

march 24, 2005  
Civil

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

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4 **CAUSE NO. 170 OF 2003**

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7 **IN THE MATTER OF THE GUARDIANSHIP AND CUSTODY OF**  
8 **CHILDREN LAW (1996 REVISION)**

9  
10 **AND IN THE MATTER OF AN APPLICATION FOR THE CUSTODY OF**  
11 **THE MINOR CHILD DONOVAN CLEVELAND LUMBY**

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13 **BETWEEN:                      NELSON DILBERT                      PLAINTIFF**

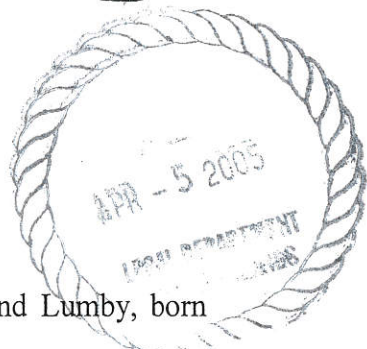
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15 **AND:                                DANIELLE LUMBY                      RESPONDENT**

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18 **Appearances:**

19 Mr. Ian Connell of Appleby Spurling Hunter for the Applicant  
20 Mr. David McGrath of Quin & Hampson for the Respondent

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23 **Before:**                      The Hon. Justice Henderson

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26 **Heard:**                      February 11, 2005



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28 **JUDGMENT**  
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33 The Plaintiff Nelson Lee Dilbert is the biological father of Donovan Cleveland Lumby, born  
34 November 7, 1998, the son of Danielle Elizabeth Lumby. Ms. Lumby has her roots and family  
35 ties in the State of Michigan, United States of America. Mr. Dilbert is a resident and citizen of  
36 the Cayman Islands. After Ms. Lumby expressed an interest in returning to Michigan with her  
37 son, Mr. Dilbert commenced this action under the Guardianship and Custody of Children Law  
38 (1996).

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2 The parties were never married. An agreement was entered into which induced Ms. Lumby to  
3 stay on Grand Cayman Island indefinitely with her son, thus facilitating Mr. Dilbert's access to  
4 him. Mr. Dilbert arranged for Ms. Lumby to have full time employment in Big Daddy's, a  
5 Dilbert family business. He also began to pay Ms. Lumby \$600.00 per month in child support.  
6 Some other reasonably generous provisions were made to ensure Ms. Lumby's continued  
7 willingness to reside in the Cayman Islands.

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9 Ms. Lumby has now re-married and continues to reside here. Her employment at Big Daddy's is  
10 coming to an end. On February 11, 2005 Ms. Lumby applied for "an interim or final order" that  
11 Mr. Dilbert continue to pay \$600.00 per month in child maintenance. Mr. Dilbert opposed the  
12 order.

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14 In her affidavit of January 20, 2005, Ms. Lumby says that she has been earning \$1800.00 per  
15 month at Big Daddy's but that someone else has now been recruited for her job, thus forcing her  
16 to find another one. Her new husband earns about \$2300.00 per month. With respect to Mr.  
17 Dilbert's financial circumstances, she says this:

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19 "Nelson's financial circumstances are good. Much better than  
20 mine. I believe he earns CI\$2,400.00 + per month for his  
21 employment in his father's Big Daddy's stores. He also owns  
22 and runs, with a manager, the Hammerheads Bar and Restaurant  
23 in George Town, from which I believe he receives significant  
24 additional income. I am not sure whether he is involved in his  
25 father's additional construction business. I understand he has  
26 recently bought a substantial property off Seven Mile Beach to  
27 renovate. At present he resides with his parents in their large  
28 property in Webster's Estates."

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Mr. Dilbert, in his own affidavit sworn February 11, 2005, took the position that he should not have to pay any child support at all. He said this:

“My financial position is as follows: I am employed in Big Daddy’s as a manager. I ears CI\$800.00 per week gross. This equates to CI\$3,467.00 per month. My approximate monthly expenditure is set out in exhibit “ND1”. Included under my expenditure is CI\$500.00 per month in respect of Donovan’s school fees and CI\$600.00 in respect of the Respondent’s rent. Up until when she was married my father paid part of her rent but his position is now that she is married that is no longer necessary. Also, my father pays Donovan’s school fees at the minute. I agree with my father that it is in Donovan’s interests that he gets the best education possible. At the minute it is simply not possible for me to be able to pay for this and until I have some more disposable income my father has said that he will take care of the fees. He has made it clear that this will not always be the case and as soon as I have more money I will be expected to pay my own son’s fees. I agree that I am not presently responsible for these but I expect to be soon.

As well as my income from my employment I also own Hammerhead’s Bar. This is a fairly new business and consequently, as with most new businesses, it is not yet making money. Naturally I expect to make money from this venture some day but that will take some time. When it does start to make money then I expect that my father will stop paying the school fees for Donovan.

Consequently, I do not have any disposable income at present. I feel that I do maintain Donovan and this application by the Respondent is really to subsidize and maintain her rather than Donovan. I would therefore ask this Court to provide me with as much access to Donovan as possible as well as dismiss the Respondent’s application for CI\$600.00 per month.”

1 The list of expenses appended to Mr. Dilbert's affidavit show that he is paying \$885.00 per  
2 month on a mortgage, \$500.00 per month for an after school care helper, \$500.00 per month for  
3 home and car insurance, \$300.00 per month for electricity, amongst other expenses.

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5 In argument, counsel to Mr. Dilbert took the initial position that, since Mr. Dilbert has no  
6 "disposable income at present" (see paragraph 11 of his affidavit), the court should make no  
7 order at all for interim child support. As the argument progressed, counsel indicated that Mr.  
8 Dilbert might be able to afford to pay \$500.00 per month, although he could not pay the \$600.00  
9 per month requested by Ms. Lumby. It was conceded that Mr. Dilbert owns the Hammerhead  
10 Bar, a brewery attached to that bar, and an interest in certain other businesses.

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12 Order 24 Rule 13 (1) of the Grand Court Rules, 1995 (Revised) reads:

13 "At any stage of the proceedings in any cause or matter the  
14 court may, subject to Rule 14 (1), order any party to produce to  
15 the court any document in his possession, custody or power  
16 relating to any matter in question in the cause or matter and the  
17 court may deal with the document when produced in such  
18 manner as it thinks fit."  
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20 Order 24 Rule 14 (1) reads:

21 "No order for the production of any documents for inspection or  
22 to the court or for the supply of a copy of any document shall be  
23 made under any of the foregoing rules unless the court is of the  
24 opinion that the order is necessary either for disposing fairly of  
25 the cause or matter or for saving costs."  
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27 By the provisions of Order 1, Rule 2, the disclosure provisions quoted above are applicable to  
28 proceedings under the Guardianship and Custody of Children Law (1996 Revision).

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1 I am not in a position to make any final order regarding child maintenance. Before the court can  
2 give appropriate consideration to the means and needs of each of the parties, the court will need  
3 documentary evidence of the income, or lack of it, earned by Mr. Dilbert from his business  
4 interests. In addition, the court will wish to have some assurance (in the form of documentary  
5 evidence) that the affairs of these businesses have not been structured in such a way as to avoid  
6 paying dividends or salary to Mr. Dilbert at present so as to eliminate his liability for child  
7 support. Absent the production of such evidence, the court is likely to conclude, despite Mr.  
8 Dilbert's assertion that he has no "disposable income", that he can and should continue to pay  
9 child support at the historical rate, i.e., \$600.00 per month.

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11 I am adjourning the application generally to provide some time for Mr. Dilbert to file financial  
12 statements for the businesses in which he owns an interest. These should be prepared by a  
13 recognized accounting firm in accordance with generally accepted accounting principles  
14 ("GAAP").

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16 In the interim, I am ordering Mr. Dilbert to continue to pay child maintenance at the rate of  
17 \$600.00 per month. These payments are to be made through the Court Funds Office. The  
18 payments for January 1<sup>st</sup> and February 1<sup>st</sup>, 2005 are to be paid forthwith. Given Mr. Dilbert's

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1 current disclosed income (about \$3,500.00 per month) and his concession that he owns several  
2 business interests, including Hammerheads Bar and the attached brewery, I consider this level of  
3 interim child support to be well within the bounds of reasonableness.

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5 Dated this 24<sup>th</sup> day of March, 2005

6 *Henderson, J.*  
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8 Henderson, J.  
9 Judge of the Grand Court

