the mother in Florida this year will mean that the court will have*
5 *to be greatly persuaded to prevent the children spending*
6 *Christmas day with their father next year*¹, *although of course the*
7 *children should spend substantial time with the mother over the*
8 *next Christmas school holiday."*

9
10 16. Although I must, of course, determine the present contact issues based on what is
11 in the children's best interests at this time and not in 2014, the decisions made last
12 year are not irrelevant. The observations made last year put this year's application
13 into context and should have given a clear indication to the parties about how the
14 Court will approach Christmas contact issues. It is clear from last year's ruling
15 that the Court, on a number of occasions, has in vain asked the parties to put
16 forward long-term proposals for contact and to see if they could agree a
17 comprehensive final contact arrangement. The comments made at the last hearing
18 should have formed part of the parties' consideration of the Court's request for
19 proper planning. Although I agree with Mr. Fee's submission that a greater part of
20 each school vacation time should be spent with the mother, and to that I also add
21 school half term breaks, my approach to Christmas last year should have made it
22 clear that this did not mean that the children would not be able to ever enjoy
23 Christmas with the father and his family. Christmas is a special time of year for

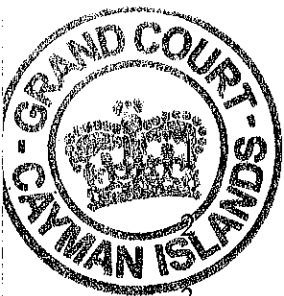
¹ My emphasis by underlining.



1 children and they must be allowed to develop long term childhood memories from
such times with both parents. Last Christmas the mother succeeded in her
application for the children to stay with her for the sensitive Christmas day and
K's birthday. The wording of my Ex Tempore Ruling made clear that my
expectation was that this Christmas would be spent with the father and that there
would be some sharing of the vacation period.

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8 17. The mother wishes the Court to make an order that the children come to her after
9 school on 16 December 2015 and return on the eve of the spring school term on
10 Sunday, 3 January 2016. The mother indicates that she wishes to take the children
11 to Sweden so that they may enjoy an extended holiday there with her, her fiancé
12 and his family. To her great credit, the mother has not mentioned the possibility of
13 this opportunity to the children. The application is based on the mother's
14 submission that such an extended period of time is required to ensure that she
15 maintains a meaningful relationship with the children and that the father's
16 proposals for Christmas would prevent this.

17
18 18. The father indicates that he would like the children to stay with the mother from
19 after school on 16 December 2015 until either the evening of 21 December 2015
20 or possibly the morning of 22 December 2105. He asks that they then be with him
21 until 27 December 2015 when they would then be with the mother until the eve of
22 the new school term on 3 January 2016. It is contended that, as the children spent



Christmas with the mother last year, they should spend it with him this year and that the father wishes them to spend a holiday with his family members in Colorado between 22 and 27 of December 2015.

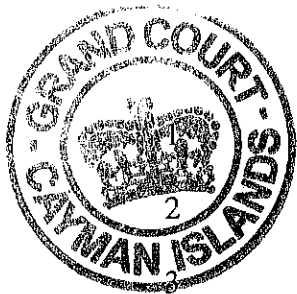
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5 19. When I am considering what orders to make in relation to the children's contact
6 with their mother, each child's welfare shall be my paramount consideration.
7 When determining what orders are appropriate I must consider the contents of the
8 welfare checklist set out at s.3(3) the Children Law (2012 Revision).

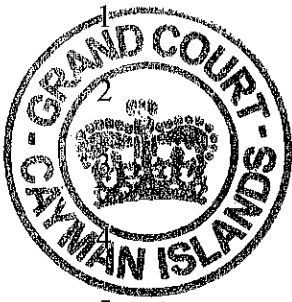
9 (a) **The ascertainable wishes and feelings of the children.** Thanksgiving is
10 an important family holiday in the Unites States and I have little doubt that
11 the children would wish to spend that time with their mother in Florida,
12 especially as they have not seen her during this half-term break.

13 I accept that both children would ordinarily be excited about the prospect
14 of spending a white Christmas with a parent in either Colorado or Sweden.
15 K has inferred to the Guardian, as she did last year, her wish that it could
16 be spent with both parents. The Guardian has not had an opportunity to
17 speak to C about the Christmas holidays. She has had an opportunity to
18 speak to K and that she believed that she was going to spend Christmas
19 with her father and his girlfriend and that the mother and the family dog
20 would also be there. The Guardian indicated that K seemed very excited
21 by the prospect of being in Colorado in such circumstances. Although Mr.
22 Allen on behalf of the father indicated that his client had not discussed



Colorado with the children, it is clear that the children had become aware. I am unable to make a finding as to whether he informed K or whether this was because she picked up on information that was in the household. The Guardian fairly indicates that she is not in a position to make a recommendation about the Christmas contact as she has some concerns about disappointment that might be caused by them not going to Colorado. Mr. Fee submits that, if the father has informed the children about Colorado which has resulted in one of the children expressing a wish to go there, the father should not be rewarded for seeking to present the Court with a fait accompli, especially as the mother has not sought 'to sow the seeds' about Sweden in the children's minds.

(b) **Physical, emotional and educational needs.** I am satisfied that the children's physical and educational needs are being met at this time. I do not think their educational needs will be detrimentally affected by leaving school early for a meaningful Thanksgiving break with the mother. I have some concerns about the effect on the children's emotional welfare resulting from the parents' ongoing inability to agree long-term contact arrangements. It is important that the children know well in advance when they are going to be seeing their mother and not continually have such issues hanging in the air until the last moment. I am unable to make findings at this hearing, but if a parent is found to be disclosing information about contact which has not been agreed or ordered to the

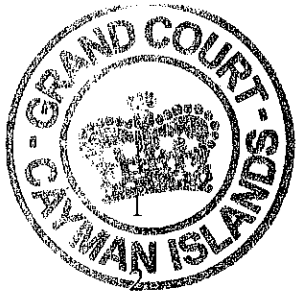


children in order to influence their wishes or to support a contention that the children would be disappointed then that may affect the children's emotional welfare. The children's emotional needs require them to have greater contact with the mother than with the father over the Christmas holidays, but to have some time with the father also. The core Christmas dates are important ones for children from which long-term childhood memories develop and it is in their interest that during their minority they have the opportunity to enjoy that time with both parents and their families. That is why the Christmas vacation should be treated differently to the other long vacations

(c) **Likely effect of any change in their circumstances.** As I indicated last year, there is not going to be any impact from the children spending time with their mother this November and December and that this would not in effect amount to a change of circumstances.

(d) **Age, sex, background and any characteristics which the Court considers relevant.** It is important for children of this age to be able to develop a bond and spend meaningful time with both parents. The mother is a very important figure in their lives. As I said last year, when the parents live in different jurisdictions the children's relationship with her must be actively preserved and boosted.

(e) **Any harm which the children have suffered or are at risk of suffering.** The parents' continual failure to agree planned contact in a timely manner



may result in emotional harm for the children, especially if the children become inappropriately involved in the dispute.

3 (f) **How capable are each of the parents of meeting the children's needs.**

4 Both parents are capable of meeting the children's day to day needs when
5 they are in their care.

6

7 20. Although any order that I make for Christmas will never be ideal, I find it to be in
8 the children's best interests to spend the core Christmas holiday days with the
9 father this year, they having spent the same and an extended period of time with
10 the mother over last year's Christmas vacation. I also feel that it would be in the
11 children's best interests to enjoy the vacation in Colorado and this coincides with
12 the important Christmas dates. Even if the Colorado trip had not been planned I
13 would have ordered that the children be with the father over similar dates this
14 year.

15

16 21. Accordingly, I order that the children travel to the mother on 16 December 2015
17 and that they are returned to the father in Miami on 22 December 2015 in good
18 time for the flight to Colorado on that day. If the mother does not feel able to have
19 the children at the airport in good time, then she should return them to the father
20 on the evening of 21 December 2015. The children should then be returned to the
21 mother on 27 December 2015 and remain with her until 3 January 2016.

22



1 22. Unless otherwise agreed by the parties, the handovers will take place at Miami
2 International Airport. The parties are free to agree that the children can travel on
3 an airline's official unaccompanied programme if they both feel that to be
4 appropriate. On the evidence before me, I see no reason to depart from my
5 previous approach that both parties should equally contribute to the cost of the
6 flights.

7

8 23. I can understand the mother's inevitable disappointment at not being able to again
9 have the children with her over Christmas day and during K's birthday. She will,
10 of course, enjoy Thanksgiving with them again this year. I suggest that the parties,
11 when they seek to negotiate a long-term plan for contact, have regard to the
12 developing pattern that the children alternate Christmas with the parents.
13 Therefore, the parties should bear in mind that if the Court was required to
14 determine the issue of Christmas contact again next year, that there would need to
15 be very good reason for a departure from an order that the children spend the
16 greater part of the holiday with the mother and that period of time will include
17 Christmas day and K's birthday.

18

19 24. Although, in light of the above order, I need not now go on and determine
20 whether leave should be granted for the mother to take the children to Sweden
21 over Christmas, I see some benefit in commenting further. I share the Guardian's
22 view that, unless there is good reason, the children should be able to travel to

1 Sweden to spend time with the mother and her Swedish fiancé and his family.
2 Sweden is a sophisticated Hague Convention country and in any event there is no
3 persuasive evidence before me to support a contention that the mother will likely
4 unlawfully retain the children there. If the mother were to apply to take the
5 children to Sweden over Easter or during the next summer vacation and provide
6 to the father the normal details required for temporary removal applications, then
7 the father would have to provide compelling evidence to persuade the Court that
8 such an order was not in the children's best interest.

9
10 25. I do not wish similar difficulties to arise over the half term holidays as has again
11 this year arisen in relation to the October half-term. For the foreseeable future I
12 would expect the children to be spending the half term vacations with the mother
13 unless there is very good reason for that arrangement not to be put in place.

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20 **The Honourable Mr. Justice Richard Williams**
21 **JUDGE OF THE GRAND COURT**
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24 The judgment in this matter is being distributed on a strict understanding that in any
25 report no person other than the attorneys (and any other person identified by name in the
26 judgement itself) may be identified by name or location and in particular the anonymity
27 of the child and the adult members of their family must be strictly preserved.