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

MATRIMONIAL CAUSES REGISTRY

13-08-04

CAUSE NO. D6 OF 2002

BETWEEN:

WADSWORTH COOLDIDGE CONOLLY

PETITIONER

AND:

DAWN MARIE CONNOLLY

RESPONDENT

Appearances:

Sheridan Brooks of Brooks & Brooks for the Petitioner

Alexander Horsbrugh-Porter of Ritch & Conolly for the Respondent

Before: The Hon. Justice Levers

Heard: August 9, 2004



JUDGMENT

Levers, J.

The Petitioner Wadsworth Coolidge Connolly has taken out a summons to vary an order of this court made as recently as June 20, 2003. He wishes the court to consider a variation in the following terms:

- (a) in paragraph 2 to allow care and control of the minor child Louis Wiseman Connolly to himself;

- 1 (b) in paragraph 3 to define the access that the Respondent should have to the said
2 child;
- 3 (c) to delete paragraph 4 of the original order;
- 4 (d) that the word Respondent be deleted where it appears in paragraph 6 and
5 replaced by the word Petitioner and that the word Petitioner be deleted where
6 it appears and be replaced by the word Respondent;
- 7 (e) that the content of paragraph 8 be varied to take into account that the child
8 would no longer be living with the Respondent;
- 9 2. That the costs of this application be borne by the Respondent and;
- 10 3. Such further or other relief as this Honourable court shall deem appropriate.

11

12 The Respondent, Dawn Marie Connolly has taken out a summons subsequent to the
13 Petitioner's summons to vary the order made on June 20, 2003 as follows:

- 14 (i) To have sole custody.
- 15 (ii) In paragraph 2 the words as long as she resides in the Cayman Islands
16 to be deleted.
- 17 (iii) Paragraph 3 to be deleted completely.
- 18 (iv) Paragraph 4 to be amended to read to pay the sum of \$1,052.00 per
19 month as maintenance for the child.
- 20 (v) The Respondent will pay the costs of this application.

21

22 The summons is headed with Dawn Marie Connolly being named as Petitioner and
23 Wadsworth Coolidge Connolly being named as a Respondent in her summons. This is

1 inaccurate. In Cause No. D6 of 2003, the Petitioner is Wadsworth Coolidge Connolly.
2 The Respondent is Dawn Marie Connolly. I therefore will refer to the parties as in cause
3 no. 6 of 2003.

4
5 The original order read as follows:

6 ORDER

7 UPON THIS MATTER coming before a Judge of the Grand Court in chambers on the
8 7th, 8th, 9th, 14th, 15th, 16th, 19th, 21st, 23rd and 26th May, 2003 AND UPON hearing
9 counsel for the Petitioner and Counsel for the Respondent AND UPON reading the
10 affidavits filed on behalf of the Petitioner and the Respondent AND UPON hearing oral
11 evidence of the Petitioner, the Respondent and witnesses for both parties IT IS HEREBY
12 ORDERED as follows:-

13 1. that joint custody of the child namely, *Lewis Wiseman Connolly* born on the
14 20th March, 1996 to the Petitioner and the Respondent.

15

16 2. That care and control of the said child to the Respondent as long as she lives
17 in the Cayman Islands.

18

19 3. That access to the Petitioner are as follows:-

20 (i) Fortnightly Thursday evening to Monday modrning.

21 (ii) Non overnight access weeks – every Tuesday and Wednesday
22 afternoon between 2:00 p.m. to 6:00 p.m.

23 (iii) Half Easter; half summer and half Christmas holidays.

1 (iv) Every other public holiday.

2 (v) Every other Christmas day.

3 (vi) Every Father's Day.

4

5 4. The Petitioner to pay the sum of CI\$400.00 per month as maintenance for the
6 said child into the Respondent's Royal Bank of Canada Account # 702-063-9.

7

8 5. The Petitioner to pay all medical, educational, and extra curricular expenses
9 for the child.

10

11 6. That the Respondent to consult the Petitioner as to the educational, religious
12 and medical decisions for the child;

13

14 7. The Respondent not to take the child out of the jurisdiction without the
15 Petitioner's written consent or the leave of the Court.

16

17 8. The Respondent to be permitted to reside at #983 Northside Drive, North
18 Side, Grand Cayman, Cayman Islands until the child reaches seventeen (17)
19 years or she remarries. The Petitioner to pay the taxes and insure the
20 premises.

21

1 9. The Petitioner to pay the sum of CI \$400.00 per month for maintenance to the
2 Respondent for two years from the date hereof into the Respondent's Royal
3 Bank of Canada Account # 702-063-9.

4
5 10. The Petitioner to pay one half of the Respondent's medical bills incurred in
6 treatment associated with Hepatitis-C only for a period of one year.

7
8 11. the Petitioner to permit the Respondent use of the motor vehicle presently
9 being used by the Respondent. The Respondent to insure and license the
10 same.

11
12 12. The distribution of chattels to be as follows:-

13
14 a) To the Respondent:-

15 i) Gold Seiko watch, if found;

16 ii) Disney books; and

17 iii) Toys from grandmother

18

19 b) To the Petitioner:-

20 i) All other chattels, including but not limited to:-

21 a) Silk rug;

22 b) Four Chinese lamps; and

23 c) Two silver coins (if found).

1

2 13. No order as to costs.

3

4 14. Liberty to apply.

5

6 In short, Wadsworth Coolidge Connolly, the Petitioner, wants an amendment to give him
7 care and control of the child and if that were given the deletion of the consequential
8 orders in the original order to be made. The Respondent, Dawn Marie Connolly,
9 however, wishes to vary the order to have sole custody of the child and be permitted to
10 leave the jurisdiction and to deny the father access completely. Although counsel for
11 the Respondent Mr. Horsbrugh-Porter in his submissions indicates that the denial of
12 access is not the relief sought, the Summons does not put forward any proposals for
13 access, but asks for the access clause to be completely deleted in the original order.

14

15 Both Summonses can conveniently be dealt with together.

16

17 **Background**

18

19 In June 2003, the question of custody, care and control and access was thoroughly aired
20 in these courts and after hearing the matter for several days, judgment was delivered
21 giving joint custody, care and control to the mother and access to the father. At that time
22 the Court was informed by the Respondent Dawn Marie Connolly that she intended to

1 stay here in the Cayman Islands, permanently if she could, commence working here and
2 therefore wished the Petitioner to buy her a home. The Judgment stated: -

3 “I wish to make it clear that this order for care and control is given to the
4 Respondent (mother) only on the basis that she resides in the Cayman Islands. If
5 the Respondent wishes to leave the island or has to leave the island, the question
6 of care and control must be revisited. It is imperative that this child is not
7 removed from this jurisdiction without the written consent of the Respondent or
8 without the permission of the court. The Respondent is to consult the Petitioner
9 as to educational, religious, medical decisions to be made on behalf of the child. I
10 only make this care and control order on the clear understanding that the
11 Petitioner, Mr. Connolly, can monitor the situation by frequent contact.”
12

13 The Court is now being asked to vary that order made nearly some 12 months ago, on the
14 basis that the child of the family does not wish to visit the Petitioner father. Access has
15 been denied from April 2004 and evidence has been placed before this court by both
16 parties in support of the summonses for variation.
17

18 **The Petitioner Mr. Connolly’s Evidence**

19
20 Mr. Connolly wishes to get care and control because he is of the view that the child is not
21 being brought up in the proper manner. He alleges that the child swears and is allowed to
22 watch adult programs on Television and more importantly is being cared for three days a
23 week by the mother’s boyfriend who in previous testimony has already admitted that he
24 is still a married man and has no intention of re-marrying.
25

26 He is fearful that especially in circumstances where he has been denied access since April
27 2004, the boyfriend of the mother is a substitute father figure. His fears are to an extent

1 endorsed by Mr. Roland Schoefer's affidavit (the boyfriend). He himself in his affidavit
2 states:

3 "although I get on extremely well, Louis I always stress to him, but I am not his
4 father but his friend. I state that his father is Mr. Connolly."
5

6 This court is of the view that that would be an unnecessary exchange to have with a child
7 who understands and who lived with his father and mother 12 months ago if in fact the
8 child was not now substituting Mr. Schoefer as the father figure. Mr. Connolly has also
9 asked the court to ensure that the Respondent does not take the child out of the
10 jurisdiction as he always feared that she was not telling the truth when she said that she
11 wished to live in Cayman permanently in the previous proceedings.

12

13 **The Respondent's Evidence**

14

15 The Respondent, Dawn Marie Connolly, states that the child does not wish to go to his
16 father. That he is particularly disturbed when he visits the father. She wishes to deny
17 him access except for one day a week and if she says she is allowed to go abroad longer
18 periods of access during the school holidays would be agreed to. She says that she
19 wishes to go abroad, that she may have a job there and that she can live with her great
20 aunt. In my previous judgment I addressed the instability of the Respondent but felt that
21 as a mother this would not impact on the relationship with her son. However, my
22 concern now is that the Respondent has flagrantly flouted the court order. She continues
23 to alienate the father by permitting association with her boyfriend and the child on a very
24 frequent basis, endeavours to displace the father in the child's life and appears to be using

1 the child to suit her own purpose. An example of this is that she has taken the child to
2 Antonio Hawkins for assessment and Mrs. Hawkins in February of this year
3 recommended that both parents go for mediation. Despite a written report being obtained
4 by her attorney's and despite the obvious need for the child to have the loving care of
5 both parents, Mrs. Connolly did nothing about the report but kept it close to her chest.
6 She was not apparently concerned about the welfare of her child sufficiently to apply for
7 a variation to the Courts, to speak to Mr. Connolly or insist on an order that both parties
8 attend mediation.

9

10 The application made by her in this instance is in response to the application made by Mr.
11 Connolly for care and control. It is highly regretted that counsel for Mrs. Connolly
12 actually stated in court "well we did this summons in response to Mr. Connolly's
13 Summons." That in this court's view is not a reason for asking for such a fundamental
14 variation in an order. Persons coming to these courts must come in good faith and if in
15 fact Mrs. Connolly felt that the welfare of the child was at risk by the access order made
16 or by the continuation of living in Cayman or by the father's behaviour the best course of
17 action would have been to take out a Summons as early as in February 2004 or April
18 2004 when she denied access flouting the Court Order. Mrs. Connolly was represented
19 by counsel at the time and a Summons should have been taken out with a view to getting
20 a variation. Mrs. Connolly's Summons is supported by an affidavit from her boyfriend
21 Mr. Shofer and the Petitioner Mr. Connolly's daughter Cheryl Miller. It is also supported
22 by two reports from a clinical psychologist, Mrs. Hawkins. I will deal with that at a later
23 stage.

1

2 Neither Mr. Shoefer nor Miss. Miller say anything to make this court believe that the
3 child's welfare is at risk.

4

5 Both witnesses do not say anything more than what the child is alleged to have said about
6 the father and endorse the fact that he is reticent in visiting with the father. It is
7 important, however, for me to review the evidence of the mother and my concerns are in
8 context of the following happenings. The mother alleges that she never denied the
9 Petitioner access to Louis. That Louis, the son, has just stated he has no desire to see his
10 father. This apparently took place in April 2004 against the background of a situation
11 nearly 12 months ago when Louis was very happy with the father on the farm and
12 enjoyed visiting with him.

13

14 The Social Inquiry Report ordered in the first trial makes it abundantly clear that Louis
15 and the father loved each other and had an excellent relationship. Indeed the father called
16 the child in June 2004 to see him and when he drove up to the house the child voluntarily
17 went out to see the father. The description of the child's reaction given by the mother
18 appears to be that after he was speaking to the father for a few minutes his body language
19 showed that he was upset and she intervened.

20

21 The court was concerned when reading the affidavit evidence and hearing the
22 submissions by Mr. Horsbrugh-Porter. An intervening event permitted the court to see
23 firsthand the interaction between father, son and mother. As the court order stood, the

1 father was due to have the child for some time during the summer holidays. At the end of
2 the submissions on August 9, 2004 Counsel for the Petitioner requested the court to order
3 the Respondent to hand the child over to the father for a few days. The attorney for the
4 Respondent agreed that the court order was still in place and arrangements were made to
5 hand over the child at 1:30 that afternoon. For some reason the handover did not take
6 place smoothly and Counsel, their respective clients and the child appeared at the
7 Chambers door and I was asked by counsel to speak with the child. This Court had no
8 intention of seeing the child for the second time having seen the child for the first time
9 during the substantive trial of this matter in June 2003.

10

11 As the child was here I saw the child. Initially he was agitated and crying. I saw the
12 child with both Counsel in my chamber and all the child kept saying was: "I don't want
13 to go to daddy. I want to stay with mummy." Having calmed him down and spoken with
14 him he could give me no reason why he did not wish to go to Daddy. Subsequently, I
15 took him outside and advised him that he has to go to his father for a few days because
16 his father loves him. He went out with counsel and his mother made him sit on her lap.
17 When it was time for the father to take him she clung to him and refused to let him go.
18 This court saw the transformation of a calm child into a hysterical child by the mother's
19 behaviour. Her attorney spoke with her and told her that she must release the child. She
20 refused to do so and eventually several words were spoken and she was asked to leave the
21 premises and leave the child. I must commend Mr. Horsbrugh-Porter for his actions at
22 that time. The mother left the premises with her boyfriend who was waiting downstairs
23 for her and the child eventually calmed down, sat on the father's lap, spoke with him and

1 agreed to go with the father on condition that he can go and stay with his mother on a
2 more permanent basis. I have no doubt in my mind that this child has been brainwashed.
3 He could not give me a reason why he did not wish to see his father but kept repeating “I
4 want to stay with my mother, I want to stay with my mother.” On being questioned by
5 me whether anybody had told him to say this he became more agitated and I therefore did
6 not pursue that line of questioning. If I was ever in doubt before that that the mother was
7 influencing the child, I was left in no doubt whatsoever after that incident. A mother who
8 wishes interaction between father and son would have not clung to the child in that
9 fashion. One would have thought that the child was migrating for the rest of his life the
10 way she behaved. It is a sad indictment on adults that they use children as a pawn to
11 achieve their ends.

12

13 As I indicated previously there are two reports from Mrs. Hawkins who is a clinical
14 psychologist under whose care Louis is presently.

15

16 In February 2004 in response to questions raised by Mrs. Connolly’s then attorney,
17 questions which are not known to this court she responds as follows: -

18 “this additional unnecessary stress on top of Louis’ ongoing distress, emphasizes
19 the importance of amicable, co-operative parenting to first meet his needs.
20 In light of these observations, I recommend that efforts be made to reduce the
21 impact of the adult’s conflicts on Louis. For example his parents should work co-
22 operatively as far as possible regarding parenting issues and be careful not to
23 expose Louis to any derogatory, angry views about each other. Mr. and Mrs.
24 Connolly may find it helpful to work with a mediator (e.g. Mrs. Nelson in Social
25 Services) in order to facilitate a co-operative parenting approach.”
26

1 When this court made the original order I insisted that Mr. Connolly be consulted about
2 schooling, medical and other matters. That clearly has not been done.

3

4 Mrs. Hawkin's second report speaks of what Louis says about his father but interestingly
5 although she says he spontaneously came out with complaints about his father, the
6 mother seems to have initiated it by asking whether his father had or played with him
7 during visits. That shows a degree of questioning of the child after visiting the father
8 which to this Court is unnecessary if parents are co-operating with each other. Although
9 Mrs. Hawkins has made it clear that she is not experienced or professionally qualified to
10 conduct a child custody evaluation and that it is in fact unethical for her to do so, she has
11 given this report without ever speaking to Mr. Connolly and reviewing the relationship
12 with Mr. Connolly and the child. Despite this she states that it is in Louis' best interest to
13 reduce the amount of parental conflict to which he is exposed and to emphasize the
14 quality of his relationship with his parents – (parents does not mean mother alone).

15

16 Mrs. Connolly offers access for one day a week. Clearly this is not what even this expert
17 with her limited experience has recognized as in the best interest of Louis. She further
18 states that Louis's resistance is "not uncommon among school age children exposed to
19 high conflict divorces". Indeed when the Court spoke to Louis and I asked him what he
20 would really like he said he wanted his parents to get back together and live together. If
21 he was not brain washed, if he was not adversely influenced against his father, this would
22 not have been his response to me.

23

1 Even more disturbing in Mrs. Hawkin's report is this statement:

2 "Louis seems generally responsive to parental conflict describing his mother as
3 nervous or his father as angry increased behaviour problems during the custody
4 hearings. He is no doubt of Mrs. Connolly's concerns about his visitation.e.g. her
5 statements in session during a period of difficult behaviour that he often has
6 outbursts following visits with his father."

7
8
9 That attitude of Mrs. Connolly's has attributed, according to the expert, to having a
10 negative influence regarding Louis' decision to see his father. Mrs. Hawkins goes on,
11 "However, I have never heard her tell Louis not to visit his father". That to my mind is a
12 statement which really cannot be taken seriously by this Court. Mrs. Hawkins does not
13 live with Mrs. Connolly and Louis to hear what Mrs. Connolly says to Louis.

14
15 Unfortunately, Mrs. Hawkins has not seen or asked to see or felt it necessary to see Mr.
16 Connolly. It is regrettable that this report has been filed in this court without the benefit
17 of that interaction. However, despite that, on a careful reading of this report, it is clear
18 that Mrs. Connolly's attitude and questioning may result and could have influenced the
19 negative attitude of Louis against his father.

20
21 An order made 12 month previously should only be revisited if circumstances have
22 changed to such an extent that the welfare of the child requires the court to revisit the
23 order and vary it. There is no evidence whatsoever before me from the Respondent
24 Dawn Marie Connolly to grant her the reliefs that she has sought. Indeed the only
25 evidence that comes out of the affidavit is that she has given this court greater concern
26 than before, that she has influenced the child against the father.

27

1 She has flagrantly flouted the court order and denied access. The court is hesitant to take
2 a child away from his mother. Her desire, it would appear, is to keep the child away from
3 the father. If that were not the case, when she got this report from Dr. Hawkins in
4 February 2004, she would have taken some positive steps to encourage mediation and
5 further interaction and better interaction between father and son.

6

7 Her behaviour in this court confirmed in my mind that I am accurate in my assessment
8 that this child is being kept away from the father. In those circumstances her Summons is
9 dismissed, I do not order an increase in maintenance. However, I do believe that to
10 change the child's residence at this time would perhaps not be the best for his welfare. If
11 Mrs. Connolly continues to flout the court order then the court must be asked to revisit
12 the question of care and control.

13

14 Mr. Connolly's Summons also is dismissed. As although I am concerned and I am aware
15 of his anxieties, if in fact access is permitted as previously ordered, I believe his influence
16 over the child will be sufficient to ensure that Dr. Hawkin's recommendation that
17 parental love and calm prevails in the child's life.

18

19 There is one other matter that I need to address and that is a Summons for Contempt that
20 was brought against Mrs. Connolly. As I indicated to counsel for the Petitioner, I intend
21 to adjourn that matter *sine die* as it perhaps is not prudent to take the mother away from
22 the child at this stage in his disturbed state.

23

1 It is imperative that children have an ongoing relationship with both parents and an ideal
2 co-parenting arrangement should result in a child feeling comfortable in both parents'
3 home. The child should not be dragged into parent's dispute and it is of grave concern to
4 this Court that this child may well be a pawn in the ongoing battle of mother and father.

5

6 Counsel should therefore ensure that a penal notice is placed on the orders and that both
7 parties are made aware what joint custody means, and emphasize the importance of
8 compliance.

9

10 The child should not be dragged into court unnecessarily. The fact that the father or a
11 mother delivers the child half an hour later than the scheduled time is not necessarily an
12 actionable contempt and Summonses should not be taken out unnecessarily.

13

14 I therefore make the following order:

15

16 The Petitioner's Summons dismissed.

17 The Defendant's Summons dismissed.

18 No order as to costs.

19

20 Dated this 13th day of August, 2004

21 

22

23 Levers, J.

24 Judge of the Grand Court

