

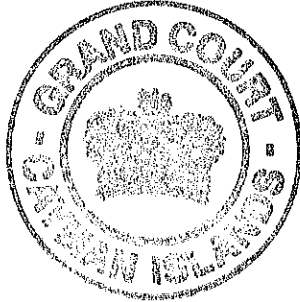
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**IN THE GRAND COURT OF THE CAYMAN ISLANDS
FAMILY PROCEEDINGS DIVISION**

CAUSE NO FAM 60 of 2016

BETWEEN



T.F.

Respondent/ Mother

AND

S.D.

Applicant/Father

Re: (E and A) (Child: Relocation to the United Kingdom)

IN CHAMBERS

Appearances: Ms. Lynne McDonagh of Ritch & Connolly on behalf of the Applicant (Father)
Mr. David McGrath of Sampson & McGrath on behalf of the Respondent (Mother)

Before: The Hon. Justice Ingrid Mangatal

Heard: 12 and 13 October 2016

**Written Closing
Submissions Received:** 4 November 2016

**Draft Judgment
Circulated:** 17 November 2016

**Judgment
Delivered:** 21 November 2016

HEADNOTE

Children's Law (2012 Revision), sections 10 and 3 – Relocation Application

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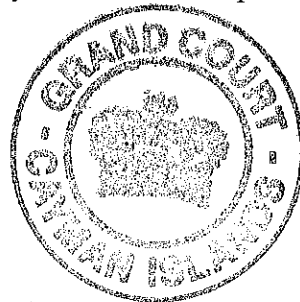
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JUDGMENT

1. This case concerns an application by the Father (“S.D.”) (hereafter “the Father”) to remove the two children of his marriage to the Mother (“T.F.”) (hereafter “the Mother”) to the United Kingdom and seeking a residency order in his favour. The children are a girl “E”, born 27 November 2005, aged 10, and a boy “A”, born 11 February 2011, age 5. Both children currently reside here in the Cayman Islands with the Mother.
2. A helpful agreed Case Summary was prepared by Counsel for the parties and I have been able to extract some of the background information from that Summary.

Background

3. The Father is fifty years old and is a British citizen. The Mother is forty three years old and is an Irish citizen. The parties met in 2002 and began living together in 2004. The Father had been married previously, the Mother had not. The parties were married on 1 February 2012, in Letterhead, Surrey, England.
4. The children currently attend a top private school in Grand Cayman. E is in Year 6, and A is in Year one.
5. The Mother is an accountant by profession and worked at a Global Law firm in London from 2006 to 2012. The Father has a background in Information Technology and also worked with a different Global Law Firm in London until May 2008.
6. The Father was made redundant in 2008 and subsequently re-trained and qualified as an electrician.



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7. In 2012 the Mother was offered the role of Chief Financial Officer at the Global Law Firm's Cayman Office. The family relocated to the Cayman Islands and has lived in rented accommodation.
8. The Father set up one company whilst he lived in Grand Cayman. He maintains that he did not pursue this business venture due to child care responsibilities.
9. In essence, the Mother has been the sole bread-winner of the family since 2008.
10. The Father suffered health issues and had major back and heart surgeries in 2015, which he underwent in both Grand Cayman and in England.
11. The parties attended marriage counselling in late 2015. The family spent Christmas holidays in Ireland and in the United Kingdom. The Father stayed on in the United Kingdom to attend medical appointments and to undertake re-training for two months in January and February 2016. The Mother moved into a rental property with the children in San Sebastian, South Sound.
12. There is disagreement between the parties as to the date of separation. The Mother maintains that the parties separated in early December 2015. The Father maintains that at this time, the parties were on a 'therapeutic separation' and did not, in his mind, separate officially until in or around March 2016, when he realized reconciliation was not possible.
13. The Father returned to Grand Cayman on 1 March 2016 and stayed in rental accommodation. He had contact with the children during this time. The Father flew back to the United Kingdom to attend further medical appointments on 25 March 2016.
14. The Father flew to Grand Cayman on 21 May 2016 to take care of the children while the Mother attended a Conference in Dublin.



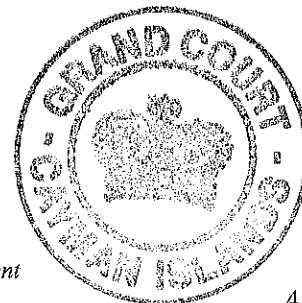
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15. The Father flew back to England in late May 2016. In preparation for the children arriving for the summer, he, on 3 June 2016, rented a house in Surrey. Up until 3 June 2016, the Father lived at his mother's house, occupying her spare bedroom.
16. The Mother flew to England and took the children to the Father there in July 2016. The children spent the summer with the Father in England, save for two weekends which they spent with the Mother, and the final week when they travelled to Ireland with the Mother. At the end of the summer, the Mother flew the children back to Grand Cayman.

The Proceedings

17. A Petition alleging the Father's Unreasonable Behaviour was served on 29 March 2016 and the Petition was proved on 19 April 2016. There was a first appointment hearing before Williams J. The Court gave directions on the Father's Maintenance Pending Suit application, the father's relocation application, and in respect of ancillary relief issues. There was one interlocutory application by the Father on 1 June 2016 seeking the payment of a capital sum from the mother. That was dismissed.
18. The Father's summons for relocation of the children was issued on 10 May 2016, returnable for 12 October 2016.
19. Affidavits in respect of the relocation application were filed on 21 June 2016 and 1 July 2016.
20. There was a mention hearing before Williams J. on 6 October 2016. The Court made further directions on the filing of final affidavit evidence.



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21. One Welfare Report has been filed on 28 September 2016 in relation to the children issues. In that Report the Court appointed social worker Ms. Sherine Barnes recommends that the children continue to reside in Grand Cayman with the mother during term time.

The Hearing

22. At the hearing, Ms. Barnes gave evidence, as did the Father and the Mother, with all being cross-examined.

23. At the end of the hearing in October, Counsel had requested that the Closing Submissions be handed up in writing. The Court had initially ordered that those be filed and exchanged by 28 October 2016.

24. However, as Mr. McGrath, Counsel for the Mother had kindly agreed to get a transcript of the hearing done, subject to costing, and there was some understandable delay in getting that process completed, the submissions were ultimately not handed in until 4 November 2016.

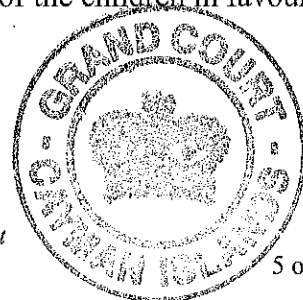
The Issues

25. The parties are agreed that they should retain joint parental responsibility, both play a significant role in the children’s lives, and that they wish to co-parent.

26. The issues remaining in dispute in respect of the application are in essence as follows:

(A) Should the Court accede to the Respondent’s application to permit the permanent relocation of the children to England?

(B) Should the Court grant a residence order in respect of the children in favour of the Father?

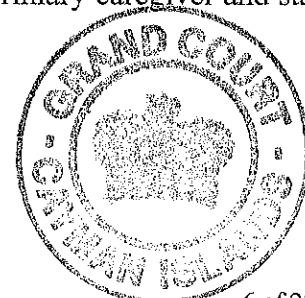


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The Father’s Position

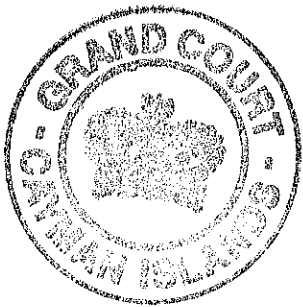
27. It is the Father’s position that it is in the children’s best interests for them to come and live with him in England and attend school there. He has at present rented a large, comfortable three bedroom house in Surrey which is close to his mother and extended family, as well as to the schools which he proposes for the children to attend. The children stayed at this home over the summer and are familiar with the area. The Father states that he made contact with good schools in the Surrey area from as far back as February 2016. It is not disputed by the Mother that the schools that the Father has proposed are very good schools.
28. The Father says that he has better prospects for employment in the United Kingdom than in the Cayman Islands. He is a qualified electrician and plans on retraining to allow him to work in the United Kingdom and to support the children. He indicates he will be able to do this once his equipment, which is presently in the Cayman Islands, can be shipped to him. He does not expect to have a long commute, and expects to be able to work flexible hours so as to be able to care for the children.
29. In the long run, the Father plans to build a new home on land that he has been gifted by his sister. He has stated that he thinks the move would not be disruptive for the children because they have stayed at the rented home before, and also because E, the older child, considers England to be her home.
30. The Father states that he has been looking after the children on a full time basis for the past eight years. For E, he looked after her since she was two and a half. For A, from birth. He claims that around the time of his retraining as an electrician after being made redundant in 2008, it was agreed that he would become the primary caregiver and stay at home to look after E while the Mother pursued her career.



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31. The Father has expressly stated that he brings this application primarily based on the children's education needs. In particular, he says that the critical education years for E will be aged 14-16 when she will undertake her GCSE examinations and aged 16-18 when she will undertake her A-Level examinations. It is his position that these critical years are better served with a structured English education at one of the schools proposed in his affidavit of 3 June 2016. He states that it would be highly disruptive for E to change school during these critical years, which is a distinct possibility.
32. At paragraph 77 of his substantive affidavit, the Father states his reasons for making the relocation application as follows:



Reason 1:

*Education is the fundamental reason why I have brought this application. It is my proposal that the children should return to England to begin school in **January 2017**. E will be required to attend interviews in person at various schools in November 2016, and January 2017 represents a natural mid-break juncture in the year when the children can travel to Ireland to spend Christmas with the Petitioner, and on to the UK. I would be happy to employ a private tutor to teach E.*

Reason 2:

The children's wishes and feelings. E has said to me many times that she is unhappy in Cayman and wishes to go home.

Reason 3:

Children's welfare: I do not believe that staying in Cayman for the long term is in the children's best interests.

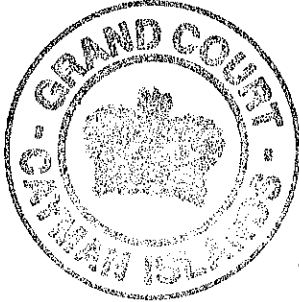
Reason 4:

It is not a viable option for the children to continue to be brought up and educated in the Cayman Islands given our nebulous expatriate immigration status in Cayman and the fact that we do not have and have no guarantee of being granted Caymanian status or permanent residence

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in the Cayman Islands. Even if the Petitioner is lucky enough to get permanent residence with the children as dependents on her residence permit, the children will cease to be dependents on becoming adults or finishing full time education and will have no right to remain in the Cayman Islands thereafter.



The family moved to Cayman as a temporary move for 5 years because education in England was a priority. The Petitioner had already decided only 8 months ago to leave Cayman and to go back to Ireland to take up a role in Dublin.

Reason 5:

I have been the primary caregiver of our children for the past 8 years in England and in Cayman and I feel that it is time for the family to return home. My employment opportunities are extensively more fruitful in the UK than they are in Cayman.”

The Mother’s Position

33. The Mother opposes the Father’s application for the children to be removed permanently to reside with the Father in England and she also opposes the sole residence order being sought. The children live in excellent, comfortable accommodation in South Sound where they have been since December 2015. Their home is close to school and also helpfully, close to the Mother’s workplace. Both children are in good, private education schools in Grand Cayman and doing well academically, albeit A is only 5 and in Year One, so it is early days in his case.
34. The Mother says that the proximity of home, work and school, allows her to play the fullest possible role in the children’s lives, whilst at the same time pursuing her career and providing solely for all of the family’s needs.
35. It is the Mother’s case that the children are happy, healthy and extremely well-cared for, and adjusting well, despite the breakdown in their parents’ marriage. She states that the

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children are active, and enjoy an appropriate range of social and extra-curricular activities. They have friends in Cayman with whom they socialize and have playdates/sleepovers.

36. She indicates that the children have excellent secondary care through her helper AW who has formed a close bond with the children, and they with her. Her care of the children from after school until 5:30/6:00 p.m. enables the Mother to undertake her job, which provides for the family.
37. The Mother has remained solely responsible for all aspects of the costs and maintenance of the children, and has done so for a number of years. She has stated that the Father has spent money recklessly during the period of the marriage. She has also denied that there was any discussion about the Father becoming the primary caregiver and resents his persistent reference to that, saying that although she was always the main breadwinner, she too has spent time with the children and during working hours also, as she had a flexible working situation.
38. She indicates that where in his evidence the Father said that he did not pursue the opportunity for a new role within the National Society for the Prevention of Cruelty to Children because of the family, that is untrue. She says his real reason was because he claimed he was sick of working in offices and all the politics and had decided that he wanted to work for himself.

The Welfare Report Recommendation

39. In the last two paragraphs of the twenty-three page Welfare Report, Ms. Barnes sets out her Conclusion and Recommendation as follows:



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“Conclusion

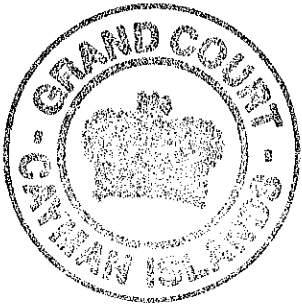
119. *To conclude, in light of the information above, it appears that [the Father’s] application is not genuine, as it will disrupt the children’s lives unnecessarily. Further, it is not realistic, as he proposes to pull the children out of school in the middle of a school year and put them in home school. At the same time, he is not yet concrete about the living arrangements and how he would finance the children.*

120. *Additionally, the children are settled in Cayman, their needs are being met, they share a loving stable relationship with their Mother, they are safe, they are receiving quality education, they have friends and they are happy.*

Recommendation

The following recommendation is being made for consideration by the Court:

1. *[The Father’s] application be refused.*
2. *Residence order granted to [the Mother]*
3. *Contact Order: Children spend one month in the summer, one week at Christmas, and one week at Easter with their Father. Christmas alternate yearly.*
4. *Contact to be agreed between the parties when [the Father] is on island*
5. *Children Face-time/telephone [the Father] as they do now.”*



The Law

40. These proceedings are governed by the ***Children’s Law (2012 Revision)*** (“the ***Law***”). Section 10 of the ***Law*** deals with residence, contact, and other orders with respect to children.

41. The governing provision is section 3 of the ***Law***, which provides as follows:

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"Welfare of the child

3 (1) *Where a court determines any question with respect to-*

- (a) The upbringing of a child; or*
- (b) The administration of a child's property or the application of any income from it;*

The child's welfare shall be the paramount consideration.

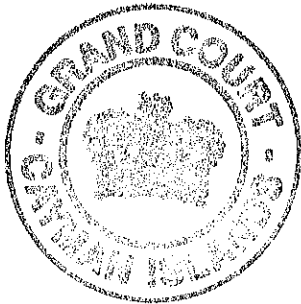
(2) *In any proceedings in which any question with respect to the upbringing of a child arises, the court shall have regard to the general principle that any delay in determining the question is likely to prejudice the welfare of the child.*

(3) *In the circumstances mentioned in subsection (4) a court shall have regard in particular to-*

- (a) the ascertainable wishes and feelings of the child concerned (considered in the light of his age and understanding);*
- (b) his physical, educational and emotional needs;*
- (c) the likely effect on him of any change in his circumstances;*
- (d) his age, sex, religious persuasion, background and any characteristic of his which the court considers relevant;*
- (e) any harm he has suffered or is at risk of suffering;*
- (f) how capable each of his parents, and any other person in relation to whom the court considers the question to be relevant is of meeting his needs; and*
- (g) the range of powers available to the Court under this Law in the proceedings in question.*

(4) *The circumstances are that-*

- (a) the court is considering whether to make, vary or discharge a section 10 order, and the making variation or discharge of the order is opposed by one party to the proceedings; or*



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(b) the court is considering whether to make, vary or discharge an order made under Part IV.

(5) Where a court is considering whether or not to make one or more orders under this Law with respect to a child, it shall not make the order, or any of the orders, unless it considers that doing so would be better for the child than making no order at all.”

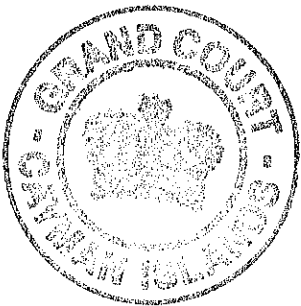
The Case Law

42. The leading authority in this jurisdiction is the decision of Williams J in **B v B** [2013 (1) CILR 271, approved by the Court of Appeal in its decision, reported at [2014 (2) CILR 234]. At paragraphs 87-93 of his judgment, Williams J helpfully provides guidance as follows:

*“87. I have considered carefully the guidance given in **Payne... K v K... and Re F....** From those cases, one can derive a number of principles which should be applied by a court in considering whether to make an order granting leave to permanently relocate...*

88. The first and overarching principle must be that the child’s welfare is paramount. It takes precedent over any other consideration.

*89. The next principle is that the court should have regard to the guidance handed down in case law when considering what factors are to be weighed when determining what is in the child’s best interests. It is important to note that the guidance should no longer be confined by labels given to the category of care. This means that a judge may consider the **Payne** guidance to an extent that he may determine to be relevant to the particular facts of the case, even in what might be termed a shared care case. Attorneys and judges should avoid detailed classification of relocation cases and hearings should not get bogged down in taxonomical arguments or preliminary skirmishes as to what characterization should*

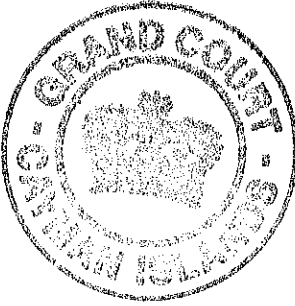


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be applied to the case by virtue of the time spent with each parent or other aspects of the care arrangements.

90. *When the court considers the guidance, the following questions, in a case such as this involving an application made by the mother, should ordinarily be raised and addressed:*

- 
- (i) Is the mother's application genuine, in the sense that it is not motivated by some selfish desire to exclude the father from the child's life?*
 - (ii) Is the father's opposition motivated by genuine concern for the future of the child's welfare or is it driven by some ulterior motive?*
 - (iii) What would be the extent of the detriment to the father and his future relationship with the child were the application granted?*
 - (iv) To what extent would the detriment to the father, if the application were granted, be offset by extension of the child's relationship with the maternal family, and if applicable, homeland?*
 - (v) Is the mother's application realistic and founded on practical proposals that are both well researched and investigated?*
 - (vi) What would be the impact on the mother of a refusal of her realistic proposal? The weight placed on this will increase if the child resides with the mother.*

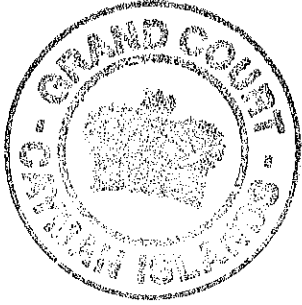
91. *Another principle arises from the fact that the circumstances in each case vary infinitely and the court should not, therefore, be unduly fettered in its approach when deciding what is in the best interests of the child. The court should regard the guidance, which can promote consistency, as helpful in determining the best interests of the child, but not feel it has to be applied rigidly.*

92. *Finally, there is no legal principle, or even legal or evidential presumption, in favour of an application to relocate by a primary carer.*

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93. *In the matter before me, as in all such cases, there is no presumption in favour of the applicant mother. I will have to consider and weigh up all of the factors contained in the evidence before me. When reviewing the evidence, I will have to consider and weigh up all of the factors contained in the evidence before me. When reviewing the evidence, I will have to consider the principles which I have identified above. As I consider each part of the evidence, apply the principles and consider guidance which has been given, I have in mind that the overreaching matter for determination is what is in the best interests of C and K. In applying the paramountcy principle, I have regard to the factors mentioned in the welfare checklist.”*



Applying the Law to the facts

43. As was so well stated by Mostyn J in *Re: AR* [2010] 2 FLR 1577, at paragraph 4:

“Applications for leave to relocate are always difficult for the court and distressing for the parties. They involve a binary decision - either the child stays or he goes. There is no scope for any middle way..... So the decision, whichever way, is bound to cause considerable trauma.”

44. So this is not going to be an easy decision, and will be the source of unhappiness, for one or other party.

Discussion and Analysis

45. In considering and applying the principles to the evidence in the case, I remind myself that there is no legal principle, or even legal or evidential presumption, in favour of an application to relocate by a primary carer. The Father has claimed that he has been the primary carer. The Mother has said in her affidavits that although the Father has been home caring for the children, it is not accurate for him to say he has been the primary caretaker. In light of where the authorities stand, it does not appear to me that there is a

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need to analyze this issue along any hard core lines. As pointed out in *K v K (Relocation: Shared Care Arrangement)* [2012] Fam 134, referred to in *B v B*, at paragraph 59, there may be no clear dividing line between a primary care arrangement and shared care. Indeed, as discussed at paragraph 61 of *B v B*, the quantum of time spent with each parent may be less important than the interaction, quality and nature of the relationship between parent and child. It is plain to me that both parents have played an integral role in the children's lives and the Mother has had the children resident with her solely since the Father left in December 2015.

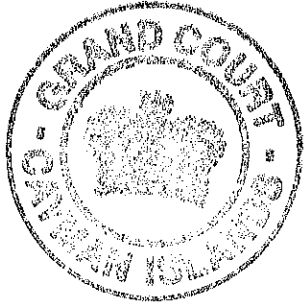
The Father and Mother's Financial Situation and Immigration Status

46. The Mother has been the sole bread-winner for the last eight years. The Father has filed an application for interim maintenance. Since the separation, the Mother has voluntarily provided the Father with US\$5,000 per month for four months, ending September 2016, as well as US\$5,000 for the Father to take the children on holiday. She also gave the Father an additional \$500 per week when the children were in the UK with the Father, and gave the children \$250 each.
47. The Father says that he currently has a right to reside in the Cayman Islands on the Mother's Work Permit. However, once the Decree Absolute is obtained, he would have to secure his own work permit. He would have no right to remain in Cayman simply because the children are here.
48. At paragraphs 158-159 of his June 2016 affidavit, the Father states that he would be enormously disadvantaged in trying to rebuild his previous career in Grand Cayman, which is predominantly driven by financial services (lawyers and accountants) and tourism. He states:

"158....I would be unable to achieve a salary that would allow me provide stable, enjoyable or continuous employment. This is particularly evident by the current onerous work permit immigration rules in Cayman.

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159. I am hoping to undertake retraining in the UK at some point in the next few months. I was very concerned about my medical position and wanted to wait until I received test results to determine my ability to be in full-time employment. Now that I have received the "all clear" so to speak, it is my intention of being gainfully employed from September of this year. Obviously, this is dependent on job prospects and retraining. As I have indicated above, my job prospects are much more lucrative in the UK and I do expect to be in employment relatively soon."

49. In oral evidence the Father indicated that he has not yet undergone any refresher training and has not yet secured any employment, whether in the IT industry, or as an electrician. He stated that in relation to occupation as an electrician, up until a year ago, the Cayman Islands had not adopted the UK regulation guidelines, so he could not have used his previously obtained qualifications. It is recognized now, but he says that he could not work as a self-employed electrician unless he had a Caymanian business partner.
50. All of that really means that the Father is not yet able to "stand on his own two feet" financially, so to speak, and will himself not be in a position to maintain the children or to pay anything whatsoever towards the not inexpensive English private school education that he is presently proposing for the children.
51. The Mother on the other hand, has stated that it is the Father who made the choice to return to live in England. Further, in her view, he could have looked for and obtained a job in Grand Cayman, as he has successfully done previously.
52. The Mother continues in her same occupation which is steady, lucrative and gainful employment which she enjoys. She earns a substantial income.
53. As regards her immigration status, the Mother states that she is here on a work permit, there is a term limit, and she has another four years approximately remaining. It is her intention at the appropriate time some years from now, to apply for permanent residency

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for herself and the children. It would seem that, whatever her prospects may be, and I need not go into that in any detail for the purpose of this application, the Mother is not in any danger of having to leave the Cayman Islands against her will, imminently.

54. She has stated, importantly, and this is a factor to be considered in more detail later, that if it was ordered that the children are to be relocated, she would have to resign her position here in Cayman and start all over again, with no guarantees as to employment, of a similar nature, and with no certainty as to how long that process would take. In the meantime, there would be no income and no one to pay the school fees, and the children would have to be taken out of the private schools which the Father proposes, and placed into the public school system, a series of changes which are likely to be nothing but disruptive for the children.

55. I now turn to examine some aspects of the matter that call for detailed consideration.

(i) Is the Father's application genuine, in the sense that it is not motivated by some selfish desire to exclude the Mother from the children's life?

56. In my judgment, the Father is making the application without the motive of any selfish desire to exclude the Mother from the children's life. It is obvious that he did not enjoy living in Grand Cayman and wished to return to live in England, separate and apart from having returned to England to receive medical attention. However, I can understand why Ms. Barnes came to the conclusion that the application is not "genuine", in the sense that it does seem to be unrealistic. This is discussed in greater detail below. It also is not inconceivable to me that there may also be some other motive involved, whereby the Father is well aware that if the children were to be relocated, the Mother would follow suit and return to England, which is what he seems to want to see happen.

(ii) Is the Mother's opposition motivated by genuine concern for the future of the child's welfare or is it driven by some ulterior motive?

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57. It is abundantly clear to me that the Mother is genuinely, and reasonably concerned for the future of the children's welfare and is not driven by any ulterior motive whatsoever. I must say, it could hardly be otherwise, when a parent is being faced with an application by the other parent to relocate the children when that other parent has no employment, and no independent source of income to look after the children. Where that parent is just recently recovering from serious health problems, and has no other aspect of their life secured with any degree of permanence, this in circumstances after not working for eight years, with no sure working prospects in sight.

(iii) What would be the extent of the detriment to the Mother and her future relationship with the children were the application granted?

58. The Mother has indicated that if the application were to be granted, she would have no choice but to resign from her job here and seek employment in England. After resigning, however, she would have to work out her Notice period. She indicates that there has never been an option for her role with the present employer to be in the UK. She would have to start all over again, and try to secure employment elsewhere so that she could be close to the children. In the current economic climate, she maintains, there would be no telling how long that process would take. In the meantime, the Father would have to take the children out of the private schools, and put them in public schools, which would be yet another change, representing a massive disruption for the children.

59. The Mother goes on to state that any new position she would get would potentially require that she be commuting over three hours again, as she had to do in the past in England, and this would radically affect the amount of time that she could spend with the children in the week. Further, depending upon what salary she could secure, this would mean that she would once again have to pay income tax, and she would likely not be able to put the children through private school.

60. The Mother also has raised as a factor that she does not have any family or support system in Surrey and that if she did secure work commutable to that area, she would be

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very isolated. To my mind, the factors and consequences described by the Mother seem very concerning and are like a beacon, warning of uncertainty and fragility.

(iv) To what extent would the detriment to the Mother, if the application were granted, be offset by extension of the child's relationship with the paternal family, and if applicable, homeland?

61. This is a situation where the Mother has candidly, and I think to her credit, owned that if the application were to be granted, she in time would have to make her way back to the United Kingdom. The detriment would in any event not be significantly offset it seems to me, because, although the Father's Mother and sister and other relatives do seem to be accessible to the children nearby, on the evidence, I accept that the Father's relationship with them has at times been fractious and tension-filled.

62. It is true that England is the homeland for the Father and for both children, and therefore to some extent this factor would be set off against detriment to the Mother. The children have also spent every summer in England since living in Grand Cayman. However, throughout their time while living in England they had the Mother present living with them as well as the Father. Further, they have been living in Cayman for the last four years and are now accustomed to life here.

(v) Is the Father's application realistic and founded on practical proposals that are both well researched and investigated?

63. It is perhaps under this most important head that I have the most concern. One example of the uncertainty and impracticality of the Father's proposals has to do with his plans for education of the children and the timing of the relocation application. In his June affidavit, at paragraphs 179, 181 and 182, the Father had this to say:

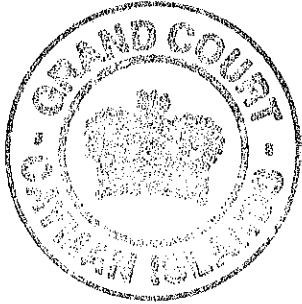
"179. My proposal is that if successful in my application, the children would relocate to the United Kingdom at the end of the Christmas

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vacation 2016. I see this time as a natural juncture in her [sic] schooling and the right time for both E and A to relocate. It would allow them to settle into life in England by summer 2017.

.....



181. *...My proposal would be based on the children having about two weeks to settle into home before beginning school. In such a circumstance, I would ask to fund a private tutor to home school E and A, and enroll them in other activities so that they are well-adjusted to life in England and E would therefore be ready for secondary school in September 2017.*

182. *In the event that it is deemed necessary for the children to relocate later in the year, namely at the end of the 2016 academic year, this is something that could be discussed though I believe it would be better to give E six months to settle back in England before starting secondary school in September 2017...*”

64. In the Welfare Report at page 20, paragraph 113, Ms. Barnes had this to say:

“Education

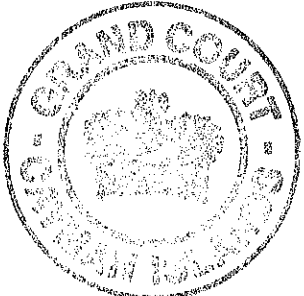
113. [The Father] proposed to have the children relocate to England in December 2016, the middle of the academic year. He argues that E will start high school in September, 2017, therefore, by the writer’s estimation, she will be home schooled from January 2017 to June 2017. This writer is unaware if [the Father] has prior experience home schooling, and if not, then he will need preparation or need to become part of an association. While in his affidavit he gave details of potential schools, he did not provide any information about his research on home schooling.”

65. It should be pointed out that, the Father was very critical about the Social Worker Ms. Barnes’ Report and recommendations. One of the aspects of her Report that is criticized

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is where she suggests that the Father said he had rejected advice from his lawyer to make the application next year when E would be ready for high school and that he said to her that he will not wait until next year to make the application. In response, the Father in his affidavit filed 11 October 2016, said that at no stage did he reject advice to make the application later next year. He states that his first position was always that the children should return to begin school in September 2017. He claims that it was only in discussion with Ms. Barnes that it was she who suggested an earlier date. At paragraphs 46 and 47, he states as follows:



“46. When I met with Ms. Barnes, I conveyed to her that I wished the children to return to England at the end of school term in June 2017. I specifically explained to her that I thought this was best for them so as not to disrupt their school year. I also explained that E was due to start in 2017 and that this was always my plan.

47. Ms. Barnes then asked me why I would not bring the children to England sooner. I explained that I had not thought of that but if it was possible then I would. To say that I would not wait is therefore, completely inaccurate.”

66. This is what he had to say at paragraph 51:

“Ms. Barnes also mentions home schooling and appears to hold this comment against me. I say comment, because, when Ms. Barnes asked me why I would not want the children back in England sooner, I explained that I would not disrupt their school year. I also explained that based on my research, E would need to be in the UK (albeit temporarily) to apply for State schools. Likewise, many of the preferred private schools would like to arrange interviews with E, around that time. The issue of ‘homeschooling’ was a mere thought and one that was brought up in conversation with Ms. Barnes for literally a matter of seconds. I have no

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intention of having the children homeschooled. This is ridiculous. The reality is that in England all children have to be found a place in school."

67. Mr. McGrath quite understandably cross-examined the Father on this issue, and asked how he reconciles the seemingly contrary contents of his two affidavits, and his suggestion that this was all Ms. Barnes' doing. The Father's response was that home-schooling was never a serious comment, it was just a throwaway comment.
68. I must say that I did not find this aspect of the Father's application to be well-researched at all. I also did not find his explanation for the inconsistencies in his affidavit evidence, nor his blaming Ms. Barnes, credible. It is plain, whatever the trigger for his thoughts, that in his application he was suggesting and proposing to homeschool. In fact, I cannot help but think that it seems somewhat short-sighted in nature, and quite self-centered to contemplate taking these children out of a settled well-reputed private school here in the Cayman Islands and take them into the unknown of home schooling, before being settled in private schools in England, simply so that the Father can have the children with him. This at a time when he has no settled employment, and is plainly contemplating the Mother continuing to support himself and the children for some time, including funding his uncertain proposals for the children.
69. In addition, the Father in his substantive affidavit lists a number of private school options, but all of these schools have selective entry, no guarantee of acceptance, and are expensive. There is no back-up plan proposed in the Father's affidavits in respect of State education in the event that E does not secure a place at a private school, or if such schooling should not prove affordable.
70. The Father has blithely suggested expensive private school options at a time when he is not even in employment, and thus, it is obvious that it will be the Mother that will have all of the future financial responsibility for providing for E and A, at least in the short-term, if not medium, or long term. It does seem to me that the Father's proposals are ill-

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conceived, somewhat cavalier and as Mr. McGrath describes them in his closing submissions, "*tantamount to economic irrationality and thoughtlessness.*"

71. In *Payne v Payne* (paragraphs 40-41), Thorpe LJ pointed out that if the application fails either of the tests of genuineness or of being realistic or practical, refusal will almost inevitably follow.

(vi) The impact on the Father if the application is refused.

72. This factor is really to be considered if the Court considers the Father's proposals to be genuine, as well as realistic. I have already indicated that the Father's proposals do not satisfy the test of being realistic or practical. Be that as it may, I discuss this aspect of the matter briefly.

73. The Father in his June affidavit indicates that having been a very hands-on Father in his relationship with the children, the impact on him if his application were to be refused, would be devastating and would create an "*enormous hole in his life*".

74. Having reviewed the matter, I am satisfied that the Father will be very unhappy if his application is refused. This is but a factor to be taken into account when considering the appropriate order to make, and how it may affect the welfare of the children, which is paramount. However, in so far as the Father's proposals are unrealistic, it is plain that his unhappiness and the effect on him of a refusal is not properly to be placed high amongst the Court's list of considerations, if at all, and in any event, would be outweighed by other considerations.

(a) Wishes of the children

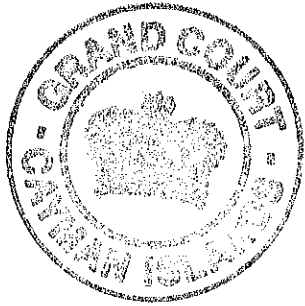
75. The cases are replete with references to the Social and Welfare officers serving as the Court's eyes and ears. Section 3 (1) (a) of the *Law* requires the Court to have regard to the ascertainable wishes and feelings of the child concerned, considered in the light of his

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or her age and understanding. E is of an age that the Court will have regard to her wishes; the question will be what weight to attach to them. A on the other hand, is of an age and general understanding such that very little weight or store should be placed upon his wishes.

76. Ms. Barnes describes both E and A as happy, fun-loving children. With regards to the wishes of E, she had this to say, at paragraph 78 of the Report:



“78. On [sic] numerous conversations with her, she expressed that she would like her parents to be living in the same country, no matter which country, even New York or California. Before she went to England for the Summer, she said that if she had to choose, school in Cayman is good, while holiday in Cayman is great. However, after she returned from England she still wanted her parents in the same country but felt that England will offer her more opportunity to further her career. She said “I want to live in England because I saw all the possibilities when I went on holiday, I want to be a professional actor or a scientist.” She added that she would like to attend a special performing arts school - Brit School. She concluded that she would like co-parenting.”

77. In this regard, I note that at paragraph 116 of the Welfare Report, Ms. Barnes indicates that the Father forwarded to her consultation notes from the General Practitioner, Dr. Jinah, who E saw in England during the Summer, whom *“he said E asked to discuss her feelings with, detailing a conversation where E told her she wants to stay in England.”* Ms. Barnes attached the Notes.

78. In her oral evidence, Ms. Barnes expressed concern about this, because she said that she found it odd that the Father would take E to speak to the General Practitioner in circumstances where it was the Father who asked the Doctor to record the conversation in her Notes. Ms. Barnes put this in the context that in her view, prior to going to England, E was not harping on living in England; she was a happy girl, not dwelling on where she

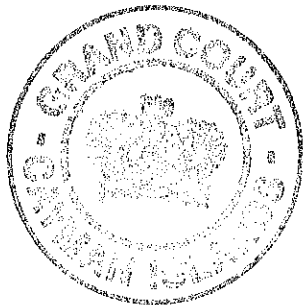
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wanted to live. Most of the times when she spoke on the subject, she did say that she wanted her parents to live in the same country, but that she even said this could be New York or Los Angeles, California. The Social Worker plainly found it peculiar that the Father would ask the Doctor to talk to E, and record what E said, and that the conversation had to do with living in England, a subject that he knew was to be dealt with by the Court, and where the wishes of the children would come up for consideration.

79. In his evidence, the Father insisted that it was because E was comfortable with the Doctor that she wanted to talk to her about where she wanted to live, and that he did not influence things in any way. I must say that I share the views of the social worker Ms. Barnes; it is odd. My assessment of the Notes, and of the Father, his evidence and demeanour, is that he has produced these Notes in the interests of affecting the outcome of the proceedings, and that he has had some influence on these recorded statements of E.

80. This is what the Doctor's Notes record:



"History

seen with dad. E has an opinion about where she wants to stay following the breakdown of her parents' marriage. Her father wanted this to be documented in her medical notes.

I spoke with E with her father out of the room.

She has stated a preference to stay with her father in the UK. She feels much happier here as there are more activities for children her age. she also prefers the schooling system and she has been to visit a few schools in the local area which she likes.

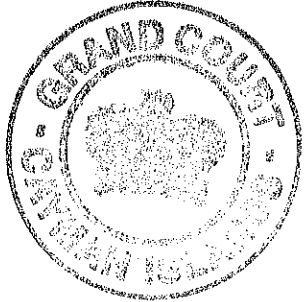
She is aware of how life in the uk is having lived here until the age of 6.

She reports that she has not been under any pressure/influence from her father to tell me she wants to stay here.

Should she move here she would like her mother to move back to [sic]. I asked her what she thought if her mum did not - she stated she would still like to live in the UK without her mother.

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Comment I have explained to E and her father that this information is only being recorded as she has come to see me and feels she can talk to me about this.

It seems the issue of custody of the children will be decided by a court - they will have the ultimate decision and will likely make their own assessments.

Should they need any information from her medical records it [sic] should be made in writing to the practice."

(My emphasis)

81. Notwithstanding my views as to the circumstances leading to this occurrence, I bear in mind the views of E, though I have not given these latterly expressed wishes great weight, because of the manner in, and timing with which they have come to be expressed. I also take into account the fact that E is still very young, and seems to have, and is understandably, likely to have equivocal wishes and desires at this unfolding and early stage of life.

82. Ms. Barnes said she had not asked A his wishes about his preference until after he went on vacation with the Father in England. Of her interview after his return, at paragraph 81 Ms. Barnes recounts:

"A was asked where he would like to live. He said he will live in England and visit his mother in Cayman. He said he likes England because they have a large Toys R Us and he feels the toy stores in Cayman are too small."

83. Plainly, A is very young, and this makes it difficult to ascertain his wishes and feelings. In addition the views which he has expressed have to be considered in the light of his age and understanding. Indeed, his response to Ms. Barnes was manifestly focused on the question of the adequacy of toy stores, quite understandable in a child of his age, but hardly a basis upon which to consider what is best for his welfare.

(c) The likely effect on the children of any change in circumstances

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84. In my judgment, the views expressed by both the Mother and Ms. Barnes are apt. At this difficult and vulnerable stage of the children's lives, dealing with their parents' recent separation, and at this stage seeming to have been re-adjusting with resilience and fortitude, it would be detrimental to the children to change their circumstances in the way suggested by the Father, particularly because of the radical and uncertain nature of his proposals.

Subsections (d) and (e) of the *Law*

85. The issues set out at sub-paragraph 3 (1) (d) are not of any great significance in this case. Additionally, in my judgment, there is no evidence of any harm and thus this factor is not relevant to my consideration.

(f) How capable each parent is of meeting their needs

86. These parents, despite criticisms of parenting styles levelled at each other in their evidence, particularly by the father at the mother, are, in my judgment both very good, loving parents. In my view, both parents are capable of meeting the children's emotional needs. However, I am concerned that the Father has demonstrated some ill-advised methodology, plans and proposals in the manner in which this application has been made, and that suggests to me that he is less able to adequately deal with the children's emotional needs. That said, however, it is obvious that he is a loving and generally very good, well-organized father.

87. Both parents are capable of meeting the children's physical needs. However, it is the Mother that remains the sole breadwinner. As regards Education, it seems to me that the benefits in Cayman are certain at this time, as provided by the mother, whereas what is proposed by the Father in England is shrouded with uncertainties.

(g) Range of powers available to the Court

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88. To some extent, the adverse effect on the Father of his application being refused, will be offset by the children spending considerable portions of the School holidays with him and continuing to have Face-Time contact as he now has when he wishes. The contact proposals set out at paragraph 99 of the Wife’s affidavit filed 1 July 2016 appear to contemplate considerable contact with the Father and I am prepared to approve them, subject to any fine-tuning that Counsel may want to carry out.

CONCLUSION

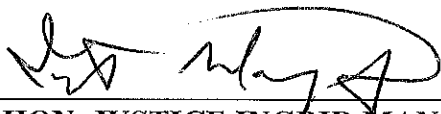
89. Although relocation cases are difficult, in this case, it seems to me that the circumstances and the nature of the application, lead inexorably to the reasonable conclusion that the application must fail.

90. To repeat the words of Ms. Barnes, at paragraph 120 of her Report:

“The children are settled in Cayman, their needs are being met, they share a loving, stable relationship with their mother, they are safe, they are receiving quality education, they have friends and they are happy.”

91. It is plain to me that this Court would be failing in its duty of regarding the welfare of each of these children as paramount if it were to grant the Father’s application and remove the children from their present satisfactory circumstances, and put them into uncertain and amorphous terrain.

92. In all of the circumstances, the Father’s application to relocate the children is refused. As so reasonably agreed by the Mother from the outset in her Opening Submissions, (hence obviating the need for argument on this aspect of the application), there shall be no order as to costs.



**THE HON. JUSTICE INGRID MANGATAL
JUDGE OF THE GRAND COURT**

