

30/3/06



1 IN CHAMBERS
2 THE GRAND COURT OF THE CAYMAN ISLANDS

3
4 CAUSE NO: 190 OF 2005

5
6 BETWEEN: IRENE COX PLAINTIFF/RESPONDENT

7
8 AND: ALFRED COX DEFENDANT/APPLICANT

9
10 CORAM: RAMSAY-HALE J.

11
12 **Appearances:**

13 Ms. Della Campbell of Della Campbell & Associates for the Respondent
14 Mrs. Sheridan Brooks of Brooks & Brooks for the Applicant

15
16 **Dates of hearing:** 16th March 2006
17



18 **RULING**

19 This Court having decided the issue of jurisdiction, Counsel for the father made an
20 application for interim access. Counsel submitted that the later Orders of the Texas Court
21 were in fact sought and made with the intent of restoring to the father his rights of access.
22 To seek the remedy of the preemptory return of a child in order to protect rights of access
23 seems draconian, especially when the parties did not intend that access rights be protected
24 by a restriction on residence. The final divorce decree anticipated that the parties may
25 live more than 100 miles apart, as they do now, and provided for alternate terms of access
26 for father.

27
28 The mother's decision to establish the child's residence in the Cayman Islands need not
29 have breached the father's rights of access and father has failed to demonstrate that the
30 act of relocation did avoid the order for contact made by the Texas Court.

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1 Indeed, the evidence shows that the mother tried to honour the agreement for access,
2 sending the child to the United States on two separate occasions. She only refused to
3 return the child to Texas after the Court varied the original order to restrict the child's
4 residence to Harris County, which Order would have essentially required her to either
5 abandon her home with the child in the Cayman Islands, which she was entitled to
6 establish, or relinquish custody of the child.

7

8 I adopt, without making any finding on the point, the observation of the Court in S v H
9 (Abduction: Access Rights),¹ that "To oblige a child and custodial parent to return to a
10 country which they may have left for very good reason, merely so that the non-custodial
11 parent could exercise his right of access, could indeed be intolerable for the child."

12

13 Had the father applied to this Court originally to recognise and enforce those rights, this
14 Court would have considered the order for access made by the Texas Court to be of
15 crucial importance and a factor to be given the greatest possible weight consistent with
16 the overriding consideration of the welfare of the child.

17

18 It seems to me that it is in the interest of the child to have contact with his father and in
19 his best interest to stay with him in Texas and maintain his American heritage. There is,
20 in my view, an urgent need to restore the relationship between the father and child and
21 the mother bears a great deal of responsibility in achieving the restoration of the
22 relationship that the father enjoyed with his son prior to his removal from the United
23 States.

¹ (1997) 3 WLR 1086 Fam Div:

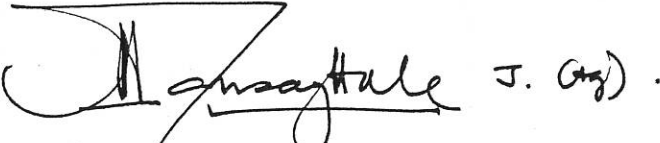
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This Court would have been prepared to order that the father have one long week-end a month in Texas and extended access during school holidays as per the original agreement for access, if it were not too taxing on the child, or such other access as were agreed, but for the existence of the Court orders restricting the child to Texas. Sending the child to Texas, so that the father can exercise his rights of access, would in these circumstances necessarily involve the child's being retained in Texas pursuant to the later orders of the that Court and I am satisfied that any immediate change in the *status quo* would be inimical to the child's welfare.

In the interim, I order that the child remain in the care, custody and control of his mother until the report on the father's circumstances is ready and the issues of custody and access can be determined on the merits.

I order that the father have access for two weeks during the Easter holiday, but in light of the concern I have expressed above, I order that he exercise that access here and not in the United States.

If the parties can agree to maintain the *status quo*, and make mutually satisfactory arrangements for access, then the matter can be settled and final orders made.


30th March 2006

