

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

C.I.C.A. APPEAL NO. 2 OF 1990

BEFORE : THE HONOURABLE MR. JUSTICE ZACCA, PRESIDENT  
THE HONOURABLE MR. JUSTICE KERR, J.A.  
THE HONOURABLE MR. JUSTICE HENRY, J.A.

BETWEEN : HUIG ZUIDERENT APPELLANT/DEFENDANT  
A N D GEORGETTE ENGELINE GOODWILL RESPONDENT/PLAINTIFF

MR. N. HILL, Q.C. and MR. D. BANNON FOR APPELLANT  
MR. A. JONES FOR RESPONDENT

AUGUST 2, 3, 9  
and NOVEMBER 28 1990

KERR, J.A. :

The parties were married in Belgium on November 28, 1978. Their son "Edwin" was born on April 2, 1979. For easy reference I shall adopt the cognomen used by the learned Trial Judge for each party - "Hugo" for the appellant, husband, and "Georgette" for the respondent, wife. On June 9, 1987, the marriage was dissolved by the judgment and order of a competent Court in Florida, U.S.A., on the petition of Georgette and the attendant orders in respect to Edwin included the grant of "shared parental responsibility" but with care and control in Georgette. In the intervening years, their place of residence included the Cayman Islands where the appellant still resides and was so residing when the respondent by an originating summons filed

in the Grand Court on August 11, 1989, sought primarily sole custody of Edwin. In turn, the appellant duly counter-claimed seeking for himself a similar order. Harre, J, pending a final determination of the issue made interim orders on August 17 and December 7, 1989, granting custody and control to Georgette with directions for access by Hugo.

After considering the voluminous affidavits filed by or on behalf of the parties, oral testimony and his interviews with Edwin, in a written judgment dated January 15, 1990, Harre, J. granted custody to the respondent by an order in the following terms:

1. "That the plaintiff be granted custody, care and control of Edwin Richard Zuideren ("Edwin").

2. That the defendant shall have such reasonable access to Edwin as shall be agreed upon with the plaintiff or ordered by the court. This shall include staying access during each school holiday not exceeding one-third of each holiday and the nights 23rd to 27th December, 1990 and every alternate year thereafter.

The arrangements for 1990 shall be as set out in Exhibit "GEG8" to the plaintiff's affidavit dated November, 1989, subject to the following -

(a) Edwin shall be permitted staying access with the defendant from 9 a.m. on 9th April to 5 p.m. on 15th April;

(b) each visit to Holland shall include a visit of at least one day to the defendant's mother.

3. That the defendant shall not have access to Edwin upon the Isle of Man during the 1990 Spring Term at King William's College.

4. That a consultation within the United Kingdom with a person qualified in the field of educational psychology, particular learning difficulties and approved by King William's College be arranged before the end of the Spring Term 1990. The following documents should be made available to the consultant before the consultation -

- (i) all written reports upon Edwin made by King William's College from the time of his entry to the school to the date of the consultation.
- (ii) the report dated 16th August, 1989, on Edwin by Dr. Edward Fields following a psychological evaluation of him on 9th August 1989;
- (iii) the reports by Mrs Rilla T. Fields on the evaluations of Edwin carried out on 12th April and 16th August, 1989;
- (iv) the letters of Mr. Timms dated 21st August 1989 and Mr. Westley dated 25th September 1989 exhibited to the defendant's affidavit dated 29th November 1989 and the further letter of Mr. Westley dated 6th December 1989 exhibited to the plaintiff's affidavit dated 12th December 1989;
- (v) the letter dated 7th December 1989 from Mr. John Goodwill to Mr. Ross, the Principal of the Cayman Islands Middle School and the reply by Mr. Ross dated 11th December both as exhibited as to the affidavit of John Goodwill dated 12th December, 1989;
- (vi) the judgment of this court dated 19th January 1990.

- 5. That the defendant be restrained in terms of paragraphs (3) and (6) of the plaintiff's originating summons."

The incorporated paragraphs of the originating summons

read -

- (3) "That the Defendant be restrained by himself, his servants or agents or otherwise from removing or attempting to remove the said minor from the care and control of the Plaintiff or from removing the said minor from the jurisdiction of this Court without the written consent of the Plaintiff."
- (6) "That the Defendant be restrained by himself, his servants or agents or otherwise from removing or attempting to remove the said minor from the aforesaid school, or any other address that the minor shall from time to time be outside the jurisdiction of the Court without the written consent of the Plaintiff."

From this judgment Hugo appealed. On August 9, 1990, we dismissed the appeal.

The history of the family life leading up to the breakdown of the marriage is relevant. Georgette and Hugo with the infant "Edwin" took up residence in the Cayman Islands in May 1980. In November, 1980, they purchased the Early Bird Stud Farm in Ocala, Florida, and Georgette and Edwin had their home there while Hugo retained his residence in Cayman. There is dispute about the amount of time spent in his visits to Ocala. In 1982 the Early Bird was sold and then Georgette, Edwin and the infant "Patrick" moved to a house in a Country Club in Ocala. Shortly after this Patrick died in a tragic accident. In December, 1984, Hugo and John Goodwill, the present husband of Georgette, entered into partnership to buy another farm called La Troienne Stud in Ocala and Georgette and Edwin moved there in May 1985. In September, 1985, Hugo met and entered into intimate relationship with a lady in New York and they lived together there from December, 1985, to July, 1986. In turn Georgette began an apparently similar relationship with Goodwill. The divorce confirmed the irretrievable breakdown of the marriage and within four months thereafter she married Goodwill. Goodwill carried on the business of a proprietor of trusts and spent his time between the Cayman Islands and the Isle of Man where his parents reside. Not surprisingly, Hugo and Goodwill's partnership in La Troienne foundered and became the subject of legal proceedings.

The learned Trial Judge in his judgment, painstakingly and thoroughly reviewed the evidence. First, he dealt with the relationship of the parties as parents during the pre-breakdown period of the marriage. In that regard he reviewed the evidence of Hugo as to his involvement with Edwin during his attendance from the age of 4-1/2 years to May 1988 at the Grace Episcopal School, a private school, and a schedule of the visits he made from 1981-1985 and computed the number of days allegedly spent in Ocala. He considered the evidence along with the

evidence of Mrs Geraldine Duke, maid and nanny from 1981 to 1985 and Mrs Lindamae Foy, the Principal of the Grace Episcopal School. He accepted Mrs Duke's evidence as to her general impression of the relationship between Edwin and his parents during those years. It was to the effect that while acknowledging that Hugo was apparently fond of and concerned about his son he spent little time with him and the brunt of bringing up Edwin was borne by Mrs Goodwill. Mrs Foy's evidence contradicted Hugo's assertion that he made it his duty to liaise with Edwin's teachers. According to her, she had no contact with him and he never came to the school. Edwin's mother impressed her as very interested and sincere. From the evidence he concluded that the appellant was "a remote though not unfriendly figure in Edwin's life while the marriage subsisted and that his involvement in Edwin's everyday affairs was minimal at that time".

The Judge then went on to consider the relationship during the contending years - 1985-1987. He had regard to the extent that "tactical considerations relating to the legal proceedings" may have influenced their actions and protestations. Against that background he considered correspondence between their Florida lawyers and concluded that the placing of Edwin in the King William's College, Isle of Man, in September 1988 and where he is still in attendance, was without Hugo's knowledge and approval and that for Georgette's failure to consult him, Hugo had a "legitimate grievance". He considered Hugo's reluctance to comply with the order for maintenance payments and accepted Goodwill's evidence of Hugo's devious attempt in August 1988 to prevent Edwin from entering the United States so that he could escort him to Grand Cayman but concluded that these incidents did not lead him to the conclusion that these actions were done "with intent of inflicting harm on Edwin or a reckless disregard for his welfare".

The primary competition between the parents was as to their fitness to have custody in the light of that paramount consideration, namely, the welfare of the child. However, in the end the matter of Edwin's schooling became the most strongly contested issue. In the light of his conclusion that "the case is not about their respective fitness as parents since neither can possibly be put in the category of an unfit parent" his describing this as the most important issue is understandable. It remains before us the prime bone of contention. It, therefore, seems convenient first to set out the learned Judge's conclusions relevant to that issue and then to deal with the arguments pro and con in relation to those conclusions against the background of the evidence and the relevant principles of law.

From the evidence on this issue the learned Judge recorded the following conclusions which are directly relevant:

1. "....."

I conclude that each has been guilty of some exaggeration in their evidence about the other and, in some respects, thoughtless disregard of Edwin's best interest. In the case of Georgette I am referring in particular to the lack of effective consultation with Hugo about the decision to send Edwin to King William's, and in the case of Hugo to his decision to seek a termination of Edwin's present school career on the basis of totally inadequate or inappropriate investigation. Hugo left me with the impression of a man who had come to regard these proceedings as a personal battle which he was determined to win.

2. It is in Edwin's best interest to remain at King William's College, at the discretion of Georgette. In order to reach that conclusion

I do not have to make a comparison between two schools. A strong case would have to be made out for removing him from a school where, I conclude that he is happy and doing well. That case has not been made out. The proposition that if he were in the Cayman Islands he would have the everyday support and encouragement from his father and mother and that it would be beneficial for him to be living close to both parents on an everyday basis is in my judgment quite unrealistic. The animosity between the parents is clear and the problem must have been compounded by the dispute between Hugo and Goodwill over matters of business. I consider it positively beneficial that Edwin should spend much of his time in a different environment. For him to have his education disrupted in order to return to school here, in the teeth of total opposition of the parent who has already made, as she was entitled to make, a different decision would be most detrimental. While I regard it as unfortunate that Hugo was not kept more fully informed about King William's College, I am satisfied that the decision to send him there was made carefully and caringly and was in Edwin's best interest.

3. Edwin should be seen by an educational psychologist in the United Kingdom approved by King William's School in respect of his learning difficulty. I am no more convinced than the school that this is really necessary, but unless it is done, the issue

is likely to continue to be a bone of contention between Edwin's parents. It is overwhelmingly in Edwin's interest that this matter should be laid to rest once and for all. From my interview with Edwin I conclude that, at worst, the experience would be a harmless one for him. At best, it may identify techniques which will help him. No further visits to the Fields or other psychologists in the Cayman Islands should take place. I wholly reject the suggestion that King William's School has been biased or motivated by self-interest in its assessment of Edwin.

4. It follows from my decision about schooling that custody, care and control of Edwin should be with his mother. Joint custody is not likely to work. Access arrangements for his father are to be liberal but carefully defined during the school holidays. Hugo should not visit Edwin at school during the present term which should be regarded as a "cooling off" period. Beyond this I shall not seek to prevent Hugo from visiting Edwin at King William's College. Clearly, if these visits prove disruptive a further application under the liberty to apply would be the likely outcome. I strongly urge Hugo to make it his business to learn more about King William's College and the English Boarding School system, and Georgette and Goodwill to cooperate in this."

At the outset Mr. Hill applied to adduce fresh evidence. The evidence sought to be tendered consisted of the Report of John Stuart Kermode dated 26th March, 1990 and a critical review of that report dated July 20, 1990, by Dr. Edward B. Fields in which reference was made to certain recent school reports.

Dr. Kermode, an Educational Psychologist and a qualified teacher with an impressive string of degrees and certificates behind his name, prepared his report at the request of the Principal of the King William's College and pursuant to and in keeping with the directions in the judgment of the learned Trial Judge. In support of his application, Mr. Hill submitted that although the Kermode report on the face of it supports the position taken by the learned Trial Judge, the school reports and the comments of Mr. Fields would be appropriate for consideration by the Court in accordance with the relevant principles on the review of the Judge's discretion and in that regard, the admission and use of additional evidence by a Court of Appeal. He cited in support M. v. M. (MINOR: CUSTODY APPEAL)

[1987] 1 W.L. 404. In that case it was held -

"that where, on appeal from an order made in the exercise of a judge's discretion, the court of Appeal admitted fresh evidence in court should first consider, without reference to the fresh evidence, whether the judge below, on the evidence which had been before him, had been plainly wrong or had misdirected himself in some material respect; that if the court thereupon concluded that the judge had so erred the appeal should be allowed unless in an exceptional case, the fresh evidence led to a different conclusion; but that if the judge had not so erred the court could allow the appeal and exercise an original discretion of its own only if the facts disclosed by the fresh evidence invalidated the reasons given by the judge for his decision". (Headnote).

Mr. Jones in opposing the application submitted that while the report of Dr. Kermode was favourable to his case it could not be categorised as fresh evidence on the basis of matters occurring after the judgment. Appellant's Counsel was seeking to reopen an issue fully debated before the Trial Judge.

We dismissed the application. In my view, the effect of Counsel's application was to tender the report of Dr. Kermode which was unfavourable to his case and then to discredit it by Dr. Field's criticism. On principle, that was plainly

unacceptable. Further, the fact that Dr. Kermode's report tended to support the learned Trial Judge placed it outside the ambit of the proposition in *M. v. M.* (supra).

As an opening gambit, appellant's Counsel complained that the learned Trial Judge erred in that he failed to exercise his discretion judicially by refusing the application on behalf of the appellant for an adjournment to file further affidavits and arrange for Linda Foy, the Principal of the Grace Episcopal School to attend for cross-examination. The purpose for requiring the attendance of Foy was to have her tender certain reports referred to in her affidavit and which reports were relevant to Edwin's learning disability.

The application for the adjournment was made on the 19th December, 1989. In opposing the application Counsel for the respondent adverted to the circumstances as recorded in the Judge's notes: -

Mrs Foy's affidavit was served on the other side on or about the 27th November and to the enquiry in the covering letter whether Mrs Foy or Mrs Duke would be required to attend Court, the reply was to the effect that neither would be required. There were further similar enquiries adverted to the fact that there was no challenge to Foy's evidence which contracted Hugo's. A request for Mrs Duke's attendance was made and granted. No similar request was then made for Foy. Counsel for respondent submitted that up to the 29th November no issue as to Edwin's education and schooling was raised. It was on 1st December that this new issue was raised by Hugo and the matter adjourned to 19th December. It was only on the 14th idem that the request for Mrs Foy was made. Accordingly, the Judge properly exercised his discretion.

The learned Trial Judge had refused the application for adjournment on the grounds that any assistance given by Mrs Foy's attendance would be dearly bought at the costs of more delay in resolving the matter.

In G. v. G. [1985] 1 W.L.R. p. 652 Lord Fraser of Tullybelton observed:-

"I would only add that, in cases dealing with the custody of children, the desirability of putting an end to litigation, which applies to all classes of case, is particularly strong because the longer legal proceedings last, the more are the children, whose welfare is at stake, likely to be disturbed by uncertainty."

Accordingly, in the light of the evidence eventually tendered on the issue of Edwin's learning disability and the reasons given by the learned Trial Judge for refusing the adjournment I can see no good reason to hold that in refusing the adjournment the learned Judge erred in the exercise of his discretion.

The challenge to the order granting custody of Edwin to the respondent was broadly stated in the following grounds:

"The learned Trial Judge erred in law and/or failed to exercise his discretion judicially in awarding the Plaintiff/Respondent custody, care and control of the said child, Edwin Richard Zuiderent."

The learned Trial Judge erred in law and/or failed to exercise his discretion judicially in approving the arrangements for schooling in the Isle of Man proposed by the Plaintiff/Respondent for the said child, Edwin Richard Zuiderent."

In support appellant's Counsel submitted to the effect that the Judge's decision as to custody was tied to his earlier decision concerning Edwin's schooling and in doing so he failed to consider, inter alia,

- (1) that Edwin's real home was in the Cayman Islands;
- (2) that the appellant had put before the Court credible expert evidence regarding Edwin's learning disability resulting in his continuing poor performance at school and

that this learning disability required prompt treatment and that the extra tuition being given at King William's College was ineffectve as evidenced by his continued poor performance;

(3) that in the circumstances custody had been granted to the respondent who was indifferent to Edwin's problem;

(4) that on the principle as stated in *W. v. W.* & C [1985] 3 ALL ER 408 all things being equal, custody of a boy of ten years of age should be granted to the father.

Now the learned Trial Judge after his findings as to the relationship which existed between Edwin and each parent, respectively, turned to consider the question of Edwin's learning disability and his schooling. He found that the child's academic difficulties existed from he was at the Grace Episcopal School in Florida and in that regard accepted and relied, in particular, on the following extract from Mrs Foy's affidavit:

"I taught Edwin and remember him well. At the end of second grade and the beginning of third grade (second half of 1987) Edwin lacked concentration and seemed to be having a difficult time at school. This was partly due to the influence of some of the other children in the class, but his mother and school were sufficiently concerned that a school consultant was invited to investigate Edwin's functioning ability. Her conclusion was that it was probably founded upon the language problem of a boy who originally spoke Dutch as a first language."

The reports on Edwin after two terms at King William's College confirmed that his "English", in particular, was weak and the appellant arranged for examination by two consultants - Dr. Fields, a clinical psychologist and his wife, Mrs Rilla Fields,

a certified and licensed speech and language pathologist and a certified teacher with wide experience in teaching generally and, in particular, children with learning disabilities. Both experts live and work in George Town. Their examinations were done at the request of Hugo and Patsy, who perhaps in anticipation of her forthcoming marriage to Hugo, presented herself then as Edwin's stepmother.

Dr. Fields described in technical language the tests he carried out and concluded:

"The overall performance indicated a child with average to high average intelligence with strength in general information, arithmetic skills, problem solving and visual patterning. Measured weaknesses include verbal conceptualisation and expression and short term memory. The difference between the verbal and performance scores is consistent with the possibility of a mild learning disability. The critical difference of score of 12 IQ points was not reached.

Overall impressions were of a boy of normal intelligence who is likely experiencing difficulty in school, inter-personal and family relationships. His behaviour is likely to deteriorate under stress to the point where he becomes oppositional, demanding and acts out with temper tantrums. His school performance will be most weak in the verbal skills and those tasks requiring short memory. Given stress of competition or emotional demand his performance will probably deteriorate further.

It is recommended that further assessment be made in academic skills to establish specific learning disabilities. In addition, improvements in the behaviour and academic performance will require increased structure and consistency in the academic, home and general emotional environments".

The learned Trial Judge considered and analytically compared Dr. Fields' views and opinions on Edwin's academic difficulties with Mr. Westley's, the Principal of King William's College who had this to say:

"It continues to be the view both of Edwin's teacher and of his House staff that he is happily and usefully involved in the life of the College. His range of out-of-school activities is impressive. He says that he "loves it" here. He is involved at the moment in regular indoor cricket practice, he plays football regularly and enjoys it, he is a member of the School Choir, he plays the drums and he has shown a particular interest in the recent modelling activities which have been introduced within the House. Academically he is no high flyer and never will be. He is thought to make a good effort in the classroom, although it is recognised that he does have some residual difficulty with English. It is not regarded as being particularly unusual nor as a great handicap; he is simply, at the moment, relatively weak at the subject. For this reason a course of private tuition has been prescribed for him during which time I understand he has made progress".

Dr. Fields' comment on the teacher's opinion that Edwin was "no high flyer" was to the effect that this was not a fair description as it relegated Edwin at best to mediocre performance throughout his life. The learned Judge, however, considered Dr. Fields' criticism as illustrative of linguistic differences. In his view, in Britain the phrase "high flyer academically" was reserved for the top level of academic ability and that a person could have a creditable school and university degree without being a "high flyer". In this regard I prefer the learned Judge's interpretation.

The Judge also considered the evidence of Mrs Fields who carried out two tests on Edwin at the request of Hugo and Patsy on the basis of referrals from teachers and parents. The first set of tests was in April, 1989. They were speech and language evaluation tests and the purpose was to identify Edwin's learning problems and recommended programmes for dealing with such problems. Mrs Fields had certain discussions with Patsy. Mrs Fields said she recognized Edwin as experiencing "a mild processing language learning disorder, compounded by current academic distress and manifests

in his ability to read by either sight word reading techniques or phonetics sounding of words and also inability to spell on grade level" but that the prognosis was good for this specific learning problem provided he received immediate, appropriate and adequate therapy. She recommended Edwin's involvement in a programme at his current school to address these difficulties and further specific tests and therapy.

On 16th August, 1989, in response to a request of Hugo and Patsy, now Mrs Zuiderent, Mrs Fields did a comprehensive evaluation for Edwin following a review of his final report card from his school. The report showed minimal progress during the year with specific deficit in spelling, reading and mathematics. The procedure called by Mrs Fields "Comprehensive Inventory of Basic Skills, Brigance Diagnostic" was used to assess Edwin's academic level.

The learned Judge upon considering her report, based on the procedure described, was not satisfied that Mrs Fields had given sufficient weight in the testing to verbal skills and the difference in language usage between Great Britain and the United States. He quoted passages from her report as illustrative and referred to her answers in cross-examination in support of his views. He then considered the reaction of Mr. Westley, Principal of King William's College and his comments on the reports of Dr. and Mrs Fields and from the Judge's extensive quotation in his judgment I extract the following pertinent passages:

"The speech and language evaluation which took place on the 12th April 1989 would appear to lead in the direction of the conclusion reached by his teachers here, that is that by our standards when he arrived, his basic knowledge and understanding in English was very weak and that his reading ability was distinctly below the average of boys of his age. We acknowledge that there is a case for Edwin receiving extra help and that the help should take the nature of sympathetic assistance with general reading, writing and understanding.

Regarding the (Comprehensive Academic Evaluation) undertaken for Edwin on August 16th 1989, we would question the need for such a thorough investigation and indeed have some scepticism regarding many of the technical terms which are used. We agree however with the conclusion that Edwin is a boy of average ability, academically. We see no need for a further comprehensive diagnostic test as recommended in the conclusion and it is our opinion that Edwin is making encouraging progress at school and will continue to make such progress as long as he continues to receive sympathetic and demanding teaching."

.....

Mr. Westley then referred to the report of Edwin's class teacher and housemaster and concluded:

"You will see that the gist of these reports is of an enthusiastic well balanced and co-operative boy who had relatively low academic standard when he arrived and has made steady and encouraging progress since. The view of his teachers here is that he does not need diagnostic tests with a degree of detail undertaken in these reports. Moreover we feel the psychological Report exaggerates the difficulty very considerably and to that extent is quite misleading."

The learned Trial Judge then referred to the second of his interviews with Edwin in which he raised the subject of further counselling to help in getting his English up to standard. The Judge's impression was that Edwin appeared downcast at the prospect of further sessions with the Fields but when he understood it was to be within his school environment he seemed perfectly willing to do so.

On the question of Edwin's performance in "English", the scrupulous academic purity that may be demanded in an English School like King William's College may present a problem to a child having his elementary years in the United States and, accordingly, the Judge's criticisms of Mrs Fields' approach seems well founded.

It is, therefore, clear from his judgment that on the question of Edwin's learning disability, the learned Judge, as it was open to him to do, preferred the practical views of the Principal and staff of King William's College based on their day-to-day experience of Edwin to that of the Fields' being expert opinion based to a large extent on information from Hugo and Patsy and school reports.

With respect to the accusation of indifference on the part of Georgette, the evidence of Mrs Duke, Mrs Foy and Mr. Goodwill and the placing of Edwin at King William's College indicate anxious concern rather than indifference to Edwin's academic difficulties.

Now the complaint that the Judge's ultimate decision as to custody vested on his decision with respect to King William's College is not well founded. He was obliged to deal specifically and, having regard to the evidence, at some length on the issue whether it was in Edwin's best interest that he should remain at that school. But, although the availability of the Middle School in Cayman for a boy of his age was mentioned this was not a case of competing schools as the learned Judge stated. In confirming custody in the respondent, he considered and compared the relationship of Georgette to Edwin with Hugo to Edwin in the pre-King William's College period. The former bore the brunt of bringing up Edwin while the latter was a remote but not unfriendly figure. From his interview with Edwin he found that his personality was one which entirely fitted the description given by the Principal and teachers of King William's College, that he was happy at King William's College and he did not wish to be identified with Cayman. Further, that while Edwin liked staying with both parents, there was slight preference for his mother. The learned Judge also accepted the evidence of the stepfather as to the cordial relationship between himself and Edwin.

With respect to the suggested principle that a father and son relationship gives the father a preferred position in competing claims between mother and father for custody, respondent's Counsel submitted that the judgment in the latter case of Re C(A) (an infant) C v C [1970] 1 ALL ER 309 denied the existence of any such principle.

In Re C, in his judgment, Edmund Davies L J at p. 312 referred to the following statement of Lord Denning W v W and upon which Counsel for the appellant relied:

"I feel it is right to be guided by the general principle that a boy of this age, some eight years of age, is, on the whole, other things being equal, better to be with his father."

and then quoted with evident approval what he regarded as the true approach enunciated by Harman L J in Re O (an infant) 1964 1 ALL ER 789:

"It is not, I think, really in dispute that in all cases the paramount consideration is the welfare of the child ... What one looks at is the whole background of the child's life ..."

and then said:

"If W v W and C is to be regarded as authority for the proposition that there is a principle that a boy of eight should, all other things being equal, always be left in the custody of his father, then that is a view with which, with profound respect, I cannot agree. The decision must depend on who the father is, who the mother is, what they are prepared to do, and all the circumstances of the case. There is no such 'principle', in my judgment; the age and sex of the child are but part of the considerations to be borne in mind."

On this point I am in agreement that there is no such general principle and that the proper approach is as enunciated by Harman L J in Re O (an infant) (supra).

In the instant case I am of the view that the learned Judge considered the whole background of Edwin's life and in granting custody to the mother, he clearly in the circumstances considered that it was in the best interest of Edwin to remain with his mother who had considerably more to do with his upbringing than his father and at the school at which he was manifestly happy and of which he so "enthusiastically spoke" and, lastly, Edwin's own desire that the contest for his custody should come to an end.

Another ground of complaint was in extensive criticism of the Judge's order for Edwin's examination by a psychologist. Whether or not there is any merit in the criticisms is of no moment. The order was in the nature of a "sop to Cerberus". In that regard the learned Judge said:

"I am no more convinced than the school that this is really necessary, but unless it is done the issue is likely to continue to be a bone of contention between Edwin's parents."

The final ground argued was in relation to access and, in particular, to the following directions:

"Each visit to Holland shall include a visit of at least one day to the Defendant's mother".

Edwin's grandparents on either side reside in Holland. The directions referred to above set a minimum. Counsel for the respondent asked for an amendment to read or to the effect of "equal time" for each side. There is no evidence that the respondent has taken undue advantage of the directions. In any event it is a matter that can be easily reopened under the almost unfettered "liberty to apply".

In the end, after considering the many points raised and extensively argued by Counsel for the appellant, I can find no fault in the learned Trial Judge's assessment of the evidence,

the progress of his reasoning, the conclusions to which he came, or the way in which he exercised his discretion.

For these reasons, I concurred in the dismissal of the appeal and the affirming of the judgment and orders of the Court below.