

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

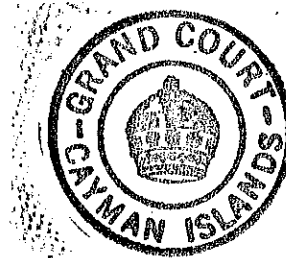
**CAUSE NO.s FAM 237 of 2013
& FAM 247 of 2014**

BETWEEN:

AND

IB

JE



Petitioner

Respondent

Appearances: Mr. David Holland of KSG Attorneys at Law for the Petitioner
Mrs. Karin Thompson for the Respondent

Before: Hon. Justice Richard Williams

Heard: 6-8 July 2016, 26-30 June 2017 & 4-7 July 2017

**Draft Judgment
circulated:** 31 August 2017

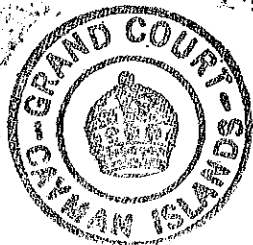
Date of Judgment: 11 September 2017

HEADNOTE

Family Law - Children - s.15 Children Law application for leave to permanently remove child from jurisdiction - mother wishing to relocate to Mexico City, Mexico with child - s.3 Children Law paramountcy principle and application of the 'welfare checklist' to s.15 applications - relevant considerations to be applied to permanent and temporary having regard to Payne v Payne, K v K, and Re F - relevant considerations to be applied to temporary removal applications - applicability of Article 7 and Article 9 Bill of Rights to removal cases - shared residence and child arrangements under s.10 Children Law - approach to recommendations made in s.9 Welfare Officers Reports - Practice Circular No.1/2014 and requirement for strict compliance with Court directions - GCR O.41, r.12 the form of documentary exhibits to affidavits

JUDGMENT

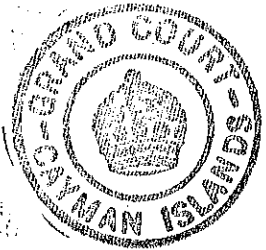
1. The Court is concerned with the welfare of one child, L, a 5 year old boy born on 12 December 2011. L is the only child of the parties - respectively IB "the



mother” and JE “the father.” L was born in and has since resided in the Cayman Islands, save for a period between September 2013 and February 2014 when the mother unilaterally removed him to Mexico. L has both Canadian and Mexican nationality.

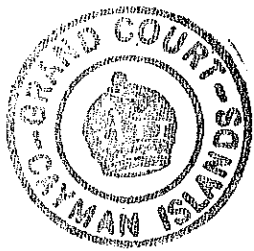
2. On 12 November 2013 I ordered that the Cayman Islands be deemed to be the country of residence for L for the purposes of the Hague Convention for the Prevention of the Abduction of Children. That order remains in force.
3. The current arrangements for L are governed by a Consent Interim Shared Residence Order dated 2 June 2014. Pursuant to that Order, L resides with the mother from 7:15 a.m. Monday to 5:00 p.m. Thursday and on Friday 7:15 a.m. to 5:00 p.m. L resides with the father at all other times. The collection and return of L continues to take place at George Town Police Station. On the same date a Prohibited Steps Order was made prohibiting either party from removing L from the Cayman Islands without the written consent of the other party or order of the Court.
4. The parents were married on 2 December 2009 in Grand Cayman. The mother left the matrimonial home in or around March 2014. The mother filed a Petition for Divorce on 19 November 2014. The Petition was proved on 11 February 2015. The ancillary relief proceedings have not been concluded.

5. The mother, a Mexican national, is aged 42 and the father, a Canadian national, is aged 42. The mother submitted a Permanent Residency ("PR") application on 24 February 2017 and she has permission to continue working pending the decision on her application. The mother states that she applied for PR, not because she wishes to work and stay here long term, but simply to enable her to remain in the Cayman Islands pending the determination of her relocation application. The mother indicates that she has been advised by her Immigration attorney that, when her application is eventually processed, there is a "*reasonable prospect*" of PR being granted to her. The father applied for PR in May 2016. He also has permission to continue working pending the decision on his application. Neither parent can say when their application will be considered due to the backlog in processing such applications by the Immigration Board. As I stated at paragraph 65 in *AK v TK* FAM 39 of 2015 (7 February 2017), the concerning delay in the processing of PR applications has created an ongoing unsatisfactory state of affairs for a number of cases in which families require the assistance of the Family Division.



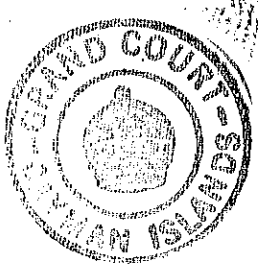
Applications and the Parties' Positions

6. The primary application before the Court is the mother's application for leave to permanently remove L from the Cayman Islands to relocate with her to Tlalpan in South Mexico City, Mexico. The application is not made by Summons. The mother indicated for the first time that she wished to make a relocation



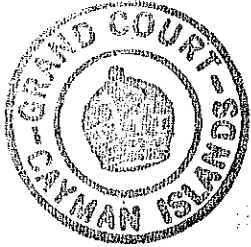
application at the mention hearing which was held on 18 December 2014 to case manage to the final private law children hearing scheduled to be heard for four days from 24 March 2015. As a consequence of the mother's indication, the Court retained the March 2015 hearing date and, by consent, dispensed with any requirement for the application to be made by Summons, but gave directions about the filing of affidavit evidence and for a Welfare Report dealing with the relocation effort. The father "*adamantly*" opposes the application, contending that removal would not be in the best interests of L. He states that L should not be able to visit Mexico until he reaches majority at aged 18.

7. The Court is also required to consider whether to make a shared residence order, which both parties consent to, as well as the best arrangements for L thereunder. If no order for permanent location is granted then the Court must also consider whether orders to temporarily locate for vacations should be made. Summonses were issued in relation to interim residence, but none have been issued in relation to long-term s.10 Children Law Orders. At the interim residence hearing on 2 May 2014 I gave directions towards a final residence and contact hearing. I am also conscious that, pursuant to s.3(3)(g) of the Children Law (2012 Revision) ("the Law"), I must have regard to the range of powers available to the Court under the Law in the current proceedings.



8. The mother's position is that, if she is permitted to relocate, there should be a shared residence order. She contends that L should have regular contact by Skype with the father. She suggests that L should alternate Christmas and Easter school holidays with the parents. She states that the father could come to Mexico and stay at her sister's property or in a hotel with L or, until L is about 8 years of age, she could accompany L to Cayman and he could stay with his father when his father was off-work. The mother believes that, if she is awarded permanent residency, she would be able to work in Cayman during the visits here. The mother wishes the two-month Summer holiday to be divided equally between the parents, with a one month period with each parent. The travel and residential arrangements for the Summer break would be the same as for the shorter school holidays. The mother indicates that the Mexican schools do not offer half-term holidays.

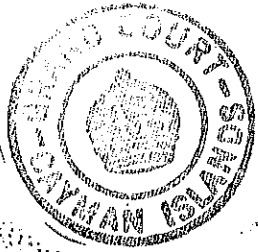
9. If leave to permanently remove is not granted, the mother contends that there should be a shared residence order. She believes that L should reside with her during the week and with the father from after school on Friday until 3:30 p.m. every Sunday when she finishes her work. The mother expressed that it is important for L to see his family in Canada, but that it is equally important that he sees his family in Mexico. She suggests that L should alternate Easter and Christmas holidays with the parents to enable that time to be spent in either Mexico or Canada. Suitable child arrangements should be made for Mother's



Day, Father's Day and birthdays. The mother contends that the Prohibited Steps Order preventing either parent from removing L from the jurisdiction should be discharged and that orders be made granting each party leave to temporarily remove L from the jurisdiction for vacations. The mother told the Court that, if an order for temporary removal was made, she would not make any child related applications in Mexico and she is willing to undertake that such proceedings should only be brought in the Cayman Islands where L is habitually resident. She stated during cross-examination that *"If I was in Mexico with (L) for any period of time, I [do] not intend to bring legal proceedings in Mexico. I want a resolution, [do] not want a legal battle for all our lives."*

10. The father's position is that, if the opposed application to permanently remove is granted, there should be a shared residence order. He first suggested that the arrangements under such an order should be for L to reside with him in the Cayman Islands at Easter and as much as possible at Christmas. He then said that L should be with him in the Cayman Islands at Christmas and the parties could alternate Easter. He told the Court that he could not travel to Mexico for safety and financial reasons, so L and possibly the mother would have to come to the Cayman Islands. When the Mother and L would be in the Cayman Islands, he suggested that the current residence arrangement should be followed, unless he was off work, in which case L should be with him in Cayman or be able to travel with him for a holiday to Canada.

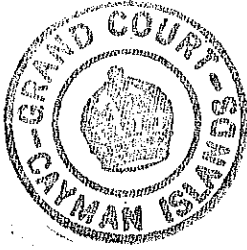
11. If an order for permanent relocation is not granted to the father, like the mother, the father commends the making of a shared residence order. He believes that the residence arrangements should reflect a 50/50 split in L's time with each parent. The arrangement under that order he suggests should be the same as it currently is, but he concedes that on the fourth weekend in a four weekly cycle L could spend that weekend with the mother. He said that he would be willing to be flexible with the above suggested arrangements if the mother's family were visiting the Cayman Islands. The father "*adamantly*" opposes the granting of any order for temporary removal to the mother in relation to L. He stated that "*I lost (L) once and I do not want to lose him again.*"



Further Introductory Remarks – The Nature of Relocation Applications

12. I am acutely conscious of the deeply upsetting nature of these proceedings, as well as the effect of any decision made in a relocation case to parents. Both parents have been openly emotional and tearful during the hearings, particularly the father, and I have this understandable reaction in mind when having regard to their demeanor and outbursts during the hearing. In *B v B* [2013] (1) CILR 271 at 281 paragraph 6 I shared Mostyn J.'s insightful observations about the sensitivity of relocation cases given at paragraph 4 in *Re AR* [2010] EWHC 1346 (FAM), where he stated:

"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. If the



decision is that the child goes, then the left-behind parent inevitably suffers a disruption to his relationship with the child, at the very least in quantum and periodicity of contact. If the decision is that the child stays then the primary carer, if not invariably, then frequently will suffer distress and disappointment in having what will normally be well-reasoned and bona fide plans for the future frustrated. So the decision, whichever way, is bound to cause considerable trauma."

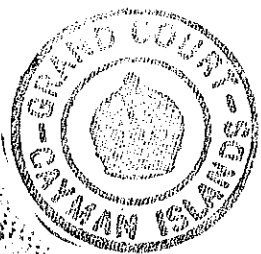
13. The following remarks of Thorpe L.J. in ***Re G (Leave to Remove)*** [2007] EWCA Civ. 1497 also provide a good insight into the nature of relocation cases and they merit repeating:

"[19] These cases are particularly traumatic for the parties, since each of them conceives so much as being at stake. They are very, very difficult cases for the trial judges. Often the balance is very fine between grant and refusal. The judge is only too aware of how heavily invested each of the parents is in the outcome for which they contend. The judges are very well aware of how profoundly the decision will affect the future lives of the children and how difficult it will be for the disappointed parent to adjust to the outcome....."

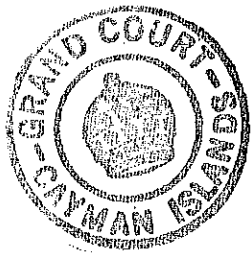
Procedural Background

14. These children proceedings have been unnecessarily protracted and I must consider the procedural background to catalogue how that has happened.
15. The proceedings were commenced by an Ex Parte Summons filed by the father on 8 November 2013 seeking the return of L to the jurisdiction from Mexico. On 12

November 2013 I ordered the immediate return of L to the Cayman Islands and I made an Interim Residence Order to the father. Having been provided with greater detail at this hearing about the events that occurred at that time, it is evident that the father's affidavit in support of that application was not as detailed as it should have been. However, despite the duty to give full and frank disclosure at an ex parte hearing, the gaps in the information were not such that my decision to make the orders that I did on the day would have been any different.



16. Following a request by the Central Authority of the Cayman Islands, the Family Court in Mexico City, in compliance with the Petition for Recovery, ordered the recovery of L to take place on 11 February 2014. L was located on 11 February 2014 and the parties attended at the Ninth Family Court in Mexico City, where a "*conciliatory hearing*" was held. At Court both parents were legally represented and they reached an agreement about the mechanism for L's return to the Cayman Islands. A copy of the court record in which the full terms of the agreement are set out was exhibited to the mother's affidavit sworn on 30 April 2014. It was agreed that they would all return on the same flights and that they would live in the same property in Grand Cayman until the mother was able to find her own property, at which time the father would contribute \$1,500 for six months.
17. The mother felt that she had inadequate time to prepare for that hearing as, on the morning of the hearing, she was provided with around one hundred and eighty

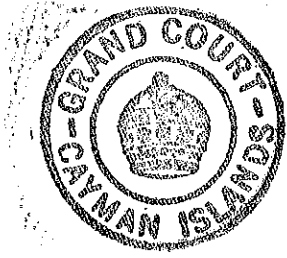


pages of documents (including the pleadings from the ex parte hearing before me in November 2013). The mother is critical of her lawyer in Mexico, as she believes that he failed to advise her that she could raise an objection to a return order pursuant to Article 13 of the Convention on the Civil Aspects of International Child Abduction ("The Hague Convention") based on her claim that L was at grave risk of harm as she contended that she had been a victim of domestic violence at the hands of the father. Having had the opportunity at this hearing to review the evidence of the mother concerning the father's alleged conduct towards her and L prior to the February 2014 hearing, although it is clear that the parties had at the time a dysfunctional relationship characterised by inappropriate outbursts, it is highly unlikely that she would have successfully established the Article 13 objection. From the exhibited Court records there is no mention of domestic violence being raised at the hearing.

18. Despite my concern about the Learned Judge in the Mexico Court indicating to the parties that L would be removed from them and placed in protective state care if they could not reach an agreement at the hearing and about the fact that there was no provision made in the agreement for L to see his mother in the five day gap before their return flights to the Cayman Islands, the approach taken by the Court in Mexico, on the information placed before it, and the Court's handling of the proceedings was most efficient.

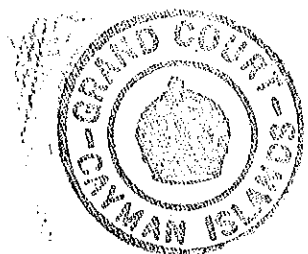
19. I can find no merit in the mother's allegation that the Enforcement Officers in Mexico, including Interpol Officers, who located and produced L before the Court had been bribed by the father. This is a comment that the mother made to Sherine Barnes, the first Court Welfare Officer, in or around September 2014. It is surprising that almost three years later, despite having had the opportunity to calmly review the events of 11 February 2014 and the opportunity to listen to the persuasive, and in my view accurate, oral evidence from the husband's Mexican lawyer, Mr. Cordero, the mother still maintains the unmeritorious and unattractive claim that there had been bribery. It is clear that the officers who attended at the property did so armed with a warrant issued by the Mexican Court and obtained in the appropriate manner pursuant to that country's obligations under the Hague Convention. The Mexican Central Authority, the Mexican agencies involved and the Family Court in Mexico City should be commended for the appropriate and timely manner in which they complied with the obligations of that State under the Hague Convention.

20. On 1 May 2014 the mother filed an application for an interim residence order as well as an application for protective injunctions and maintenance pursuant to the Protection from Domestic Violence Law 2010. On 20 May 2014 an ex parte injunction was granted. On the return date on 26 May 2014, the father's then attorney was not in a position to deal with a contested injunction hearing and the



injunctions were extended until 2 June 2014, when the interim residence application could also be heard.

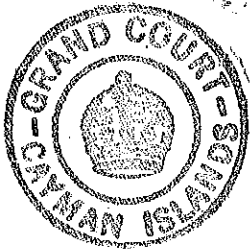
21. On 2 June 2014 the father voluntarily gave a written non-molestation undertaking. He also undertook to pay \$750 per month interim child maintenance as well as an additional \$125 each month when a bonus payment was received by him. He said that he could not afford to pay the \$1,500 agreed in the Mexican proceedings, as his income had been greatly reduced at work. An Interim Shared Residence Order was made by consent. The arrangement under that order was that from 7:15 a.m. on Monday until Thursday 5:00 p.m. and from Friday 7:15 a.m. until 5:00 p.m. on Friday L would be with the mother. It was agreed that at all other times L would be with the father. A Prohibited Steps Order was made prohibiting either party from removing L from the jurisdiction without the written consent of the other party or leave of the Court. A referral under s.9 of the Law was made for the preparation and filing of a Welfare Officer Report dealing with the issues of residence and contact by 25 August 2014. The Welfare Report was not filed until 9 September 2014. In that report the then Welfare Officer, Sherine Barnes, recommended that there be a residence order made in favour of the mother, with L having weekend contact with the father on three weekends per month. The father views Ms. Barnes as being biased in favour of the mother and he does not agree with the majority of the recommendations in her report or the factual basis upon which she says they were made.



22. At the mention hearing on 11 September 2014 directions were given to a four-day Children Law hearing, to be listed on the first open date after 15 January 2015. The Court was informed that there was a new Welfare Officer, Karelle Dacosta, and she was directed to prepare and file an Addendum Report addressing the welfare checklist by 28 November 2014. The Addendum Report was filed on 24 November 2014. On 3 November 2014, a Notice of Hearing was issued, to inform the parties that the final Children Law hearing would be heard on 24 March 2015.

23. On 19 November 2014 the mother filed her Petition for Divorce. No Answer having been filed by the father, the Petition was later proved on 11 February 2015.

24. On 2 December 2014, the father's current attorney came on the record for him. At a mention hearing on 18 December 2014 the Court was informed that the mother had filed a Divorce Petition, but that it was still to be served on the father. At the hearing the mother told the Court for the first time that she intended to make an application for leave to permanently remove L to Mexico. Directions were given in relation to that application, which was then listed to be heard at the same time as the other children issues at the four-day final hearing commencing on 24 March 2015.



25. At the hearing on 18 December 2014 a direction was given for the provision of a Welfare Report to address the relocation application. On 10 March 2015, the third Welfare Officer to be involved in these proceedings, Keisha Smith, filed that report. Ms. Smith recommended that L remain in the Cayman Islands until his parents were “*rolled over*” for immigration purposes in 2017. She recommended that L spend weekends with his father every Friday until Monday.
26. At the pre-trial mention hearing on 17 March 2015, the Court was informed that the father had failed to file his affidavit by the directed date of 30 January 2015. The four-day hearing on 24 March 2015 had to be vacated due to the late filing of the father’s affidavit, as well as Legal Aid and listing issues. The parties were directed to obtain a new hearing date and directions were given to that hearing.
27. On 10 April 2015 the mother filed a Summons seeking (i) child maintenance orders; (ii) orders in relation to maintenance arrears; (iii) orders in relation to medical insurance; and (iv) a protective injunction. On 14 May 2015 the father filed a Cross-Summons seeking a protective injunction pursuant to the Protection from Domestic Violence Law 2010. When the Summonses came on for hearing on 5 June 2015 they were adjourned generally, with the mother giving formal written undertakings and the father’s existing undertakings being reiterated. Accordingly, no findings of fact have hitherto been made in relation to each party’s allegations about domestic violence inflicted upon them by the other. At



the hearing when contact arrangements were discussed, I expressed a concern about the father videoing the contact handovers and his excessive inspection of L for any injuries. The hearing to determine the Children Law issues, including the removal application, was listed for four days commencing on 22 September 2015.

28. On 21 August 2015 Karelle DaCosta, who again became the allocated Welfare Officer, filed her Addendum Welfare Report. In her report Ms. DaCosta recommended that leave be given to the mother to relocate with L to Mexico. She suggested in the report that L should spend half of his Summer holidays, all of his Easter holidays and alternate Christmas holidays with the father. Ms. DaCosta also made recommendations for possible orders if leave to permanently relocate was not given, which included (i) L residing with the mother save for three weekends per month when he should be with his father from Friday until Monday; (ii) L being with his father for one evening in the week before the no contact weekend; and (iii) leave to the mother to temporarily remove L to Mexico for holidays.

29. On 3 September 2015 leave was given to the parties to file updated affidavits and I stressed the importance of the hearing proceeding on 22 September 2015. The father, as he had done with Ms. Barnes, also viewed Ms. DaCosta as being biased in favour of the mother and, similar to his position in relation to Ms. Barnes, he



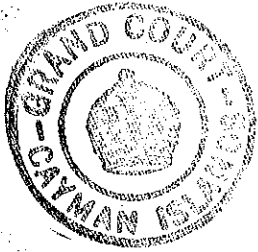
does not agree with the majority of the recommendations in this report and in her later report as well as the factual basis upon which she says they were made.

30. On 21 September 2015 McMillan J, understandably, administratively felt compelled to vacate the 22 September 2015 four-day hearing due to a bereavement in the father's attorney's family.

31. Regrettably, between September 2015 and January 2016 there appears to have been, particularly by the father, insufficient marshalling of the case to properly progress this matter. In January 2016 the mother's attorney wrote to the Listing Officer requesting the provision of a new final hearing date. This was followed-up by further emails from him in February 2016 in which he noted that Ms. DaCosta was expressing concern about the delay. From the record, it was not until around 16 February 2016 that the father's attorney actively involved herself in written communications with the Listing Officer about a new hearing date. She expressed concerns about the father not having Legal Aid and stated that she was not, at the time, in a position to continue in the proceedings. She indicated that she hoped to be in a position to indicate whether she could proceed as his attorney by close of business on 26 February 2016.

32. As no Notice of Hearing is on file, it is unclear when the parties were notified about the new hearing date of 17 May 2016. It is clear from an email sent by the

mother's attorney to the Listing Officer on 6 May 2016, in which a request was made for a formal notice to be issued, that the parties were aware of the hearing date. On 10 May 2016 I was asked by the Legal Aid Officer for, and I provided on the same day, my comments concerning the mother's application for an extension of her Legal Aid. As the matter was not reserved to me, and in the absence of any applications, this was the first time that I been asked to review the file since 3 September 2015. The extension to the mother's Legal Aid Certificate was granted on 11 May 2016.



33. On 17 May 2016, the final hearing came on before Mangatal J., but it was vacated due to the father's Counsel being unwell. The final hearing was re-fixed for 6 July 2017 for three days, with Mangatal J. indicating that *"the trial date in July is to be treated as the final date and is a priority fixture for the hearing to take place before any judge."* On the same day a Notice of Hearing was issued indicating that the child arrangement hearing was fixed for 6 July 2016 with a three-day time estimate.

34. This final hearing eventually commenced before me on 6 July 2016. Unfortunately, at the end of the listed final third day of the hearing, the hearing had to be adjourned part-heard, as the three-day time estimate which the attorneys had provided to Mangatal J. on 17 May 2016 proved to be wholly unrealistic.

35. On 30 November 2016 the Listing Officer offered a hearing date commencing on 13 March 2017 to the parties. On 14 December 2016 the mother's attorney contacted the Listing Officer indicating that, in the absence of any reply from the attorney for the father about fixing a date for the conclusion of the part-heard final hearing, the hearing should now be fixed for 13 March 2017. On 12 January 2017 the mother's attorney contacted the Listing Officer and again expressed concern about the lack of contact from the father's attorney relating to the listing process. He sought confirmation that the hearing had been listed for four days commencing on 13 March 2017.

36. It appears that the Listing Officer was trying to schedule the concluding part of the hearing for 13 March 2017 but, since 30 November 2016, she had been unable to receive confirmation from the father's attorney about her availability on that date.

37. On 30 January 2017 a written communication was sent to the Governor's Office from the Mexican Embassy in Kingston, Jamaica in which concern was expressed about the delay in these proceedings and about the mother's immigration status. On 31 January 2017 I was informed about the listing difficulties and, on my own motion, I directed that a mention hearing be set for the first available Family Mention Day. On 31 January 2017 a Notice for the mention hearing to be heard on 24 February 2017 was issued.

38. At the mention hearing held on 24 February 2017 I reluctantly had to vacate the tentative 13 March 2017 four-day hearing date to ensure that the father's attorney would be in a position to represent him. Directions were given to a five-day hearing to conclude this part-heard matter. I directed the mother to file and serve an updating affidavit concerning her immigration status by no later than fifteen working days prior to this hearing. Regrettably, that affidavit was filed late namely, on 7 June 2017. I also directed the parties to file any additional affidavits by no later than twenty working days prior to the hearing. The parties failed to file any further affidavits. As a consequence of that, documentary and some oral evidence has been provided in a disorganised and piecemeal fashion for the first time at this hearing, rather than being exhibited in or shared in the proper manner in an affidavit. Although both parties consented to this new evidence being produced in this way at the outset of the second part of this part-heard hearing, the resultant inconsistency in the bundles and need to take updated instructions has caused this hearing to drag on longer than it should have done. Parties before the Family Division are yet again reminded of the requirement, pursuant to *Practice Circular No. 1/2014*, for strict compliance with directions made by the Court.

39. There were also difficulties with the bundles, as the parties did not seem to have the same exhibits to each affidavit and if they did they were in a different order. This undermined the benefits to be derived from well-organised matching bundles envisaged by *Practice Direction No. 11/2014 'Court Bundles in Family*



Proceedings’ (“PD 11/14”). Ordinarily any document to be used should be produced in conjunction with an affidavit by being made an exhibit. Parties before the Family Division in Children Law Proceedings should have regard to GCR O.41 and, due to the inefficiencies in the matter now before me, particular attention should be paid to O.41, r.12 which clearly sets out the form of documentary exhibits to affidavits. I accept that *Practice Direction No. 1/99 ‘Filing Documents in Court’* at 3.5.4 and O.41, r.9(2) means that exhibits should not be filed, but this makes it more important that the requirement for the form of exhibits under O.41, r.12 is adhered to when the copy exhibits are made available to the Judge in the hearing bundle when it is filed in advance of the hearing in compliance with PD 11/14.

40. Karelle DaCosta filed her updating Welfare Report on 16 June 2017. The father, citing bias on behalf of Ms. DaCosta, failed to comply with his obligations to assist in the reporting process, as he refused to meet with her. Her recommendations in the report did not differ from those set out in her earlier report filed on 21 August 2015.
41. This hearing has been spread over twelve days, regrettably with almost a year’s gap between the first and second part of the hearing. Following the receipt of oral closing submissions I adjourned with the reserved judgment to be delivered. This is the reserved Judgment.

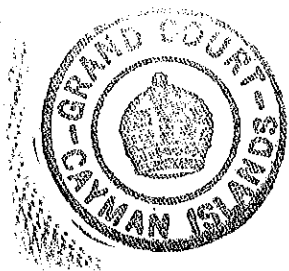
42. It is clear that there has been an inordinate delay in the hearing and conclusion of this unnecessarily protracted matter. The reasons for the delay which are set out herein are self-evident and most regrettable when one recognises the importance of the delay principal enounced at s.3(2) of the Law.

The Law - Permanent Relocation Applications

43. This is not a case in which the parties have sought a determination about whether there is a shared care arrangement or about who is the primary carer of L. Before the mother's return from Mexico in February 2014 she could have been regarded as being the primary carer for L. Following her return it is evident that the parties have both played highly significant roles in the care of L. The parties should be commended for not occupying Court time arguing about the label they may wish to attach to their interaction with L. Cases are no longer categorised into primary carer or shared care cases. I see merit, as I did in my Judgment in the case of **B v B**, in again sharing the sentiments expressed by Black L.J. at paragraph 145 in **K v K Relocation: Shared Care Arrangements**) [2012] FAM.134; [2012] 2 W.L.R. 941; [2012] 2 FLR 880; [2011] 3 F.C.R. 111; [2011] EWCA Civ 793¹ where she stated that she would:

"...not expect to find cases bogged down with arguments as to whether the time spent with each of the parents or other aspects of the care arrangements such to make the case "a Payne case" or "a Re Y case"', nor.... expect preliminary skirmishes over the label to be

¹ Hereafter referred to as **K v K**.



applied to the child's arrangements with a view to a parent having a shared residence order in his or her armoury for deployment in the event of a relocation application."

44. In ***B v B*** I conducted a full review of and applied the authorities emanating from the Cayman Islands and from England and Wales in developing the approach to permanent relocation applications. Upon the appeal of my orders, the Court of Appeal approved this Court's consideration of the applicable case law in their decision which is reported at ***B v B*** 2014 (2) CILR 234. During the hearing and in their closing oral submissions, both of the parties agreed that the approach to the law set out by this Court and approved by the Court of Appeal in ***B v B*** is the correct one to be applied in this case. They agreed that ***Payne v Payne*** [2001] Fam 473; [2001] 2 W.L.R. 1826; [2001] 1 FLR 1052; [2001] 1 F.C.R. 425; [2001] EWCA Civ166² should be read in the context of ***Re F (Child: Permission to Relocate)*** [2013] 1 FLR 645; [2012] 3 F.C.R. 443; [2012] EWCA Civ 1364³ and ***K v K***, the latter case now being regarded as the starting point instead of ***Payne***. The parties acknowledged that the only principle to be extracted from ***Payne*** is that the welfare of the child is paramount, although the guidance in the case goes to the factors to be weighed when considering the welfare principle.

² Hereafter referred to as ***Payne***.

³ Hereafter referred to as ***Re F***.

45. Unlike in *B v B*, the governing statute for this case is the Law and not the Guardianship and Custody of Children Law (1996 Revision). Section 15 of the Children Law provides that:

"(1) Where a residence order is in force with respect to a child, no person may-

(a) [...]

*(b) remove him permanently from the Islands;
without either the written consent of every person who has
parental responsibility for the child or the leave of the
court.*

(2) Subsection 1(b) does not prevent the removal of a child, for a period of less than one month, by the person in whose favour the residence order is made.

(3) In making a residence order with respect to a child the court may grant the leave required by subsection (1) (b), either generally or for specified period."

46. With this in mind, I remind myself of the paramountcy of the welfare of L, as s.15 is governed by the welfare principle in s.3(1)(a) of the Law. By reason of s.3(4) of the Law, the 'welfare checklist' in s.3(3) is not a necessary part of the Court's analysis on a s.15 application. While the welfare checklist is not a required consideration for the analysis of welfare in s.15 cases, the Court of Appeal in England and Wales has commended its use on many occasions. For example, in *Re F* at paragraph 37 Munby L.J. stated that:



".... From beginning to end the child's welfare is paramount, and the evaluation of where the child's best interests truly lie is to be determined having regard to the "welfare checklist in s.1(3)."

Of course the considerations in s.3(3) of the Law are directly applicable to the decision to be made in relation to the s.10 residence and contact issues which are also before me.

47. International relocation cases engage Article 6 (right to a fair trial) and Article 9 of Part 1, Bill of Rights, Freedoms and Responsibilities, of the Cayman Islands Constitution Order 2009 ("the BOR"). Any dispute about the applicability of the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950 ("ECHR) were settled in *Glaser v United Kingdom* (Case No. 32346/96), [2001] 1 FLR 153 at (57 to 65):

"(57) [...] It is not disputed that these matters concern 'family life' within the meaning of Art 8 of the Convention and that this provision is applicable.

[...]

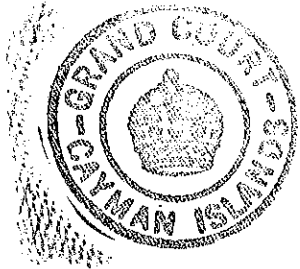
(63) The essential object of Art 8 is to protect the individual against arbitrary interference by public authorities. There may however be positive obligations inherent in an effective 'respect' for family life. These obligations may involve the adoption of measures designed to secure respect for family life even in the sphere of relations between individuals, including both the provision of a regulatory framework of adjudicatory and enforcement machinery protecting individuals' rights and the

implementation, where appropriate, of specific steps (see, amongst other authorities, *X and Y v The Netherlands* (1985) 8 EHRR 235, and, *mutatis mutandis*, *Osman v United Kingdom* [1999] 1 FLR 193. In both the negative and positive contexts, regard must be had to the fair balance which has to be struck between the competing interests of the individual and the community, including other concerned third parties, and the State's margin of appreciation (see, amongst other authorities, *Keegan v Ireland* (1994) 18 EHRR 342).

(64) Where the measures in issue concern parental disputes over their children, however, it is not for the court to substitute itself for the competent domestic authorities in regulating contact questions, but rather to review under the Convention the decisions that those authorities have taken in the exercise of their power of appreciation.

(65) The court's case-law has consistently held that Art 8 includes a right for a parent to have measures taken with a view to his or her being reunited with the child, and an obligation for the national authorities to take such measures. This applies not only to cases dealing with the compulsory taking of children into public care and the implementation of care measures (see, *inter alia*, the *Olsson v Sweden* (No 2) (1992) 17 EHRR 134), but also to cases where contact and residence disputes concerning children arise between parents and/or other members of the children's family (eg the *Hokkanen v Finland* (1995) 19 EHRR 139, [1996] 1 FLR 289) [...]

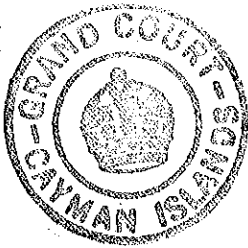
The key consideration is whether those authorities have taken all necessary steps to facilitate contact as can reasonably be demanded in the special circumstances of each case (*mutatis*



mutandis, Hokkanen v Finland (1995) 19 EHRR 139, [1996] 1 FLR 289)."

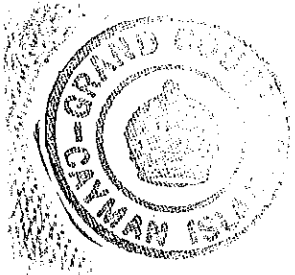
48. I am guided by the following observations of Dame Butler – Sloss confirming the application of the ECHR to private law children proceedings when considering the interrelationship of the ECHR and the Children Act 1989 in **Payne**:

"81. The Human Rights Act 1998 came into force in October last year and all the previous decisions have to be scrutinised in the light of the European Convention on Human Rights. In anticipation of the Convention, on an application for permission to appeal Ward and Buxton LJ in re A (permission to remove child from jurisdiction: human rights) [2000] 2 FLR 225, refused the father permission to appeal. In that case the mother had been given leave by the Recorder to remove a ten month old girl permanently from the jurisdiction to the United States in circumstances where the mother's job prospects were better in New York than in England. The father, (in person) raised the question of a breach of his right under Article 8(1). The Court considered the effect of Article 8 but saw no reason to interfere with the established line of authority followed by the judge and which bound this Court. Buxton LJ doubted whether the difficult balancing exercise performed by the judge came within the purview of the Convention at all. The question whether the Convention applied to private proceedings would appear to me to have been settled by the decision of the European Court in Glaser v The United Kingdom, [2000] 3 FCR 193 in which a Chamber of the Court held that there were no violations of Article 8 and of Article 6 in a case where a father's application related to failures

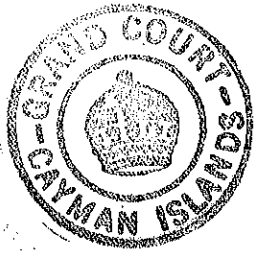


in enforcing contact orders both in England and in Scotland. The Court rejected the application on its merits, see also the decision of this Court in Douglas, Zeta-Jones and Northern Shell plc v Hello plc [21st December, [2000] unreported].

82. All those immediately affected by the proceedings, that is to say, the mother, the father and the child have rights under Article 8(1). Those rights inevitably in a case such as the present appeal are in conflict and, under Article 8(2), have to be balanced against the rights of the others. In addition and of the greatest significance is the welfare of the child which, according to European jurisprudence, is of crucial importance, and where in conflict with a parent is overriding (see Johansen v Norway [1996] 23 EHRR 33 at pp 67 and 72). Article 8(2) recognises that a public authority, in this case the court, may interfere with the right to family life where it does so in accordance with the law, and where it is necessary in a democratic society for, inter alia, the protection of the rights and freedoms of others and the decision is proportionate to the need demonstrated. That position appears to me to be similar to that which arises in all child-based family disputes and the European case law on children is in line with the principles set out in the Children Act. I do not, for my part, consider that the Convention has affected the principles the courts should apply in dealing with these difficult issues....."



49. I am conscious that, were I to grant the mother's application to relocate to Mexico with L, it would result in an interference with the BOR Article 9 rights of the father and of L to respect their family life. Any such interference must be justified, reasonable, proportionate and in accordance with the law. There is a



positive obligation on the State, and therefore on the Court, to take measures to maintain the relationship between parent and child. As stated in *Gnahoré v France* (Application No 40031/98) (2002) 34 EHRR 38):

"The mutual enjoyment by parent and child of each other's company constitutes a fundamental element of family life."

50. At one time the starting point in relocation cases was seen to be the approach taken in *Payne*, especially if the applicant was the primary carer of the child. In *B v B Chadwick*, P helpfully summarised the approach derived from *Payne* by relating Thorpe L.J.'s remarks in the following manner:

"9. In Payne v. Payne (9), Thorpe, L.J. had said this ([2001] Fam., at 483–485):

"In summary a review of the decisions of this court over the course of the last 30 years demonstrates that relocation cases have been consistently decided upon the application of the following two propositions: (a) the welfare of the child is the paramount consideration; and (b) refusing the primary carer's reasonable proposals for the relocation of her family life is likely to impact detrimentally on the welfare of her dependent children. Therefore her application to relocate will be granted unless the court concludes that it is incompatible with the welfare of the children.

...

Thus in most relocation cases the most crucial assessment and finding for the judge is likely to be the effect of the refusal of the application on the mother's future psychological and emotional stability."

Thorpe, L.J. went on to suggest a disciplined approach to the findings a judge will need to make in cases of this nature. He said this (ibid., at 488):

"However, there is a danger that if the regard which the court pays to the reasonable proposals of the primary carer were elevated into a legal presumption then there would be an obvious risk of the breach of the respondent's rights not only under article 8 but also his rights under article 6 to a fair trial. To guard against the risk of too perfunctory an investigation resulting from too ready an assumption that the mother's proposals are necessarily compatible with the child's welfare I would suggest the following discipline as a prelude to conclusion:

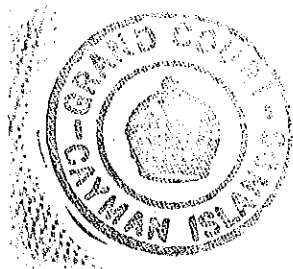
(a) Pose the question: is the mother's application genuine in the sense that it is not motivated by some selfish desire to exclude the father from the child's life. Then ask is the mother's application realistic, by which I mean founded on practical proposals both well researched and investigated? If the application fails either of these tests refusal will inevitably follow.

(b) If however the application passes these tests then there must be a careful appraisal of the father's opposition: is it motivated by genuine concern for the future of the child's welfare or is it driven by some ulterior motive? What would be the extent of the detriment to him and his future relationship with the child were the application granted? To what extent would that be offset by extension of the child's relationships with the maternal family and homeland?

(c) What would be the impact on the mother, either as the single parent or as a new wife, of a refusal of her realistic proposal?

(d) The outcome of the second and third appraisals must then be brought into an overriding review of the child's welfare as the paramount consideration, directed by the statutory checklist insofar as appropriate.

In suggesting such a discipline I would not wish to be thought to have diminished the importance that this court has consistently attached to the emotional and psychological well-being of the primary carer. In any evaluation of the welfare of the child as the paramount consideration great weight must be given to this factor."

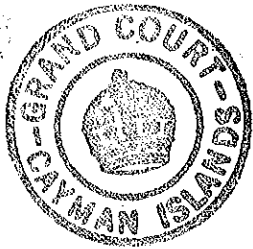


51. At paragraphs 74 and 79 in **B v B** I noted the trend moving away from a rigid application of the guidance given in **Payne** and the reasons for that. In **Re F** clarity was given to the type of approach that should now be taken. At paragraphs 79 to 84 in **B v B** I quoted extensively from the judgment of Munby L.J. in **Re F**. Although I again have regard to that content, for the purposes of this Judgment, I restrict myself to reproducing the more concise extract from Munby L.J.'s Ruling at paragraph 12 and my observations found at paragraph 13 of the Judgment of Chadwick, P in **B v B** where the President stated:

"12. The judge quoted extensively from the judgment of Munby, L.J. in Re F (Child: Permission to Relocate) (4) (a judgment with which the other members of the court, Pill and Toulson, L.JJ. had agreed). It is, I think, unnecessary for me to set out the whole of his quotation again in this judgment. It is enough to refer to the following paragraphs in the judgment in Re F:

[29] The starting point now must be K v. K (Relocation: Shared Care Arrangements) ... Its central message is conveyed, succinctly and accurately, in the headnote in the Law Report:

'That the only principle to be applied when determining an application to remove a child permanently from the jurisdiction was that the welfare of the child was paramount and overbore all other considerations however powerful and reasonable they might be; that guidance given by the Court of Appeal as to factors to be weighed in search of the welfare paramountcy and which directed the exercise of the welfare discretion was valuable in so far as it helped judges to identify which factors were likely to be the most important and the weight which should generally be attached to them and promoted consistency in decision-making; but that (per Moore-Bick and Black, L.JJ.), since the circumstances in which such decisions had to be made varied infinitely and the judge in each case had to be free to decide whatever



was in the best interests of the child, such guidance should not be applied rigidly as if it contained principles from which no departure were permitted.'

I need quote only what Thorpe, L.J. said (at para. [39]):

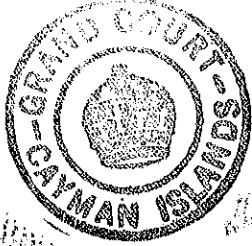
'... the only principle to be extracted from Payne v. Payne is the paramountcy principle. All the rest, whether in paras. [40] and [41] of my judgment or in paras. [85] and [86] of the President's judgment is guidance as to factors to be weighed in search of the welfare paramountcy.'

[37] In K v. K (Relocation: Shared Care Arrangement) there was a shared residence order. The mother sought to relocate to her country of origin. The importance of K v. K (Relocation: Shared Care Arrangements) for present purposes is its emphasis that even where the applicant is a primary carer there is no presumption in favour of the applicant. That, after all, was hardly new. As was pointed out in K v. K (Relocation: Shared Care Arrangements) both Thorpe, L.J. and the President had made this clear in Payne v. Payne. As Black, L.J. said (para. [143]):

'... the effect of the guidance must not be overstated. Even where the case concerns a true primary carer, there is no presumption that the reasonable relocation plans of that carer will be facilitated unless there is some compelling reason to the contrary, nor any similar presumption however it may be expressed. Thorpe, L.J. said so in terms in Payne and it is not appropriate, therefore, to isolate other sentences from his judgment, such as the final sentence of para. 26 ("Therefore her application to relocate will be granted unless the court concludes that it is incompatible with the welfare of the children") for re-elevation to a status akin to that of a determinative presumption.'

There can be no presumptions in a case governed by s.1 of the Children Act 1989. From beginning to end the child's welfare is paramount, and the evaluation of where the child's best interests truly lie is to be determined having regard to the 'welfare checklist' in s.1(3).

...



[40] Following a careful analysis of the authorities, Black, L.J. continued in this important passage (paras. [141]–[142]):

'[141] The first point that is quite clear is that ... the principle—the only authentic principle—that runs through the entire line of relocation authorities is that the welfare of the child is the court's paramount consideration. Everything that is considered by the court in reaching its determination is put into the balance with a view to measuring its impact on the child.

[142] Whilst this is the only truly inescapable principle in the jurisprudence, that does not mean that everything else—the valuable guidance—can be ignored. It must be heeded ... but as guidance not as rigid principle or so as to dictate a particular outcome in a sphere of law where the facts of individual cases are so infinitely variable.'

[41] She continued (para. [144]):

'Payne therefore identifies a number of factors which will or may be relevant in a relocation case, explains their importance to the welfare of the child, and suggests helpful disciplines to ensure that the proper matters are considered in reaching a decision but it does not dictate the outcome of a case. I do not see Hedley, J.'s decision in Re Y as representative of a different line of authority from Payne, applicable where the child's care is shared between the parents as opposed to undertaken by one primary carer; I see it as a decision within the framework of which Payne is part. It exemplifies how the weight attached to the relevant factors alters depending upon the facts of the case.'

...

[43] As I read his judgment, Moore-Bick, L.J., with whom Black, L.J. explicitly agreed on this part of the case, was of the same view as her: see in particular para. [86] where he said:

'Guidance of the kind provided in Payne v. Payne is, of course, very valuable both in ensuring that judges identify what are likely to be the most important factors to be taken into account and the weight that should generally be attached to them. It also plays a valuable role in promoting consistency in decision-making. However, the circumstances in which these difficult

decisions have to be made vary infinitely and the judge in each case must be free to weigh up the individual factors and make whatever decision he or she considers to be in the best interests of the child.'

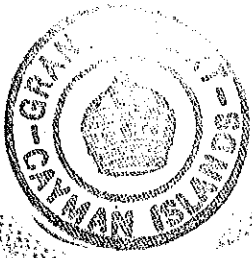
[44] On this point, therefore, the correct approach is that of the majority, that is to say Moore-Bick, L.J. and Black, L.J.

...

[61] The focus from beginning to end must be on the child's best interests. The child's welfare is paramount. Every case must be determined having regard to the 'welfare checklist,' though of course also having regard, where relevant and helpful, to such guidance as may have been given by this court."

13. After setting out those passages in the judgment of Munby, L.J. in *Re F (Child: Permission to Relocate)* (4) - which, themselves, contain extensive citation from the judgments of Moore-Bick and Black, L.JJ. in the earlier decision of the Court of Appeal in *K v K (Relocation: Shared Care Arrangements)* (5)—the judge said this (2013 (1) 271, at paras. 85 and 86):

"85 The clear message being sent out by Munby, L.J. is that the child's welfare is the paramount principle to be applied in applications for permanent relocation. To do this, the court should consider all the factors, whether they were or were not contained in the guidance in Payne v. Payne, in reaching a decision as to what is in the child's best interests. The decision appears to be advocating a single approach to all relocation cases, in which the Payne factors may apply to all cases, albeit with varying weight. Due to the very recent nature of this decision it may be too early, in the absence of what would be a most welcome ruling from the Supreme Court, to conclusively state that there exists in England and Wales an unquestionable single analytical framework for all relocation disputes. Munby, L.J. was rightly stressing that each case is different and that the court must not seek to categorize the case in the manner sought by Ms. Dowse [counsel for the mother].



86 *I am satisfied that Munby, L.J.'s approach, in a judgment in which he summarized the entire jurisprudence, is timely and shows the right way forward."*

52. I accept that each case depends on the facts in that case, but I again adopt the above guidance given by Munby L.J. as being the appropriate approach. In *B v B* I went on to address what principles had emerged under the relevant case law and the questions the Court should be considering, when I stated:

"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. A number of the following principles were stated by Mostyn J in Re AR."

88. The first, and overarching principle, must be that the child 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 characterisation should be

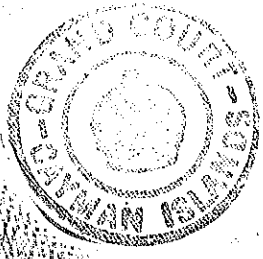
applied to the case by virtue of the time spent with each parent or other aspects of the care arrangements.

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 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 therefore the court should not be unduly fettered in its approach when deciding whatever 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 that 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."



53. To this I only add the following observation of Ryder L.J. in *Re F (a Child) International Relocation Cases*) 2015 EWCA Civ 882:



"... a step as significant as the relocation of a child to a foreign jurisdiction where the possibility of a fundamental interference with the relationship between one parent and a child is envisaged requires that the parents' plans be scrutinised and evaluated by reference to the proportionality of the same."

This is important when considering whether the preferred option arrived at following a welfare analysis of both parents' proposed arrangements represents a proportionate interference in the BOR Article 9 rights of those involved.

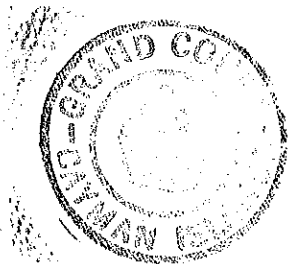
54. I have in mind the parties' financial circumstances when considering what is in L's best interests and the feasibility of each party's proposals. However, as neither party sought to have the financial issues determined at the same time as the relocation application, the proceedings have not been case managed along the lines commended in *Re W (Leave to remove)* [2008] EWCA Civ. 538; [2008] 2 FLR 1170, namely for all the issues relating to the children and finance to be heard together with one determination thereafter.
55. I have regard to all of the above principles and guidance and I apply them to the evidence.

Approach to the Facts and the Background

56. The type of approach to be taken to the background facts is raised in the mother's Written Opening Submissions dated 13 May 2016. Therein the mother relies upon an extract from the judgment of Mostyn J. in *Re: TC v JC (children: relocation)* [2013] EWHC 290 (fam) to support a submission that the Court should not pay much regard to the background when determining a relocation case. The written submissions refer to the following statement made by Mostyn J.. at paragraph 18 in *Re:TC* where he stated:

"... presumptions have no place in a relocation application. I therefore start with a blank sheet."

However, in the next sentence Mostyn J. added



"There is no presumption in favour of the applicant mother. My determination will involve a factual evaluation and a value judgment."

Mostyn J. was not referring to the background or factual history in a case when using the words a "*blank sheet*", but only to any presumptions that may be thought to exist. Mostyn J. was referring to the New Zealand Supreme Court decision in *Kacem v Bashir* [2010] NZSC 112, [2011] 2 NZLR 1; [2010] NZFLR 884 where at paragraph 23 observations were made about the fallacy of any suggestion that there existed a presumption in favour of an application to relocate and where at *para 36* they said a presumptive approach to relocation cases did not exist.

57. Mostyn J's above sentiments are consistent with the position taken by this Court and the Cayman Islands Court of Appeal in *B v B*, as well as the view of the Court of Appeal in *Re F*, when Munby L.J. stated:

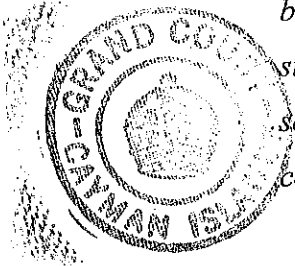
"[37] ... There can be no presumptions in a case governed by s.1 of the Children Act 1989.⁴ From beginning to end the child's welfare is paramount, and the evaluation of where the child's best interests truly lie is to be determined having regard to the welfare checklist in s. 1(3)."

58. Having regard to the nature of the written submission submitted on behalf of the wife I see value in sharing the following further helpful observations about the approach to relocation cases made by Tipping J. when giving the majority judgment in *Kacem*:

"[23] At the highest level of generality the competition in a relocation case is likely to be between declining the application for relocation because the children's interests are best served by promoting stability, continuity and the preservation of certain relationships, as against allowing it on the ground that the interests of the children are thereby better served. Put in that way, it is difficult to see how any presumptive weight can properly be given to either side of those competing but necessarily abstract contentions. To do so would risk begging the very question involved in what is necessarily a fact-specific inquiry. [24] Everything will depend on an individualised assessment of how the competing contentions should be resolved in the particular circumstances affecting the particular children. If, on an examination

⁴ Section 3 of the Children Law (2012 Revision) – 'the paramountcy principle'.

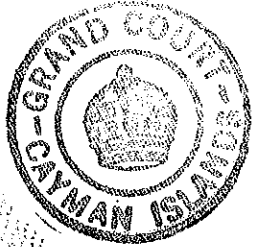
of the particular facts of a relocation case, it is found that the present arrangements for the children are settled and working well, that factor will obviously carry weight in the evaluative exercise. All other relevant matters must, of course, be taken into account and given appropriate weight in determining what serves the child's welfare and best interests, as s 4(5) puts it. The key point is that there is no statutory presumption or policy pointing one way or the other. All this seems to us to follow from ss 4 and 5 of the Act as a matter of conventional statutory interpretation."



Tipping J. then went on to say about the type of assessment judges should carry out and the policy in relocation cases:

"[32] But the fact that the case involves factual evaluation and a value judgment does not of itself mean the decision is discretionary. In any event, as the Court of Appeal correctly said, the assessment of what was in the best interests of the children in the present case did not involve an appeal from a discretionary decision. The decision of the High Court was a matter of assessment and judgment not discretion, and so was that of the Family Court.

[33] These and other concerns ... are inherent in the exercise in which judges administering ss 4 and 5 of the Act are involved. Lack of predictability, particularly in difficult or marginal cases, is inevitable and the so-called wide discretion given to judges is the corollary of the need for individualised attention to be given to each case. As we have seen, the court is not in fact exercising a discretion; it is making an assessment and decision based on an evaluation of the evidence. It is trite but perhaps necessary to say that judges are required to exercise judgment. The difficulties which are said to beset the field are not



conceptual or legal difficulties; they are inherent in the nature of the assessments which the courts must make. The judge's task is to determine and evaluate the facts, considering all relevant s.5 principles and other factors, and then to make a judgment as to what course of action will best reflect the welfare and best interests of the children. While that judgment may be difficult to make on the facts of individual cases, its making is not assisted by imposing a gloss on the statutory scheme."

59. Therefore, the Court must make an assessment and a determination based on its evaluation of the evidence, and that includes the background. As Mostyn J. rightly states at paragraph 5 in *NJ v OV* [2014] EWHC 4130 (Fam):

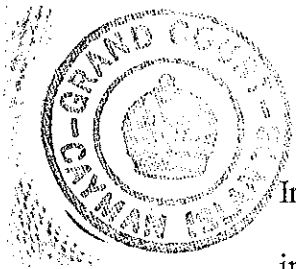
"It is a factual evaluation followed by a value judgment."

However, when carrying out such an exercise in the matter before me where an abduction has taken place, I endorse Mostyn J.'s note of caution in *TC and JC* where, although he found that the mother's conduct was "*abysmal*" and "*an act of cruelty*" to the father and that her abduction of the children to Australia was "*directly contrary to the interests of the children*," he said that:

"The decision that I make is based from first to last on the interests of these children. I must shut out my strong feelings for sympathy for the father at the high-handed, selfish and autocratic way he has been treated by the mother, and I must eschew any temptation to punish the mother for that conduct."

60. 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 that evidence I have regard to the principles emanating from the cases as set out above. When I do so I remind myself that the overreaching matter for determination is what is in the best interests of L. As Black L.J. stated in *K v K* at paragraph 141:

“Everything that is considered by the court in reaching its determination is put into the balance with a view to measuring its impact on the child.”



In applying the paramountcy principle I must have regard to the factors mentioned in the welfare checklist.

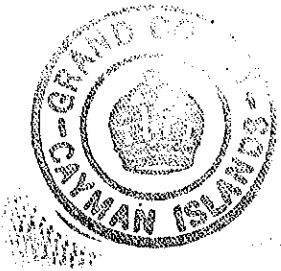
61. Despite my attempts to assist the parties in concentrating on evidence that may be relevant the issues in this case, there has been a considerable amount of unhelpful information placed before the Court in unnecessarily elongated and repetitive oral evidence. With this in mind, before moving on to analyse the evidence, I indicate that I will do so in a manner consistent with the approach of Thorpe L.J. in *Re F (Shared Residence Order)* [2003] EWCA Civ 592, [2003] 2 FLR 397⁵, namely that one of the functions of the judge is to make findings and that another function is to be selective and to make findings that are relevant and necessary for the disposal of the issue. When considering what orders would be in the best interests

⁵ See also *B v B* [2013] (1) CILR 271 at paragraph 10 and *KP v JB* 2012 (2) CILR 249.

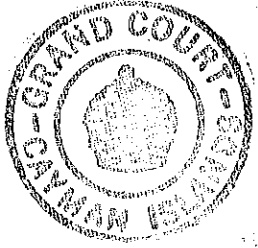
of L at this time, I am not required to make findings on every area or issue that has been presented to me for determination or which have become apparent during the hearing. I must determine the factual issues that have implications for the decisions that I have to take in relation to L.

The Factual Background

62. The parents met at the mother's sister's wedding in the Cayman Islands in December 2007. Her sister's husband's father has status in the Cayman Islands and her sister still visits the Cayman Islands most years with her family. The mother and father started cohabiting in February 2008, marrying in December of the following year. In her oral evidence the mother stated that although they purchased their house in the Cayman Islands in March/April 2012, after initially living in rented accommodation and after L was born, she said that the arrangement was that they "*moved here as expats and would have to leave eventually.*" The mother said that she told the father that she did not want to be "*tied down*" by the property and that it should be bought as an investment and not as a home. The mother stated that the father promised her that the property, purchased on a canal as it would be easier to sell, was just an investment as they planned to leave the Cayman Islands eventually. She said that "*the plan*" was that they would all move to Mexico and that they had "*talked about*" Playa Del Carmen. The father disagrees, stating that there was never any intention to, or discussion about, moving as a family to Mexico and that the parties saw their long



term future as being in the Cayman Islands. There is no supporting evidence for the mother's contentions and what is clear is that the parties have settled and have obtained long-term employment. They acquired a property in the Cayman Islands and there is no evidence of them making any arrangements to leave in the shorter or medium-term. For the purposes of this hearing, I regard Grand Cayman as being their home where L has been brought up.



63. It is accepted that the purchase of the matrimonial home placed a financial strain on the parties' finances. As a consequence the mother was unable to regularly travel to Mexico to see her family. Although one of her sisters visits the Cayman Islands every year, usually around Christmas, the mother missed her other family members and this contributed to her depression before and during her pregnancy. In June 2011, as the father recognised that the mother was homesick for her friends in Mexico, he arranged for and financed a surprise trip for one of her friends to come from Mexico and stay with them in the Cayman Islands.⁶ On two occasions the mother and the father visited and stayed with her family in Mexico City, one of the occasions being when she was pregnant. The mother agreed that Sherine Barnes had wrongly stated in her Welfare Report dated 9 September 2014 that she had not seen her family for two years prior to July 2013.

⁶ Father's email to PC dated 2 June 2011.



64. It is clear that the parents have different parenting styles and attitudes to child rearing, which causes tensions between them and, increasingly, disagreements. The final breakdown in their relationship has been difficult and conflictual, with the parents arguing regularly with occasional physical altercations. Both parties have accepted that they are short-tempered⁷ and that there were heated arguments with raised voices. Over the period in which their relationship was breaking down the Police were contacted by the parents on numerous occasions. The father, purportedly for his own protection, has for some time been videoing the handovers of L at the Police Station, as he says both the Police and the mother make false allegations about his conduct towards her.

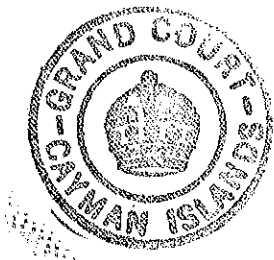
65. The mother states that there has been a history of domestic violence in their relationship with the father being physically, verbally and emotionally abusive towards her, sometimes in the presence of L. She said that the father was controlling and aggressive. She contends that this has and will continue to inflict emotional harm on L. The mother believes that the “space” that would come with a relocation may improve the parties’ cooperation with one another and would remove L from a harmful situation. Consistent with the approach commended in *Re F (Shared Residence Order)* [2003] EWCA Civ 592, [2003] 2 FLR 397 I do not intend to review herein each and every allegation made by the parties concerning the conduct of the other, but instead to be selective, concentrating on

⁷ Mother’s email dated 28 September 2013 and paragraph 10 of father’s affidavit sworn on 30 May 2014.

the incidents that give best insight into each party's conduct and the cause for the deterioration in the relationship of the parties and how that affects L's welfare.

66. In her oral evidence the mother told the Court that at the beginning it was a *"relatively happy marriage"*, with no physical violence or reports being made to the Police between February 2008 and July 2013. However she later added, referring to paragraph 8 of her affidavit of 30 April 2014, that on one occasion before L was born, the father threw all of her belongings over the balcony and ripped the telephone cord out when she was trying to call her sister for help. She said he then called her a *"whore"* and *"kicked her out of the house"* and she left and stayed with a friend. Despite stating this in her affidavit, during cross-examination she agreed that she told Sherine Barnes that their problems started after L was born and that was an accurate statement. Although the mother made a few allegations in her affidavits about events prior to the Mexico trip in July 2013, she primarily relies upon events thereafter.

67. The father denies that it is a marriage with a history of domestic violence from him and he characterised it as being a *"wonderful marriage"* until the Spring/Summer of 2013. He said this coincided with the time when they purchased their house shortly after L's birth which resulted in a great deal of financial strain coupled with the pressures of parenting. He said that friction increased after L was born, but there were still *"wonderful times"*. He conceded

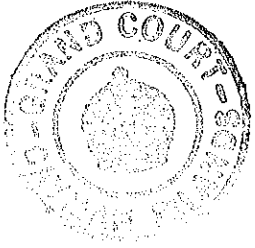


that he felt that he was being ignored by the mother and that he was regarded as being "*the sperm donor and the one who pays the cheques.*" During cross-examination, the mother accepted that she had neglected the father after L's birth as she had shifted all of her attention to the baby, resulting in the father becoming "*needy and seeking her attention*". The mother told Sherine Barnes that she recognised that the relationship had been affected and that she had neglected the father, and she accepted that she had not realised this at the time. The father stated that due to the pressure they "*argued as any normal parent.*" He states that the mother found the stresses of parenting difficult and this would manifest itself by her yelling and being emotionally abusive to him. He said she would smoke marijuana on a daily basis to enable her to cope. He said that the mother was "*very controlling*" and "*at times possessive*" of L.

68. In June 2013 the mother was diagnosed as having polycystic ovary syndrome. She felt that, as she was "*stressed, unhappy and had a medical condition*", she needed a break and to visit her family and to talk to them about her marital problems. The mother stated that the father reluctantly agreed that she would go to Mexico with L to stay with her father for 6 weeks in July 2013. The father told the Court that although finances were tight, he recognised that she needed a break as she was "*tired*" and "*burnt-out.*" During cross-examination the mother then accepted that she knew that money was "*tight*" at that time and she stated that she went to Mexico with the father's "*blessing and financial support.*"

69. The mother told the Court that the father had sent her some hostile emails when she was in Mexico. The father stated that he could not go to Mexico due to work commitments and that this was the first time that L had been away for some time. He said that he sent unhostile emails requesting that he have the opportunity to see L and that the mother, although she had access to Wi-Fi, did not contact him for ten days to two weeks. He said that she did contact him during the first week of the stay and she appeared happy. He said that L *"was happy to see his Papa"* and he also added, which is a clear recognition of the importance of wider family members to L, that it *"melted my heart to see the boy and his grandpa."* I cannot make a finding that the periods of non-contact were as long as the father states, but I do find that the parties failed to find the appropriate level of contact, the father seeking too much and the mother not providing enough.

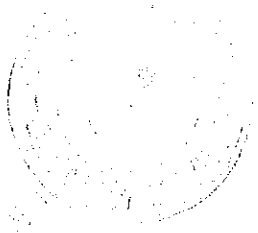
70. The mother returned to the Cayman Islands on 27 August 2013. She said that she got an unfriendly reception from the father when he collected them from the airport and that during the next month his threatening behaviour escalated. The father contends that, although he was anxious when he met them at the airport and the mother appeared *"distant and withdrawn"*, by the time they got home they were *"one happy family again."* The father said he had been to counselling two days before and that he and the wife agreed that they would not discuss such issues that night. He said he felt that it was one of the best nights they had had for weeks.



71. On Sunday 1 September 2013, the parties went for brunch at Luca Restaurant with the mother's colleagues from work. They arrived when the brunch started to be served at around 11:30 a.m. and they left at around 2:30 – 3:00 p.m. The Court was informed that the cost of the brunch was met by the mother's employer, and that the cost included limitless glasses of Prosecco. The mother initially said that she had only one drink, probably a mojito, and then she said that she may have had two. The father believed that she had drunk "*a considerable amount of alcohol*", stating that he saw her have at least three drinks. He added that she may not have been drunk, but she was "*on the cusp*" and "*buzzed.*" The father said that he told the mother that he should drive the car home and asked her for the keys to her car several times, but she refused. He said that they were both being "*stubborn*" and he conceded that sometimes it is best not to argue in such circumstances. The mother says that he asked her for the keys as he wanted to drive her car, but there was no discussion about that being because she had been drinking alcohol. The mother says that he was being aggressive in the car, kicking the floor and continually screaming "*what happened in Mexico?*" The father said that whilst in the car he was telling her, not screaming, that he had missed L when he was in Mexico and asking her why she had not let him speak to him for several days. The father said it was the mother who was screaming and that she actually slammed on the brakes.

72. The mother said that when they got back into the house the father was still arguing and asking about Mexico. She said that she told the father that as it was L's nap time, due to the screaming in the house, she wanted to take L in the car. She said that the father refused and took her purse and car keys. At this stage her father telephoned, and she said that the father picked up her telephone and threw it into the canal and she responded by throwing his watch into the canal. The father accepts that there was an argument when they got home. He states that when he was asking her about what happened in Mexico she became angry and did want to talk about it. He conceded that in hindsight starting a conversation of that nature when she did not want to talk about it was not the best thing. He said that she placed L in the playpen in the living room and they "*walked around the house as babbling idiots.*" He told the mother that she should not drive off with L because he felt that she was drunk. He said it was at this stage that she picked up his watch from the counter and threw it into the canal and, as he was upset by that, he then threw her telephone, which also was on the counter, into the canal. He said that she did not receive any telephone call from the father.

73. The mother said that matters escalated as the father pushed her when she still had L in her left hand. The mother conceded that she slapped the father in his face and that he then took a photograph of his face. She said that, while she was still holding L, the father then grabbed her by the waist and threw her down the hallway. She said that she was so scared that she "*peed*" herself. The father said

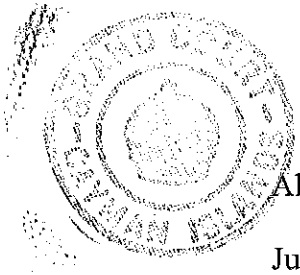


that she had been “*urinating herself*” since child birth and that he did not see her do so on this occasion. She said that when she tried to get away, he grabbed her waist again and in all the pulling L fell to the floor and started crying. The mother said that she bit the father on his arm and that he locked her in her bedroom. The mother said that she tried to open a window and he closed it, so she tried to break a window but was unable to do so as they were so thick. The mother accepted that it was a “*turbulent*” night and that they were both yelling at each other. She said that was able to walk out with L, but was unable to grab her purse or put on any shoes. She said that when she was in the street a car stopped and the family in the vehicle took her to Bodden Town Police Station where she made a report. Unfortunately there is no evidence before the Court from the persons who she says assisted her and who took her to the Police Station.

74. The father said that after the phone had been thrown into the canal, she punched him in the eye leaving a bruising mark. He says that the mother was not holding L, because he remained in the playpen. He said that he did not hit her back and he backed off and she followed him into the hallway. He said that, when he tried to pass in the hallway, she bit him. He said that at no time did she lock herself in the bedroom, as they were both in there arguing. She said that she was going to call the Police and she picked up L and left the house with her shoes on. The father denied taking her purse and keys and he said that they were left on the floor and he next saw her when she later returned to the property with the Police. However,

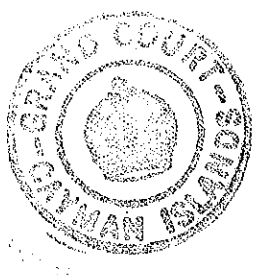
I do not accept this part of his evidence because in a note prepared by the paternal grandmother and exhibited at D and D1 in the father's affidavit sworn on 13 May 2014 she stated:

"One time we understand that (the father) took (the mother's) car keys away from her when he thought driving judgment might be impaired. (The father) was most concerned as she claimed that she had had only one drink at that gathering may not have been safe to drive. Sounds like she exercised her own poor judgment"



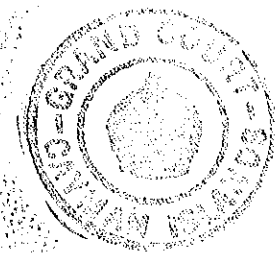
Although I will deal with the credibility of the grandmother at a later stage in this Judgment, I note that the above negative remark about the mother was given in a document that was intended to be supportive of the father and in that document she was expressing things that had been told to her by the father. This unguarded evidence collaborates what the mother said about the keys on that day and explains why she did not drive her vehicle to the Police Station.

75. The mother said that she returned to the property with the Police Officer. The Police Officer telephoned the father and he returned to the property. She said that he told the officer that they were going to therapy and counselling. She said that she told the officer that she was going to stay as she believed him. The mother said that the father told the Police that he felt that they should go to therapy and counselling. The father said that he had gone to the gym and when there he spoke to a friend who was an attorney. He returned to the home after the Police telephoned him. When asked by the Police if he had assaulted her he denied it and



said that she had assaulted him and he showed them his face and also photographs he had taken to document the injury. He said he also showed them photographs of two overturned tables in the property and window blinds on the floor taken on the night before, which he said the wife had flipped over. He said that he had tried to discuss counselling, but the mother got angry and threw one table down the hallway and flipped over the other table which had the DVD player speakers and gaming machine on it. The mother said during cross-examination, when she was shown the photos of the tables and the blinds, that she could not recall the table in the hallway being overturned, but she admitted that she did flip over the larger table, although that was not on 1 September, she could not remember when she did it. The father said that he mentioned to the Police about her not allowing him to see L when she was in Mexico and that he informed them that they were both going to attend counselling.

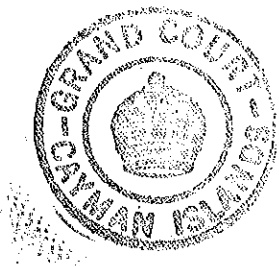
76. The mother said that when she went in the house the father was still being aggressive and it was still a "*tumultuous night*." She said in her affidavit sworn on 30 April 2014 that the father picked up "*all of L's photos off the wall*" and threw them into L's bedroom. In her oral evidence the mother said that he threw them onto the floor. She said that she locked herself in the bedroom and the father kept banging on the door. She felt that she was not safe and she left the house between 8:00 - 9:00 p.m. with L in her car to stay at a friend's property. The father disagreed with this version of events, indicating that after the Police left he went



outside and the mother followed him asking if he wanted to talk. He said that he told her that he did not wish to and he felt it was best if one of them left for that evening and that she chose to leave. He said he did not throw any pictures, he simply took the only baby picture that was hanging on the wall and told her to keep it if she wanted it.

77. The Police Report in the bundle records what the parties told the officers. On the whole, what the mother and father told the Court is consistent with what they told the officers, although they still give different versions of the events. The officers recorded that there were no visible signs of violence on the mother. I note that the officers did not record seeing any markings or bruise on the father's face, although they did see a photograph showing a red area on his right cheek. At the end of the report it says that both parties requested no further Police action as they were going to counselling.

78. I have had the opportunity to hear both parties' oral evidence concerning this event. I have compared that with the contents of the affidavit evidence and the Police Report. There are no independent witnesses. What is clear is that the parties had a heated dispute on 1 September 2013, and I am satisfied it started because the father did not want the mother to drive because he genuinely felt that she had had too much to drink. I am also satisfied that the mother believed that she was able to drive and did not like the fact that the father was demanding to



drive her car. It is clear that tensions had been brewing because the father was unhappy about the lack of contact he had had with L when he was in Mexico with the mother. The night before there had been an argument between the parties and the wife had overturned tables in the household. I accept both parties' evidence that they are short-tempered with a tendency to forcefully express their views to the other party and that this argument developed whilst they were in the vehicle on the way home. I am satisfied that, when they entered the home, both of them were still arguing with each other and in that argument the mother struck the father and the father grabbed the mother. They were both able to throw an item belonging to the other party into the canal during the argument. I do not find, on the evidence before me, that L was in the mother's hands when the parties were in physical contact with each other, there is no mention of that in the Police Report and no reported markings on L in the report. I accept the father's evidence that when the Police attended there was no mention of L. I prefer the father's evidence that L was in the playpen. I am satisfied that this dispute arose because the father was saying things that he knew angered the mother and she responded in like and their exchanges developed into an unpleasant physical altercation in front of L which both parties were at fault for.

79. The father purchased a replacement phone for the mother which he left on the counter in the house for her to collect. Despite him apologising for what he had done to her phone, it is clear that the physical altercation on 1 September 2013

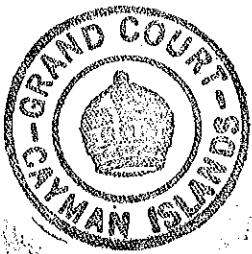
was a significant illustration of how far the parties' relationship had deteriorated and, although the parties went to counselling, it has never recovered from that day. The father accepted in cross-examination that the events between 31 August and 1 September 2013 exposed L to instability and that was an undesirable situation.



80. After 1 September 2013 the mother raised with the father of the possibility of her again visiting Mexico. She said that on occasions he would say he would think about it and then change his mind. On 9 September the mother met the father on the beach with L and she asked the father if she could return to Mexico with L to be with her family and whether he would provide her with a travel letter. The father said that he refused to give her a travel letter. He said that she told him that she wanted to move to Mexico and to have a home there with L, then moving between Mexico and the Cayman Islands at her will. He was concerned about her going back to Mexico due to the lack of contact he said that she had allowed during her July visit there and because she was saying so soon after her return that she needed another break with L in Mexico. He said on that day he gave her \$500 for her and L's expenses.

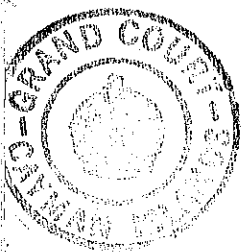
81. Although the father frequently asked to see L, he was only next able to see him on 15 September when the mother was at work. On that date the father gave the mother \$1,500 to enable her to find a rental property, so that she could get settled.

He said that he told her that the \$1,500 was provided to her on the basis that she would not take L to Mexico, and she agreed.



82. The mother spoke to a lady called Camilla who worked at the Crisis Centre, as well as seeking advice from Legal Befrienders. She says that they advised her that she would not be breaking any law if she took L to Mexico without the father's consent. In her affidavit she says that she was stressed, confused and worried about the impact their relationship and the father's alleged conduct was having on L, so she bought tickets for them to leave to Mexico using the \$1,500 rent money provided by the father. The father is of the view that she was selfish, putting her own reasons above L's best interests. He felt that she had misled him about her expressed willingness to attend marriage counselling and had misled him to give her the \$1,500, which he did in good faith and which she misused. The mother during cross-examination admitted that when she was given the money she intended to leave to Mexico and that she accepted the money knowing that she was not going to use it for the purpose intended by the father.

83. The mother says that she asked the father whether L, who she says was supposed to be with the father, could spend the day with her on 26 September 2013 as it was her birthday. The father says that he only saw L on three occasions after 1 September 2013 and that there were no days when L was due to be with him, as since 1 September he had only been given limited contact. He stated that the

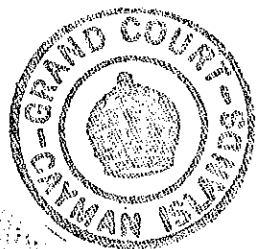


parties had agreed that L spend time with the mother during the day. In the evening the mother had to work and a friend was looking after L during that time, as stated by the mother to Sherine Barnes⁸. The father said that the mother had refused his request for him to look after L when she was at work. She said that the father followed her to work and when he got out of his vehicle he began yelling at her and pushing her. She then walked into her place of employment. When she finished the class she was teaching she was informed that the Police had come to speak to her. She showed them the email in which it had been agreed that L would be with her and she said in her affidavit that L was at her place of employment. She said in her affidavit that this was having an impact on L and that she was scared, so she formed the view that they needed to get away from the father "*to breathe.*" However, in her affidavit she did not specify when she had purchased the flight tickets or when she had reached that conclusion and, as a result by the language used therein, gave the impression that she did so after the incident on her birthday. This is the same impression that she appears to have given to Sherine Barnes, and which was accepted by Ms. Barnes, when one reads paragraph 37 of her September 2014 Report.

84. It is clear that by 26 September 2013 the father had genuine concerns, which proved to be well-founded due to subsequent events, that the mother was going to remove L to Mexico. The father was so concerned about a possible abduction that

⁸ Paragraph 36 of the Welfare Report filed 9 September 2014.

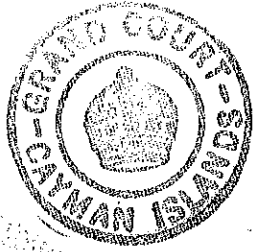
on 12 September 2013 he approached the Canadian Consulate to express the same. On 26 September 2013, before the events that evening, he had told his therapist and the Police about his concerns. His fears had been heightened by the limited contact he had been allowed in September with L and because, although he agreed that L could be with his mother on her birthday, she refused to allow L to be with him when she was at work. He said that is why he turned up at the mother's place of employment. When he had asked where L was she told him that he was with a friend and, as she would not tell him which friend, he felt he had no option but to call the Police and he attended George Town Police Station as to share his concern regarding abduction. The officer promised to follow up with him and he again attended at the Police Station later in the evening when he was told that he would need to make an application at Court.



85. If viewed in isolation, the father's actions on 26 September 2013 might have been regarded as being rather antagonistic and unreasonable. However, in light of the mother's planned actions, which she had started putting in place before the 26 September, his concerns were well-founded and his actions understandable in that context. For the mother to say during cross-examination that the father was acting in a paranoid fashion at her place of employment that day was proved wrong, as his suspicions turned out to be well-founded in light of the fact she had already put arrangements in place for L's imminent removal to Mexico. Although the mother said that she left on 28 September it is clear from the stamp in L's

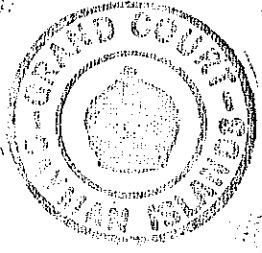
passport that she actually left on 27 September. I am satisfied that one of the primary reasons for not allowing L to see the father on 26 September was because the mother had put the arrangements in place for her departure to Mexico on the following day and him seeing L might hinder her plans. During cross-examination she initially stated that she found out that she was going to leave only on the day before she flew out. However, after being pressed, it became clear that she had purchased the flight tickets well before that date and in fact she conceded that it might have been within 48 hours after receiving the \$1,500 on 15 September 2013. The mother was not teaching any classes on the Friday 27 September and she informed her employer that she was leaving and they cancelled her classes from Saturday 28 September 2013. It is clear that the mother never intended to attend the parties' joint counselling session scheduled for around 3 October 2013 to discuss a separation plan and how to best meet L's needs.

86. On 28 September 2013 the mother emailed the father but did not adequately disclose therein that she had removed L from the Cayman Islands. In the email she recognised the importance of the father to L when she said that he *"loves you so much... You are present every day in our life and (L) is very proud of his dad."* In an email on 30 September 2013 she wrote that she had taken L to a place that was a sanctuary for her, so that she and L could recover. It was not until 1 October 2013 that she specifically stated that they were in Mexico. The father had first become aware that she had left just before he received that email, because on



1 October 2013 he attended at her workplace from where he called the Police when he found out that the mother had cancelled her classes and the reason why she had. In her earlier emails in October 2013 the mother indicated that she wanted to repair the marriage. In an email on 6 October 2013, when she was clearly annoyed that the father had approached her employers in the Cayman Islands and her family members, she appeared to be saying that their marriage was over as it was too late to go to therapy and she gave no indication that she intended to return with L to the Cayman Islands.

87. The mother said that when she was in Mexico, whenever the father communicated with her on the telephone, he was aggressive and screaming at her that she had kidnapped L. She said that he was continually insulting her, although he was more pleasant by January 2014. However, when one reads the disclosed emails he sent to her, even prior to that date, it is evident that he was understandably distraught at the unilateral removal of L. The tenor of the emails sent by him are, on the whole, not hostile, but give off an air of desperation. It is not threatening when the father in his position firmly informs the mother that he will bring legal proceedings if she fails to return the child. It was appropriate for him to attend at the mother's workplace in the Cayman Islands to find out when they were aware that she had left, especially at a time when he did not know that she had already left the Cayman Islands. It was appropriate for him to seek the assistance of her family members in Mexico, especially her sister who appeared to possess some



child-centric insight at that time and who the mother referred to as in her oral evidence as being "*a good mediator*". Although these emotive actions may have angered the mother, they are all understandable in the circumstances and should not be characterised as being threatening. In his email of the 15 December 2013 the father attempted to set out all the things that he had been doing or working on to improve himself for the wife and for the marriage. In his email of 4 January 2014 he made it clear that he would fund the return flights to Grand Cayman, including purchasing a ticket for her sister to also travel and stay here to settle the mother.

88. The father travelled to Mexico City in October for ten days and the mother only permitted limited contact with L. The father stayed with her sister. Her sister, in supporting the father in this way, was acting commendably and in L's best interests. What is regrettable is that when the father attended at the maternal grandfather's property with the sister they were informed that the mother was no longer there as she had taken L elsewhere. It is clear that she was trying to evade the father. The mother said this was because she was scared of him and said that she "*honestly thought*" that she was "*not ready to see him.*" In the end, the father was able to see L on Skype on the second to last day of his visit, primarily due to the efforts of the mother's family who had made contact with her. On the last day the father actually physically saw L for about two hours in the presence of the mother and the maternal grandfather. He said that the mother said that for him to

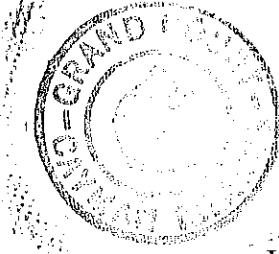


see L they were not to discuss their problems at that meeting in her country. She also said on or around 8 October 2013 that she would speak to him about L, but only if he agreed not to contact her for thirty days. To his credit, although it must have been difficult for him, the father did not contact her, even by email, during that period of time. As I have already mentioned, at that time he appropriately made an Ex Parte Application for L's return in the Grand Court, albeit with a supporting affidavit that should have had more information about the events leading up to the removal.

89. Although the mother indicated that she invited the father to visit Mexico for Christmas and L's birthday, he next returned to Mexico in February 2014. I am satisfied that the father is correct when he says that L's indirect contact with him was limited as it was on the mother's terms. Prior to arriving in February 2014 the father had warned the mother on at least three occasions in emails that he intended to bring proceedings if she did not come home. He did not send her copies of the proceedings in the Cayman Islands, as he feared that she would go into hiding.
90. The next time the father saw L was on 11 February 2014 at the Ninth Family Court in Mexico City after the Mexican agents had retrieved L. The mother and the maternal grandfather were initially uncooperative with the agents when they arrived at his property, the grandfather initially indicating that the mother and L were not there. He only admitted that they were there when he was informed that

the agents would be entering the property and what the consequences would be if he was not telling the truth.

91. When in her oral evidence the mother apologised to the father and admitted that (i) she had made a mistake; (ii) she was not proud of what she had done; and (iii) it would not happen again, I am satisfied that she was being genuine. It is clear that she now fully comprehends that what she did was improper and totally unacceptable. In her oral evidence she said:



"I am sorry. I do everything... that I regret. I was in a fragile state of mind. Really difficult three years. I am not in a fragile state of mind now⁹. I do it all in the Court by law."

I note that by this remark the mother makes clear that she is now in a stronger state of mind. I am satisfied that although she would be very disappointed if not permitted to relocate with L, there is no evidence that the mother's health would be detrimentally impacted by a refusal or that her ability to care for L would be affected.

92. After the parties and L returned to the Cayman Islands on 16 February 2014, pursuant to the agreement reached before the Ninth Family Court in Mexico City, they stayed at the matrimonial home. The mother and L slept in one bedroom and the father in another. The agreement was that they would all initially live in the

⁹ My emphasis by underlining.



matrimonial home until the mother could acquire alternative rented accommodation for her and L. When she found that property, the agreement required the father to pay her \$1500 per month for living costs.

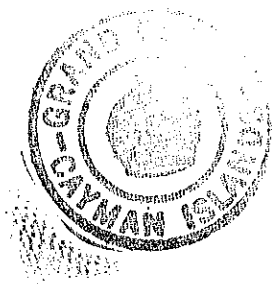
93. The mother said that she was in frequent contact with the Crisis Center to update them about her status. She also got in touch with the paternal grandparents who had sent her some money for L when she was in Mexico. Although not dealt with in the oral evidence, the mother had stated that the father put up security cameras at the property, one inside the home. The mother said that he would initiate arguments, in which he would insult her employers. She said that L would hear the father yelling and he refused to look at the father in fear.
94. In March 2014 the paternal grandparents came to stay at the matrimonial home. The mother described the situation as being "*explosive*" because she felt that his parents did not have a good relationship with the father. She explained that she was "*walking on egg shells*" as one minute the father would be calm and the next he would "*flip*." On 22 March the father and his parents went out to the Farmers Market with L, and the mother stayed at home for a break. The mother said that, when they returned to the property, the father was yelling at his parents telling them to get out of the house because he was upset when he learned that they had sent her money for L's birthday and Christmas when he was with her in Mexico.

95. In her affidavit sworn on 30 April 2014, the mother said that the father had L in his hands and was yelling at his parents to get out of the property. She said that she took L from his hands and heard his parents tell him that he needed to be "*mentally tested*." In her oral evidence she said that, although she could "*not recall exactly*", L was on the paternal grandfather's lap and, when she and the maternal grandmother were sitting down, the father was standing in front of them with clenched fists and screaming. She said in oral evidence that it was then that the father went and locked himself in a room. The father went out of the house, but when he returned he continued yelling and he locked himself in a room where he was banging on the walls. In her affidavit the mother said she was so concerned that she telephoned the Police. However, in her evidence-in-chief she said that it was the paternal grandfather who had telephoned the Police. When the Police attended she said that all of them were outside of the house, except that the father who was still in the room.

96. The mother said that the father showed the Court papers to the Police and told them that he had full custody of L. The mother stated in her oral evidence that she did not show the Police a copy of the Written Agreement reached before the Family Court in Mexico City. Although she did not want to, the mother left L at the property under the care of the grandparents, and went to stay at the Crisis Centre. In her affidavit she said that the Policewoman called the Crisis Centre on her behalf, but in her evidence-in-chief she said that she called the Crisis Centre.

She said that the grandparents informed her that on the next day the father had made them leave the home and he dropped them off to stay at the Treasure Island Resort.

97. The father said that he did have an exchange with the paternal grandmother when they informed him on the way back from the Farmers Market about them sending money to the mother in Mexico in circumstances where she had abducted L. He said that they were not yelling, but it was a back and forth argument when they got back to the house. He said that he was initially arguing with the paternal grandmother, then the paternal grandfather got involved and then the mother got involved asking what was wrong with them sending her money. He criticised the mother as he said that, when he was having the argument with his parents, she brought L into the room and thereby exposed him to the ongoing argument. He denied that he clenched his fists in an aggressive manner but only did so to relieve stress. He said he walked away from the argument and went into a room to have a nap. The father said that the Police then attended, that he did not see who called them, although he thought it was the mother who *"wanted to elevate it for her own cause."* The Police informed him that L was going to leave with the mother, but they then agreed with him that she could not take L after he had shown them a copy of the Interim Residence Order made by the Grand Court. The father said that the mother then left the property and L remained, as did his parents. He said he gave his parents the option of leaving the house or staying, and they chose the



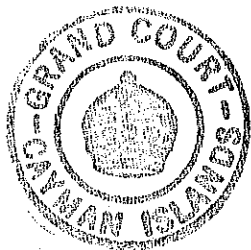
former. The following day he took them to Treasure Island Resort where they stayed until they left and he had no further contact with them at the time because he said that they believed what the mother had told them.

98. The paternal grandparents have provided highly inconsistent written affidavits to each parent. The paternal grandmother also gave inconsistent oral evidence at the hearing. Their initial written evidence was supportive of the mother and highlighted strong concerns they had about the father, but in the end their evidence was forcefully supportive of the father and highlighted their concerns about the mother.

99. The paternal grandparents each provided an affidavit sworn on 23 May 2014, which were filed on behalf of the mother. The sworn affidavits were prepared shortly after their visit to the matrimonial home, when the March 2014 events were fresh in their mind. They both said that they were “*extremely concerned for the emotional well-being*” of L. They both added that:

“Whilst we love our son dearly, we recognise that he is prone to angry outbursts and we believe that he needs to seek help to assist him with his issues.”

They stated that L’s welfare was their “*priority*” and that the present care arrangements were not in L’s best interests. The paternal grandparents concluded, in their affidavits sworn before a Notary Public, that they hoped that the



information in the affidavit and their attached letter dated 7 May 2014 addressed to the Police Family Support Unit ("the FSU"), would assist the Court when making its decision about L's welfare.

100. The joint letter exhibited to the paternal grandparents' affidavits is most insightful as to what happened on that day and about the father's interaction with others, despite the more recent highly inconsistent evidence given by the paternal grandmother. The importance of ensuring that the detailed content of the letter to the Police and exhibited to a sworn affidavit was true could not have been lost on the paternal grandparents as they stated that the content of the affidavit was "*the facts of the matter to the best of our recollection.*" I note that in the letter the grandparents gave a balanced presentation by highlighting that they loved their son dearly, but felt that they must speak out as they were extremely worried about the mental and emotional well-being of L who they felt was "*fast absorbing the stresses of this situation.*" When striking this balance, they also expressly stated that at no time did they see either parent physically abuse L.

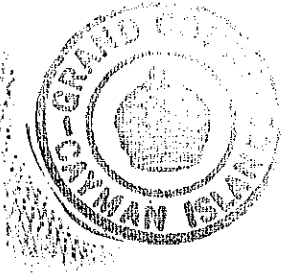
101. With the above in mind, there is merit in setting out in detail what they said in the letter. The grandparents recorded that the father became agitated during their visit in March 2014 when he heard during a casual conversation with them about them sending money to Mexico for L's birthday and Christmas. They stated that they were "*aghast at the rollercoasters, emotional and loud outbursts of shouting by*

(the father) towards (the mother) in their home” which occurred in front of them and L as a result of the father feeling that they had betrayed him. They said that the father was very mad. They added the following detail in their letter:

“L was sitting on his mother’s knee at this time and seemed to be in shock at this sudden anger outburst able to comprehend what was happening. At one point during (the father’s) yelling (the paternal grandfather) had interjected as (the father) stood over (the mother) with his fists clenched. We were all in fear at this time. (The father) told us we could go back to Canada and that they had one hour to pack and get out. (The father) asked (the mother) at this time if he had ever hit her and she said yes. Again he was very angry and denied that. Because of (the father’s) angry behaviour at this time (the paternal grandfather) suggested to (the mother) to call the police for assistance in calming him down as he feared the situation might escalate. (The father) was livid at having the police present in the home. He was pacing back and forth in his driveway and phoned his lawyer to talk about “his legal rights” as he “has sole custody of (L).”

At one point when (the father) was ranting (the paternal grandfather) use the term “unstable” to the attending policewoman on March 22. This agitated (the father) all the more and he asked the policewoman to remove his parents from his house. She said she could not do that.

In the end (the mother) was forced to leave the home by the police and removed to a shelter. (The mother) wanted as to keep (the father) “calm” at this time I was extremely worried about L’s well-being.



As parents we were also concerned for L and we refused to leave, but stayed a night. L was there at the house with us and (the father) for the night."

102. The paternal grandparents indicated that, following their premature departure from the Cayman Islands on 26 March 2014, the only communication they had with the father was when they sent him an email on 30 April 2014 for his birthday. They added that:



"Past experience has indicated to us that he would fail to acknowledge email communication. Phone calls to (the father) usually only resulted in a one-sided rant one could only 'listen to.'"

They concluded the letter by stating:

"We see that (the father) lacks respect for all persons who do not agree with his thinking whether the family, friends or persons of authority. On March 23rd when (the father) dropped us off at the hotel in Grand Cayman he was the calmest we saw him. At this time his wife was out of the house and so were his parents. He had CONTROL because he had (L) to himself.

Although we love our son dearly and always will, we sincerely believe that (the father's) anger is a sign of an illness and he must recognize this and seek help. No one else but he can fix his behaviour caused by uncontrolled, angry outbursts that affect his ability to think and act clearly.

We believe that (the father) and (the mother) should continue to receive counselling to dissolve the one-side, unfair custody agreement now in place.

*WE (AS GRANDPARENTS) ARE EXTREMELY CONCERNED FOR THE MENTAL AND EMOTIONAL; WELL BEING OF OUR GRANDSON...*¹⁰

103. On the 14 April 2015 the paternal grandparents swore a joint affidavit before the same Notary Public who had assisted them with the earlier affidavits in these proceedings. This time the joint affidavit was filed on behalf of the father. In this affidavit their expressed concern was about L being *"torn from his father's care and comfort"* to Mexico, which they believed would cause him psychological damage. Unlike the previous affidavit they said that the father was *"responsible and focused solely on (L's) proper upbringing."*

104. The paternal grandparents said that they do not wish L to be with the mother because they say that she has a history of drug abuse. They indicated that she informed them about her taking drugs in March 2014 but, if that is correct, I note that did not influence the content supporting the mother in their affidavits and their joint letter to the Police written in May 2014. Another factor which appears to have changed their minds is the father's allegation that the mother had been driving her motor-vehicle without a valid driver's license. In relation to this, they accept the facts as portrayed to them by the father, in the absence of any finding

¹⁰ The capitalisation of the words in this extract or as recorded in the letter.

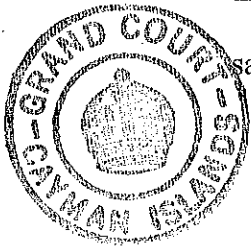
by the Police in this regard. They also have a concern about the mother's failure to have L vaccinated when she took him to Mexico in September 2013, but they make no mention of the father allowing L to travel to Mexico in July 2013 with the mother apparently without vaccinations.

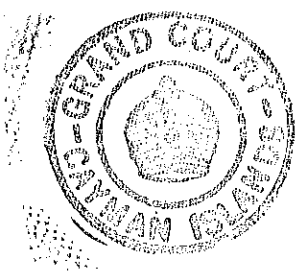
105. They state that when they swore their previous affidavits they were informed by the attorney for the mother that she was not planning on taking L to Mexico and she wanted to share custody. They said they were stunned to see that she was now applying for a sole residence order. Although in their previous affidavits they were sympathetic as to the reasons why the mother went to Mexico in September 2013, they now viewed her actions as amounting to an illegal abduction. In fact they go so far as to say that they do not want L to "*ever go to Mexico*" as they think he will go missing again. In cross-examination the paternal grandmother

said:

"I absolutely agree that the child should not be allowed to go to Mexico for the rest of his life."

It is of course understandable for them to express views as to why L should remain in the Cayman Islands rather than moving permanently to Mexico. There is nothing wrong with them repeating the father's concerns about pollution and crime in Mexico City, as well as about how much thought the mother has given to what the circumstances will be if she moved to Mexico with L. There is nothing wrong with them recording their concerns about false allegations being made at





handovers on the basis of what they say they have seen live on Skype. They are entitled to provide evidence, as they do in the affidavit, about things that they say they have heard L saying on the videos about going to Mexico in January 2015.

106. Where their evidence becomes rather troubling is where they now criticise the mother for the events of 22 March 2014 which is so much at odds with the content of their previous affidavit sworn on oath. It is extremely difficult to understand how they could regard themselves as being truthful in their letter to the FSU¹¹ concerning the events on that day when in the latest affidavit they say that the mother *"made a false report to the police in an attempt to remove L from the house."* The paternal grandparents alarmingly seem to have forgotten that, in their earlier letter sent to the Police, which was attached to affidavits which they say had been drafted to assist the Court in making its determination about L's welfare, they had clearly stated that the Police had attended at the suggestion of the paternal grandfather who was concerned about the father's angry behaviour in front of L. The glowing terms in which they now speak of their son and his care for L in the April 2015 affidavit are greatly at odds with what they said in the earlier affidavits about his lack of insight and worrying conduct. The difference between the two extreme versions of their evidence cannot be explained by events that have occurred since that date, or the nature of the information they say they have since received and now unreservedly rely on from the father.

¹¹ See paragraphs 95-96 above.

107. The paternal grandfather was unable to attend Court for health reasons. The maternal grandmother attended to give oral evidence in support of the father on 8 July 2016, the third day of the hearing. I listened to her evidence extremely carefully to make a determination about her credibility in the light of the 'chalk and cheese' content of her affidavits. In her extremely brief evidence-in-chief she simply adopted the content of her affidavit of 14 April 2015 and characterised it as being merely a "*retraction*" of the earlier affidavit.

108. During cross-examination the paternal grandmother said that the initial affidavit and letter were written because the mother had been very convincing in what she had told them about the father and L. When she was asked why in the earlier affidavit and in the letter to FSU she had not outlined her concerns about the mother, she became visibly unsettled and simply said "*Takes two to tango, right?*" The paternal grandmother said that earlier affidavits and the letter to the FSU were written before they found out that the truth that the mother had been "*kidnapping*." In their joint affidavit sworn on 26 May 2016, the paternal grandparents said that they had been "*manipulated*" by the mother starting in October 2013. I note that the paternal grandparents provided the earlier affidavit and letter after the mother and L had returned from Mexico City and that would have been at a time when they were already aware of how and why the return had happened with the involvement of the Family Court in Mexico, including the content of the Grand Court Interim Residence Order and the Mexican Agreement,

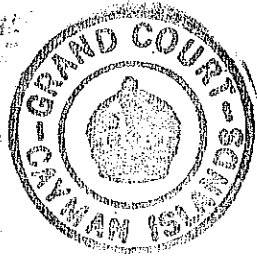
both of which were shown to the Police Officers by the father in March 2014 in their presence.

109. The grandmother's demeanour became very awkward during cross-examination, especially when emails which she had sent to the mother between February and April 2014 were shown to her. In an email sent on 11 February in reply to the mother's email informing them that the father was in Mexico to "*sue her for kidnapping (L)*", she replied "*we don't want him to have L.*" On the following day she sent an email in which she said to the mother "*(the father) does not know how to treat people including his own parents and sister ... the charming that comes across and his violence that comes out.*"

110. The paternal grandmother became particularly uneasy when she was shown an email she had sent to the mother on 2 April 2014. This was just after their return to Canada after the March 2014 events which occurred in their presence in the matrimonial home. They clearly had those events in mind when writing the email. The content portrays the same picture they had of their son to the one they had painted in their May 2014 letter to the FSU. In the email the grandmother writes:

"As for (the father) - he blew it.

He had a chance to wipe the slate clean ...his violence brings back all the past - punching holes in the house walls, cutting up furniture, taking a knife to school because he didn't like someone putting a knife at his dad's throat - shall I continue?

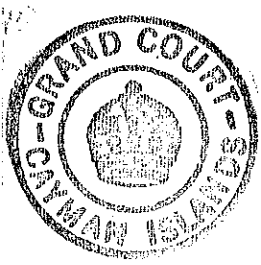


He will deny it all!!

I see poor little (L) acting out because of his violenceSince when is it a crime to give money to our grandson for Christmas and birthday? Where does it say that will stop (the father) needs help but like an alcoholic he has to admit to the problemI pray few everyday (the mother), no one deserves to be treated the way he treats you."

111. The maternal grandmother sought to justify what she had written in that email by saying that (i) the father had punched a hole in the house wall only once; (ii) the father had not cut up furniture, but only a pillow out of anger; and (iii) the father had taken a knife to school when he was 16 because he was being bullied. Although the paternal grandmother wrote in the email that the father had put a knife to the paternal grandfather's throat, she said that the father had not done that, and that all that happened was that she had been washing the dishes and the father picked up a knife and she took it away from him. The paternal grandmother's inadequate explanation for saying these disturbing things in the email about her own son and the different version of events that she was now giving was because "*I guess my imagination (was) going crazy at that time..*" She went on to say that although mentioning L "*acting out because of his violence*", the father was not violent in front of L, he would just raise his voice which scared L. The paternal grandmother said that she believed that the father had been undertaking Anger Management Counselling and that he had told her about the

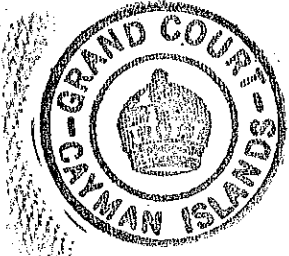
different types of counselling, including parenting. She said that she had noticed a marked difference in the father since he had been attending counselling.

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112. The paternal grandmother conceded in cross-examination that the father was yelling during the March 2014 incident and that his fists were clenched, but she said the latter was only to relieve stress. She admitted that the father's behaviour had been intimidating to her, to L and to the mother, but she did not hear the paternal grandfather use the word "*unstable*." Despite saying in her letter to the FSU that during the March 2014 incident the mother "*was forced to leave her home by the police and remove to a shelter*" the paternal grandmother said that there was no reason for the mother to leave a residence.

113. I found the paternal grandmother to be an unimpressive witness. It was clear from the over-emotive and blatantly impartial language used in the two joint affidavits sworn by the paternal grandparents on behalf of the father that they were blindly adopting the language and arguments used by the father in his written evidence. I find that the latter affidavits had many hallmarks of preparation by the father and were clearly not objective. This is particularly evident when the paternal grandmother firmly stated in oral evidence that the welfare officers, based purely on the father's criticisms and what he had told them, were biased. The grandparents said in their affidavits, grounded on

supposition confirmed by the paternal grandmother in re-examination to be on “facts from (the father)”, that:

“The events we have witnessed in (the mother’s) behaviour, it is clear to us (the mother’s) motive is to destroy the (the father’s) life, and prevent access to L, in retaliation for bringing back to his home in Cayman through the Hague convention. We have witnessed (the father) become an exceptionally unselfish, loving, responsible and dedicated father with integrity. Other than the word ‘loving’, these are traits we have not seen (the mother) demonstrate.”

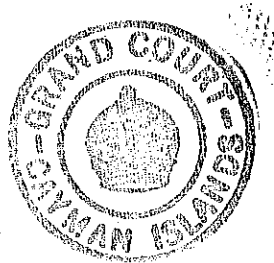


114. When considering the position of the respective grandparents, for the sake of balance, I should add that, in her Welfare Report, Keisha Smith expressed a view reached after contact made with them, that the maternal and paternal grandparents were siding with their respective child based on information they had received from them, rather than from what they themselves had witnessed in the past.

115. The value of the paternal grandmother’s potentially useful observations concerning the father’s parenting and the reasons why Grand Cayman is a better place for L to be brought up in rather than Mexico were diminished by the highly inconsistent and blatantly impartial evidence relating to past events and the father’s conduct.

116. Although I find the paternal grandmother to be an unreliable witness, her earlier affidavit evidence, given at a time when she clearly had a more balanced view, gives some insight into what happened in March 2014 as well as into the nature of the parents' relationship and the father's temperament at that time. The grandparents' affidavits sworn on 23 May 2014 were prepared at a time when the events of March 2014 were fresh in their mind. During cross-examination the paternal grandmother stated that the letter to the FSU was not intended to be provided for Court proceedings, but it clearly was, because it was exhibited to an affidavit in which specific reference was made to the "*attached letter*" assisting the Court concerning issues relating to L's welfare. With this in mind, as I have already indicated, the above provides supporting evidence for the version of events given by the mother in relation to the events on 22 March 2014. I am satisfied that on that occasion the father was angry as a consequence of what he had been told about money being transferred to the mother in Mexico and he acted in the inappropriate and aggressive way that he did, resulting in the mother permanently leaving the matrimonial home.

117. I find the paternal grandmother's later and ill-judged attempts in oral evidence given on oath and in written sworn evidence to fundamentally change her evidence and to minimise the father's conduct on that day to not be to her credit. To seek to justify the details she had clearly set out in the letter by saying "*I can't remember – can't remember anything at my age, I am 70, I not remember what I*

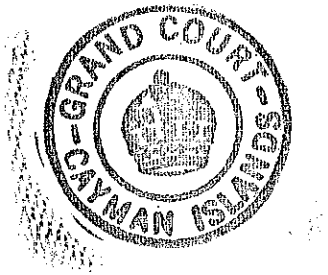


have for breakfast sometimes" is an embarrassing and deliberately misleading statement for her to make, especially when one has regard to the nature of the detail contained in that letter. The grandmother is potentially an important figure in L's life and she should have thought carefully about how that may be affected by the questionable nature of her contribution to these proceedings from May 2014 to date.

118. The mother remained at the Crisis Centre for about 15 days before she moved to her current accommodation on 1 April 2014. The father had refused to allow L to stay with the mother until she found the accommodation. The mother stated that the Crisis Centre had advised her to make reports of every incident so that there would be a documented history. That appears to be why she made so many reports to the Police. The mother indicated during cross-examination that she had probably made in excess of twenty reports, but she added that, because she later felt that would not bring about closure in the case, she stopped making them. She said that she soon realised that when she made a report the father would then make a report and that it was "*an endless battle of reports*" and the Police "*did not do anything.*" Both parties have involved the Police when they had disagreements about parenting issues which should not have been referred to the Police. The mother has belatedly recognised this over the past two years, during which time she said she only made one or two reports.

119. After she left the home, the mother felt that the father was limiting her contact with L, especially if she said anything that he did not like. She said that he did not allow her to see L until 26 March 2014. The father enrolled L, when aged two, for a week at a daycare school, although he had never been at daycare before and although the mother was, due to her employment hours, able to care for him when the father was at work. The mother said that the father had initially told one of the carers that the mother was not allowed to go to the school and that, if she showed up, the Police should be called. However, when it became clear that L was becoming tired and unsettled at nap time, it was agreed that the mother could attend, but the mother said the father had instructed that she had to leave as soon as he woke back up. The father denies that he placed these restrictions and there is no independent evidence from the school/day care to verify what the mother contends. I am unable to make a finding on this issue.

120. On 1 May 2014 the mother filed a Summons seeking ex parte protections orders. At that time L was seeing his mother from 7:15 a.m. to 6:30 p.m. on weekdays when the father was at work and from 10:00 a.m. to 7:00 p.m. on weekends as long as that latter time was spent with the father. That was a controlling condition imposed by the father. I am not sure why there was a delay, but the Summons first came on before me on 20 May 2014, at which time an Ex Parte Non-Molestation Injunction was granted with a return date on 26 May 2014. That Order was then extended unopposed until 2 June 2014, when it was replaced by a written Non-

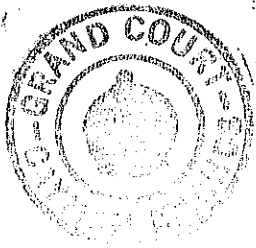


Molestation Undertaking from the father. There has not been a hearing at which findings were made in relation to allegations of domestic violence after hearing from both parties.

121. It is clear from both parties' evidence that handovers for contact have been stressful. This included an occasion when the parties thought they had agreed a variation in the arrangements outside of the Courtroom at a hearing in February 2017. A disproportionate amount of time during the current hearing was occupied concerning a dispute about where and what time they had agreed the handover on that day, with each party unreservedly blaming the other for what occurred resulting in L waiting around at the Police Station. Having reviewed that evidence, I am satisfied that, although the parties believe they had reached a purported agreement, in fact no agreement was reached, with each party genuinely believing that their interpretation of the outcome of their discussions amounted to the agreed arrangements. It does not influence my decision on the applications before me.

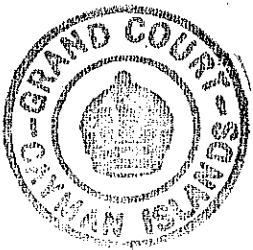
122. There was an incident at a handover outside Hurley's Supermarket in which the mother alleged that the father spat in her face three times. Apparently there were witnesses at the scene. The father was charged by the Police and the matter went before the Summary Court where the father was acquitted after a criminal trial. I have heard evidence in relation to this incident from both of the parties and

regrettably, similar to the Summary Court, there is still no independent witness evidence before the Court. It appears that there was a willing witness, as Sherine Barnes set out in her first report the details of the incident which she said were relayed to her by a woman who said she had seen what happened, which were consistent with the mother's version of the events. Although a Welfare Officer may give hearsay evidence, on an issue such as this the Court would expect the mother to have obtained an affidavit and ensure the attendance of that lady witness. Although the standard of proof before this Court is on the balance of probabilities and not the criminal standard required in the Summary Court, I do not find myself in a position to make findings as to what happened on that day based on the evidence placed before me. However, I am able to find that this handover and later handovers at the Police Station have been problematic and are illustrations of both parents' inability to co-parent effectively.



123. Following on from this incident the parties agreed that the venue for handovers should be changed to the George Town Police Station. Unfortunately these handovers were also problematic, with both parties giving different versions of disruption occurring at handovers. Ms. Dacosta, although recognising that the handovers had been an issue between the parties, told the Court that she has no concerns for the safety of L resulting from what she has personally seen at the handovers which she attended.

124. Evidence was received from Officer Miller who approached the mother and said that he was willing to give evidence as to what he had observed at contact on her behalf in his personal rather than professional capacity. His evidence was not particularly helpful. He told the Court that on one occasion he thought the husband was being manipulative and he speculated about what the father had said to L to make him act in a clingy way towards him at one handover. He said that he thought the father's conduct on this day was "*sick behaviour*", which was a rather over-emotive remark and showed a lack of neutrality as a witness. The handover arrangement is an area of co-parenting that the parents require assistance with and counselling for. Moving forward, the parents must show a degree of maturity and understanding to ensure that handovers are less problematic and held in a more natural setting than a Police Station.

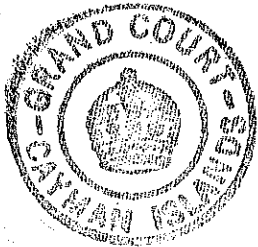


125. The parents have been inconsistent in their joint approach to health issues in relation to L. They have not acted collaboratively in relation to health professionals, attending their preferred doctor when L is under their care rather than finding and agreeing on one General Practitioner. There is evidence of a failure to exchange information about the treatment received and for a consistent approach to be taken to medical issues, for example in relation to L's potty/constipation concerns, applying lotion on his bumps and how to treat a splinter. The parties are also unable to act consistently when it comes to discipline and his dietary habits. I accept that parents do have different approaches, but for

these parents it becomes an open dispute, which on occasion has been witnessed by L.

126. Although, on the evidence before me, I do not find on the balance of probabilities the mother's allegations of physical abuse from the father to be made out, there are traits in his personality that have affected her emotionally. A prime example was his aggressive verbal and physical conduct on 22 March 2014. In his oral and written evidence, the father portrayed a firm and occasionally patronising belief in the merits of his own views and opinions, and he is not easily swayed. This is because he is unable to see beyond the mother's removal of L almost four years ago in September 2013 or accept her recognition that what she did was wrong. Although he may have been entitled to be highly suspicious of her actions at that time, he has failed to acknowledge that she has since followed the due process in relation to where L should live. The fact that the mother has sought legal advice in Mexico does not mean that she intends to abduct L.

127. During the hearing a great deal of time was spent giving evidence about the mother taking L on the Disney Cruise ship on a day pass whilst it was moored at the Port. On one occasion the mother took L on the vessel and he enjoyed a wonderful experience with visiting members from the mother's family. The fact that the mother did not tell the father about that child centric event is irrelevant to the issues before me, it is a matter for her what appropriate entertainment she



provides for L when he is with her. The father wrongly feels that he should have been told and the fact he was not does not support his belief that there is an intention to abduct. The position he took and maintains in relation to the mother's wish to again take L on the Disney vessel despite him retaining L's passport and the security measures ordinarily put in place by the cruise company, in the absence of any supporting evidence, was and remains unreasonable and controlling.



128. The father has an openly critical and disparaging view of professionals, including Social Workers and Counsellors, who do not adopt his views. From my assessment of him in the witness box, I accept that he shows little flexibility in his beliefs and he has a lack of appreciation of the detrimental emotional effects some of his controlling and overbearing conduct concerning L has on the mother. Even allowing for nervousness as a live witness in Court, his evidence was characterised by delivery of answers at great speed and intensity, on occasion not addressing the question asked by Counsel, but instead rambling somewhat on unrelated matters. He reacted adversely when he heard something that he did not want to hear. His witness affidavits, particularly the one prepared by himself, were lengthy and somewhat obsessive in tone.

129. On occasion, especially when the marriage was breaking down as well as following the mother's return from Mexico, the father has been verbally abusive

and overbearing as he wished to impose his will. However, I do not accept the mother's evidence that this behavior has been to the degree or as serious as the mother contends. During cross-examination she conceded that:

*"Since September 2014 there have been no fights, just arguing. Not physical. The only time when physical was when he spat in my face."*¹²

I am satisfied that she also has a temper, admittedly sometimes that has been when the father has behaved in such a way that she had to stand up for herself, and at times her conduct has 'added fuel to the fire' when there have been some potentially turbulent situations. Ms. DaCosta despite in her assessment seeming to prefer the mother's version of what happened during incidents between the parties, when examined by the mother's attorney stated:

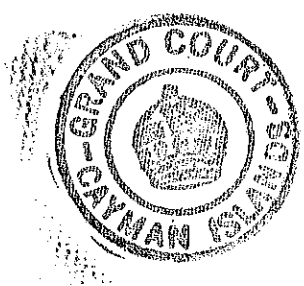
"I think at times both parties are at fault for the combativeness,"

This is a conclusion I also reach. The mother summarised her conduct during cross-examination when she stated as follows:

"I not start fights, if someone start a fight I will defend myself. I avoid conflict, but if I have to I will."

130. Despite the above, it is clear that the father has a degree of insight into his behaviours sufficient to comprehend the need for counselling for his temperament and parenting issues. This seems to be something that he is more willing to attend

¹² See incident outlined in paragraph 122 herein.



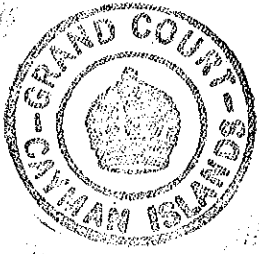
than the mother at this time. It is clear that the father loves L very much, as does the mother, and all that he does is driven by what he thinks is best for L, even if at times he appears to be over-possessive and insistent that his approach to parenting is the correct one.

The Mother and Father's Financial Position and their Immigration Status

131. The parties have stable and long-term employment in the Cayman Islands. They have both applied for Permanent Residence Status and feel somewhat confident that residency will be granted, if and when the applications are eventually considered. They are currently employed on work permits pending the determination of their applications. Although the mother has applied, she indicates this is not due to a desire to remain in the Cayman Islands but primarily to enable her to be in employment pending the determination of the Children Law proceedings. The father regards the Cayman Islands as being his and L's permanent home. On the evidence from the parties, I approach this case on the basis that the parents and L may remain in the Cayman Islands and that neither must leave in the foreseeable future for immigration reasons beyond their control.

132. The mother contends that the family's financial circumstances are one of the reasons why it would be in L's best interests to leave to Mexico. The mother characterises her financial position in the Cayman Islands as being "*really difficult*". She said that her average income is about \$1,600 per month and that she

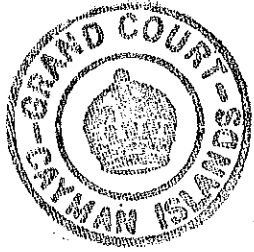
receives \$750 from the father for rent with an occasional \$100 more. She says she also receives financial assistance from her father in Mexico who has permitted her to use a credit card attached to his account. When I asked for details about the mother's outgoings, she listed her basic outgoings totaling \$1,234 which does not include rental vehicle expenses (save of petrol), lunches for L, hairdressing, clothing and the remaining two payments of \$250 per month to her immigration lawyers.



133. The mother contends that if she were in Mexico she would be able to work two jobs and that she would have family who could assist with childcare. She indicated that her sister would recruit her as an Event Planner at the Civil School of Engineering (a job she had previously had there) and that she would continue as a Yoga Instructor. She stated that on a good month she could be earning 10,000 pesos¹³. The mother did not provide conclusive evidence about the availability of this work and about the pay that she would receive.

134. The father's financial position has deteriorated, especially from the end of 2013. He had to spend a lot of money on the Mexican Court proceedings and he has experienced a significant reduction in his salary in his new employment position. His monthly income is \$48,000 per year. From that he said he has monthly outgoings of \$5,375. This includes \$1,622 for the mortgage on the three-bedroom

¹³ Converts to about CI\$459.

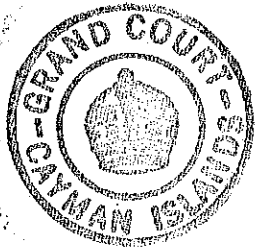


property, \$750 per month maintenance he pays to the mother and school fees for L of \$1,300 per month during school-term. The father says that he would like the \$750 per month maintenance figure to be reduced to around \$450 and the mother to pay a contribution to the school fees. Although the property is a three-bedroom property, significantly larger than the property that the mother can afford to rent, he wishes to remain in that property and pay the mortgage. The feasibility of the status quo remaining will be a matter for determination at the ancillary relief proceedings, for if the mother and L are to remain in the Cayman Islands and if the father states that he can no longer afford to pay child maintenance to the mother at the current level, then the father's outgoings may need to be reduced and this may only be achieved by the parties then living in separate rented accommodation of a similar standard.

135. The mother's case is that if she were able to move to Mexico she would seek minimal maintenance and may not seek a contribution to the much lower school fees which would be payable in Mexico. She says that the money that the father would save by not having to meet the above expenses could be contributed towards the cost of visits for him to Mexico to see L or for L to visit the Cayman Islands. The mother indicated that if she had to travel to the Cayman Islands with L to enable him to see his father then she would cover the cost of her flight.

136. The Court is not in a position to determine at this hearing what financial ancillary relief orders will be made. The outcome of this hearing may well affect the nature of those orders. It is clear that the parties are financially stretched, but there may be an argument for this bilingual mother increasing her income capacity now that L is at school, especially during school-term time, if she were to remain in the Cayman Islands. As a Yoga Instructor she does not seem to work during the daytime during the week. She has experience in office employment as she was an Event Planner. There is still uncertainty about the mother's employment and income position in Mexico as she has failed to provide adequate documentary evidence to back up her contentions. The mother has provided a letter of recommendation from the Convention Manager from 2006 which set out what she earned in 2004, but this is not evidence of the current availability of the same post or of what income she could now receive. Although, on the balance of probabilities, I accept that she would initially be able to live with her sister in suitable accommodation, it is unclear how long that arrangement would last in the absence of any evidence from her sister. I do not find, on the evidence before me, that the father's concerns that the sister's property is currently subject to foreclosure proceedings to be made out.

137. On the evidence before me, although I have regard to them, the financial circumstances are not a significant factor indicating that it would be in L's best interests to leave permanently when conducting the necessary balancing exercise.



The uncertainty about the mother's income in Mexico is a factor to consider when determining whether she would be in a position to financially assist with the cost of travel for L to spend time with his father, especially if she intended to travel with him to the Cayman Islands.

The Impact on the Mother if the Application to Relocate is Refused

138. I accept that mother states a genuine wish to relocate to Mexico, as she does not regard the Cayman Islands as being her long-term home and she misses Mexico where the majority of her family live. That said, she has stable employment in the Cayman Islands and she is not isolated as she has friends who she may socialise with.

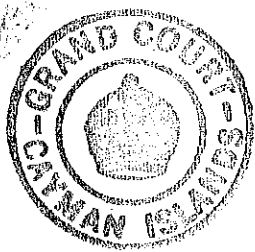
139. The importance of the potential impact on the mother unsuccessfully seeking to relocate is an important factor when considering what may be in the best interests of L. I am satisfied that the mother's application is genuine to the extent that it is not motivated by some selfish desire to exclude the father from L's life. Despite the issues raised by the father about the level of contact during her visit to Mexico in July 2013 and following the removal of L in September 2013, I am sure that the mother would try to facilitate Court ordered contact if she were given leave to permanently relocate.

140. The mother's wish to move is partly motivated by her desire to live a distance away from the father and away from the stresses arising out of their difficult interaction which she finds to be emotionally draining. She states that she feels that the distance may improve the way that the parents co-operate with each other in relation to L. However, I fear that, if she were to move with L, the father's emotional response and great difficulty in accepting such a state of affairs would make her view an unrealistic one. It is evident from all of the evidence that L has a very close bond with his father who plays an active role in his upbringing and I am not satisfied that the mother recognises the detrimental emotional affect that separating this young boy from his father would have on L at this important stage in his life.

141. I accept that the mother would be very upset if she was unable to move back to Mexico to be with her family and I take that into account when considering her application to permanently remove. The father accepts that the mother wishes to go back to Mexico and that she would be happier there, but he feels it would not be in L's best interests for him to relocate there and he rather ungraciously remarked in his evidence "*if she wants to go to Mars, she can if it makes her happy.*" I have to consider how her disappointment might affect her ability to care for L and what effect that could then have on his welfare, which is paramount. If the mother does not return to Mexico, the father should take a less rigid and more

sensitive stance and adopt one more akin to the one he did back in July 2013 when he facilitated the mother and L travelling to Mexico.

142. There is no contention by the mother that a refusal of her application would result in damage to her mental health. There is no medical evidence to support such a contention, even if one were made. In her oral evidence the mother made it clear that when she wrongfully removed L from the jurisdiction in September 2013 she did so as she was in a fragile state, but she then added that things have changed and she is stronger and no longer fragile.

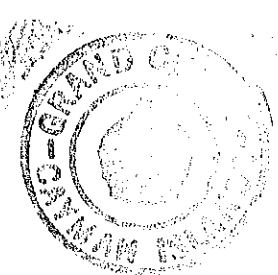


The Mother's Views about the Benefits for L of a Relocation to Mexico City and the Mother's Plans if she Relocates

143. The mother sets out her views concerning her plans and the benefits for L of her relocation plans primarily in her affidavit sworn on 2 January 2015. Therein she stated that she had:

"thought very carefully about making this application and the negative impacts and consequences that flow from it."

144. In that affidavit the mother indicated that they would live with her father. She then said in her affidavit sworn on 6 June 2017 that they would live with her sister in her three bedroom home. Despite the father's concerns about the sister's property and her past and alleged present financial difficulties, I am satisfied that the mother could reside there upon arrival or, if granted leave to temporarily



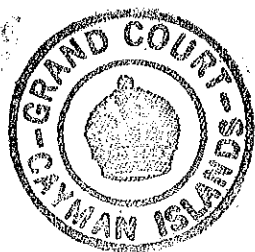
remove L, for an extended vacation. From the photographs and detail provided, the accommodation is suitable and in a reasonable and safe neighborhood. However, the mother's long-term accommodation plans have not been adequately presented to the Court and do not seem well thought out. There is no affidavit evidence from any family member about the accommodation or care that they would be able to provide moving forward. There is no evidence about the type and cost of independent long-term accommodation for the mother.

145. In her affidavit the mother initially said that she had looked at and researched a Montessori and Primary School for L to attend in Mexico City¹⁴. In the affidavit she stated that a printout from one of the schools was exhibited illustrating its “non-traditional” school methods, but regrettably it was not. She felt that the education system in Mexico would “*be extremely beneficial and work wonders for L*” as she characterises him as being a “*very active and sensitive child.*” She says that although she believes Cayman’s educational system has improved it is “*still not as developed and advantageous as what I believe we, as parents, can provide to the children.*” Save to say that Grand Cayman is a small island in a larger world which she believes generates less life experiences and less sporting/activities or opportunities, the mother does not give any hard reasoning for her reaching such a conclusion. Although the mother does contend that the

¹⁴ There is also a Montessori School in Grand Cayman.

British system which she says is followed in Cayman¹⁵ focuses on core subjects and despite L's tender years she feels that it would be better for him to be in a flexible system which she says exists in Mexico.

146. In her affidavit sworn on 6 June 2017 and at the hearing the mother said that L would not attend the Montessori School, but a bilingual private school close to her sister's accommodation which offers a Mexican curriculum and where she says space is available for L from August 2017. The mother indicates that children who attend the schools that she has in mind will attend Mexican universities. In the same affidavit the mother exhibits a one page Registration Report from the school setting out the fees and school hours. There is no helpful information from the school (and later schools in Mexico) concerning the nature of the curriculum, facilities and students.

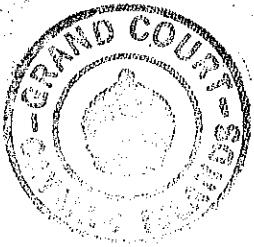


147. On the limited evidence before me I am unable to find that the short or longer term education that L would receive in Mexico would be better for him than the education available in the Cayman Islands. As stated by me in **B v B**:

"I may take judicial notice that the Cayman Islands have good quality private primary school education, providing access to either the American or British curriculum. There are also private secondary schools in the Cayman Islands providing access to the

¹⁵ In fact this is not in all Cayman Islands schools, a number follow the US Education System.

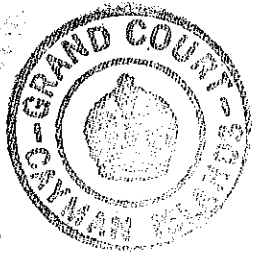
American and British curriculum and which offer a more than adequate education, at least up to the age of 16."



There are a large number of expatriate children in the Cayman Islands who receive a solid primary and secondary school education at the on-island private schools here. L has a Canadian father. Although not seeking to judge the quality of Mexican universities, I am conscious that the consequences of leaving the education structure in the Cayman Islands, a departure which the mother regards as being a permanent one, may restrict later opportunities for L to attend a university in the United Kingdom, Canada or the United States. All are paths followed by many students graduating from high school in the Cayman Islands.

148. I have been provided with limited information about Tlalpan, Mexico. The mother has exhibited to her June 2017 affidavit an extract from Wikipedia to her affidavit. The Welfare Officer has not made any enquiries of her own. In the absence of further meaningful detail from the mother or from the Reporting Welfare Officers, the information supplied by the mother may be fairly helpful when considering a temporary removal application, but is deficient when considering a permanent removal.

149. The mother's initial position that the father should visit Mexico to see L until he reached the age of 8 rather than L travelling to Cayman was too restrictive and would deprive L the benefit of spending quality time in his second home with his



father. The mother recognised that during the hearing and then agreed that L could travel accompanied and that she would be willing to play a role in that. The mother's contention that they should still share the Summer holiday time equally again does not take into account that, if the father is able to arrange his vacation time from work, then L should spend a greater time with his father during the vacations. When reviewing the rest of the mother's evidence concerning contact arrangements I am satisfied that she is being genuine when she says that she would facilitate direct and indirect contact if she were permitted to move to Mexico. I do not feel that she seeks to exclude the father from L's life or that her application is motivated by a desire to do so.

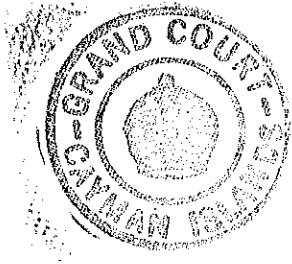
150. Despite the mother's willingness to facilitate direct and indirect contact, there would be a detrimental reduction in the time that L would be spending with his father if L moved permanently to Mexico.

151. The reduction in the level of time spent with the father, even if L stayed with him for extended periods in the Summer and for either Easter or December school holidays and had regular indirect contact, would disrupt and be detrimental to the close and important relationship he has with his father, a relationship which would have to be nurtured for over ten years from a country with a different language and culture. The father is utterly bonded with L and is desperate to maintain his relationship with him. His opposition to the mother's application is

motivated by his genuine belief that such a separation with such a reduction in face to face contact would be detrimental to L's welfare and it has not arisen due to some other ulterior motive. In his Judgment in **MB v JB** 99/2009, 22 June 2010 Quin J. referred to the following helpful extract from page 10 in a paper presented by Professor Marilyn Freeman at "The Family Law Bar Association Conference" on 9th May 2010:

"Indirect contact is no substitute for the meaningful, ongoing relationship between a child and his or her parent, which allows for the development of a relationship through the minutiae of life, without the obligation of having to treat each meeting as a holiday excursion or an important event; having time to argue and differ with the opportunity of reconciling differences within a normal relationship and without fear that the distance and time lapse between visits will prevent the healing that occurs naturally in ongoing caring relationships; allowing the child to learn from the parent through regular observations in everyday circumstances, which builds understanding and familiarity with the issues that need to be faced in life."

152. As I stated in **B v B**, I accept that, with a proposed move of this nature, a number of arrangements, including housing, will have to be transitional and some details not firmed up. Despite again acknowledging this, I still feel that the mother's plans as presented have not been researched to a degree necessary to persuade the Court that the proposed arrangements in Mexico would be better for L than those he has in the Cayman Islands, or that in the balancing exercise that



any benefits to L and to this foreign national mother by acceding to her wish to return to her homeland and to her wider family in Mexico would outweigh the detriment caused by the loss of frequent informal contact between the father and L. I am not satisfied that the mother's proposals are well researched and investigated.

Court Welfare Officers

153. Three Welfare Officers have submitted reports in relation to L. The first was filed by Sherine Barnes on 9 September 2014 in which she recommended that a residence order be granted to the mother, with L having contact with the father on three weekends per month. It is clear that Ms. Barnes on the whole preferred the mother's versions of events over the father's and she placed great reliance on what she was told about the incident at Hurley's Supermarket.

154. When the matter came on before the Court on 11 September 2014, the Court was concerned that the Welfare Officer had failed to consider the welfare checklist. A further report was requested and this was filed on 21 November 2014 by a new Social Worker, Karelle DaCosta. In the report Ms. DaCosta informed the Court that she had observed L in the home of each parent on a number of occasions and that L had been:

"observed to be responsive to both parents and goes to both parents for comfort in his time of need or for any request that he may have. He has been observed to be happy, content and active

while in both homes. The parents were engaging with (L) and attended to his needs the situation called for."

Importantly she added that the parents would:

"benefit from co-parenting classes given (L's) young age and the fact that they would both like to be an integral part of his life as he grows up."

She concluded a report by giving very sensible advice that as:

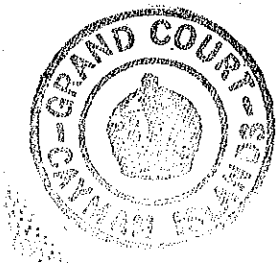
"both parents love (L) dearly and only have his best interests at heart .. It would be wise for them both to be able to co-parent this child to help ensure that he is raised in a stable, nurturing and loving environment."

These reports were not concentrating on the issue of relocation.

155. The third Welfare Officer's Report before the Court is one prepared by Keisha Smith and it was filed on 10 March 2015. Ms. Smith was satisfied that L's physical needs were being met by both parents and that he had developed a good attachment to each of his parents. She added that it was:

"clear that (L) has a good relationship with both parents and wishes to be with both parents..."

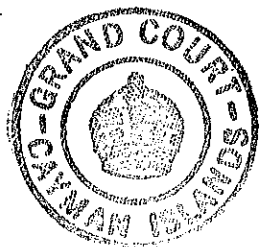
and that



"L will need an unbiased account of his family history as he ages, and there is a concern that both parents will be unable to do this given their poor relationship which may not improve."

She recommended that L remain in the Cayman Islands until the parents' immigration status changed due to their 'rollover' due in 2017. She felt that in the interim L should remain in the "*care and custody*" of both of his parents, with weekend contact with his father from Friday to Monday. She stressed the importance of the parents continuing counselling sessions and that they both should have a psychological assessment. Attached to this report were reports from Counsellors following sessions addressing each parent's personal issues and both reports indicated that they had both made "*excellent*" or "*exceptional*" improvements.

156. The fourth Report was filed by Ms. Dacosta on 21 August 2015. Regrettably, in each report, she incorrectly recorded L's date of birth, making him one year younger than he is. It was also concerning that during her oral evidence, and apparently in her exchanges with the father, Ms. Dacosta minimised the inappropriateness of mother's actions in September 2013 as well as the effect of them on the father. She found great difficulty in recognising that what occurred was child abduction, referring to the removal as being "*an abduction in inverted commas.*" When commenting upon the incidents that occurred between the parties in the month leading up to L's unlawful removal, which were partly driven



by the father's justified concern that L was going to be abducted, Ms. DaCosta was unable to acknowledge that the mother, albeit due to her being in a "*fragile*" state, had acted in a calculated manner and instead she levied all the criticism and blame for those incidents on the father. It is this lack of insight that may have engendered a feeling of bias in the mind of the father and it was an unhelpful distraction from the meritorious and helpful parts of the detailed assessment she carried out.

157. The 21 August 2015 Report dealt with the issue of the mother's application to permit her to relocate to Mexico. The Welfare Officer had been asked to specifically report about the arrangements that the mother would have in place in Mexico as well as the husband's ability to remain in the Cayman Islands in the long-term. Some of the observations about L and his interaction are now unfortunately dated, as at the time he would have been less than three years old. It is clear from the report that Ms. Dacosta's professional relationship with the father has broken down, she referred to him as being "*antagonistic*" or on one occasion "*borderline hostile*" towards her. Having seen his, on occasion, intense demeanour in Court at this and past hearings, I am satisfied that the father would not have been civil to the Welfare Officer, especially when she did not agree with his position. In fact at different hearings during these proceedings, when the various options available to the Court have been canvassed, the father has forcefully told me that if the mother is given leave to take L to Mexico, even for a

visit, he will be appealing the decision to a number of Courts including *“the European Courts”*.

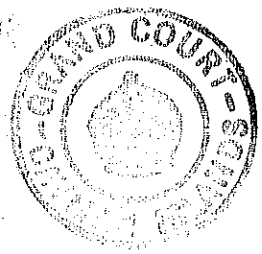
158. Ms. Dacosta told the Court that she:

“enjoys a better relationship with the mother.”

She felt that the animosity between the parents was causing emotional distress to L as he was no longer a cooperative, easy-going child. She rightly highlights that:

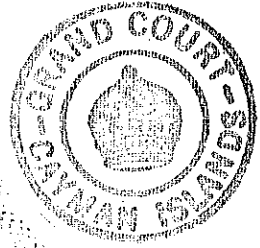
“Co-parenting is a major issue that both parents need to grasp even though they are no longer in a relationship, this error needs to be greatly improved.”

After setting out three options covering different scenarios where L moved to Mexico or not, she recommended that it would be in his best interest to relocate to Mexico with the mother with liberal access to the father. Upon reading the report in preparation for the first day of this hearing on 6 July 2016 I was concerned that the welfare officer had not therein adequately set out her reasoning for the conclusion that she had reached and that she had failed to properly investigate the suitability of the arrangements the mother proposed to place in Mexico. Ms. DaCosta made it clear during her oral evidence that she was satisfied that the mother had given proper thought to the move, but when asked whether she had conducted an independent investigation into the proposed circumstances in



Mexico or based her finding solely on what the mother had told her, she replied that she had not contacted anyone in Mexico. She agreed that she had not sought any independent confirmation about the mother's declared employment proposals if she moved to Mexico. She also accepted that she had no means of verifying what the mother had told her, that she had not been provided with any documents in this regard and that she accepted the information given to her by the mother about Mexico in good faith.

159. In 2016, during the first stage of this hearing, the Welfare Officer gave evidence over three days. After that hearing was adjourned part-heard Ms. Dacosta prepared a further updating Welfare Report which she filed on 16 June 2017. In that report she again set out three options in relation to the arrangements for L, each depending on which jurisdiction he was living in. Regrettably, due to his concerns about bias, the father refused to meet with the Welfare Officer and he therefore hindered the preparation of the report. In the report Ms. Dacosta, when considering the welfare checklist and the likely effect of any change of circumstances, felt that a move would offer L more stability, rather than moving back and forth between the parents. She felt that L might need counselling to help address the issues from the loss of seeing his father as often as he now does. She suggested that L may feel some sort of relief not being "*caught in the middle*" of his parents who are unable to agree on issues. She stated that the move would be an easier transition at this age rather than an older age.



160. In the report Ms. DaCosta highlighted concerns from the school about L becoming “*quiet and reserved*” after contact with the father, whereas the other occasions he is “*outgoing, playful and full of energy*.” The teacher also reported to the Welfare Officer that she had heard L say “*my mom’s a liar*.” This is not the only mention in the reports of L saying things which tend to indicate that his father has been mentioning inappropriate things about his mother to him.

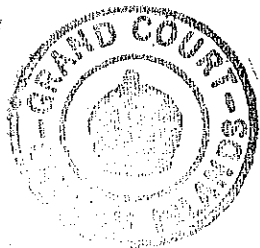
161. L has also had to be treated by a therapist in relation to his toilet difficulties, and a bathroom plan has been put in place. The Welfare Officer believes that this may be as a consequence of the emotional strain he is feeling from the parent’s interaction and the father’s conduct, especially at handovers. The school noted improvement after that. Ms. DaCosta shared that L is doing well academically at the school where he has lots of friends. She also shared that he likes his school and he has been making a lot of progress since September 2016 and has been “*focusing more*”.

162. What jumps out of the report is Ms. Dacosta’s concern that both parents have an inability to communicate with each other which exposes L to a “*lot of instability and chaos*.” She commendably added that:

“Both parents must realise that parental influence plays a major role in the life of L and they must put aside their differences and communicate so that future decisions can be made for L which is in his best interest.”

She stated that:

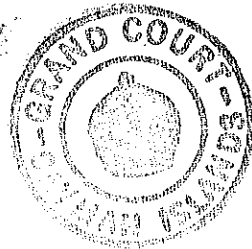
"They both need to realise that they are L's parents for life and it is therefore imperative that they take the necessary steps to improve their communication..... Co-parenting is a major issue that both parents need to grasp especially since there are no longer in a relationship; this area needs to be greatly improved by the parents. There is much emotional damage being caused to L by this current animosity between the parents which needs to be better managed or end if both parents are considering the best interests overall well-being of their son."



163. What the Welfare Officer then fails to address is how the parents could be assisted to move forward in the above manner if they were living in different jurisdictions. The reality is that the father would find the separation extremely painful and it is unlikely that he would be able to come to terms with the same. The knock on effect would likely cause a devastating long-term effect on his relationship with L and bring to an end any hope of the parents developing a position where they could communicate and work together for the sake of L.
164. As already mentioned Ms. Dacosta gave three days of evidence during the first part of this hearing before filing her final written report, but she also gave evidence for most of the first day of the second part of this hearing. In her oral evidence she gave the impression that in her written reports she had believed that the mother would not be able to remain in the Cayman Islands for immigration

purposes. During the hearing I asked her whether her recommendation would be the same if the mother was not compelled to leave the Cayman Islands and she said:

"I am not one hundred percent sure. I cannot say with one hundred percent certainty what my recommendation would be if the mother was not compelled to leave for immigration reasons... As I am trying to get the correct words out, If I be of (a) mindset, that civility and (the) way things are between these parents could improve and change and the mother not being forced to leave Cayman, then (my) recommendation may be different. Because of that contention and what he does to L's emotions as he (L) (has) seen what has taken place, then that is where my concern is. Do I think they can make a go of it, if that price I locked in a box and thrown away?- It is a possibility. If she is compelled to leave beyond her control L should be able to go with her."

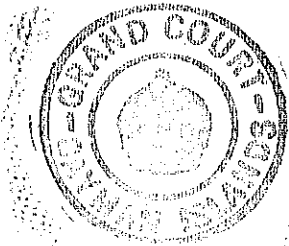


165. Ms. DaCosta indicated that, if permission is not granted to relocate, the current arrangement has resulted in too many transition periods and that L should reside with his mother during the week and have contact with the father on three out of every four weekends. This is a weekend arrangement which the father has indicated he would accept. It is clear from her evidence that she feels that a better routine must be established and that L is more relaxed in the mother's home.

166. When considering the status to be given to a Welfare Officer's Report and recommendations I agree with the following, non-binding, observation of Cheung

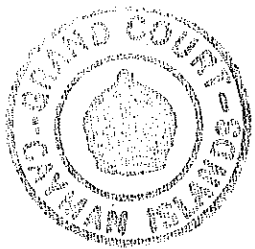
J.A. in the Hong Kong Court of Appeal decision in *Naziya Aslam v Rafaqat Ali*
CACV 144 of 2003:

"24. We will further add that a social welfare report is not a special category of material information, nor should the recommendation assume a status somewhat akin to a legal assumption which needs to be rebutted. Ultimately the decision lies with the judge based on the available evidence and guided by the relevant principles..."



167. Although she rightly highlights the emotional harm caused by the nature of the parents' interaction, I do not adopt Ms. DaCosta's recommendation that leave should be given to permanently relocate. My reasons for reaching my own decision in this Judgment provide the reason why I decline to follow the Welfare Officer's recommendation. When I reach this conclusion I wish to record that a great deal of the content in all of the Welfare Officers' reports and Ms. DaCosta's oral evidence have provided an insight into this family and have been helpful to me when reaching my decision about the various options available to me in relation to L. I also acknowledge that Ms. Dacosta has done her best to try and engage the father in the reporting process but, due to his temperament, he is a difficult person to work with especially if one expresses a view that differs to his own.

168. In her reasoning Ms. DaCosta has not adequately investigated circumstances in Mexico arising out of the mother's proposals about the arrangements there or



considered how they compare to how L's physical needs may also be met in the Cayman Islands. She has also insufficiently investigated and addressed the detrimental effect on the positive elements of the relationship between L and his father, in light of their strong bond, if he were to permanently relocate to Mexico. I find that the father's opposition is motivated by genuine concern and the Welfare Officer has failed to properly consider that when reaching her recommendation- this may be because of the difficult nature of the relationship they have. The prospective loss of regular face-to-face contact has been given insufficient weight during her investigations and when carrying out the balancing exercise in reaching her recommendation.

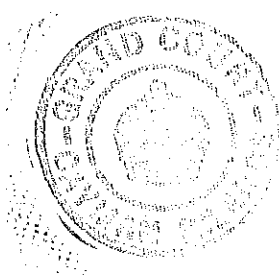
169. I note that Ms. DaCosta rightly highlighted the needs of the parents to improve their communication and co-parenting skills. Despite this, she has not dealt with how such an improvement could take place or how any assistance that needs to be given to make that take place will occur if the parties are residing in different countries. It is without doubt in L's best interest that those issues are resolved, but it is highly unlikely that this would occur following a permanent relocation and that would have a long term detrimental effect on the emotional well-being of this very young boy.

170. I accept that the Welfare Officer's observation about the inability of the parents, especially the father, to handle their emotions in front of L appropriately and their

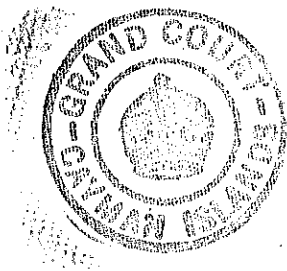
conduct has had an unsettling impact on L and must be addressed to prevent him suffering emotional harm. I agree with the welfare officer that L at his age requires a reasonable routine to be established, particularly one which promotes his needs during the school week days over the parents' emotional needs.

Conclusion

171. The overarching principle is that L's interests are paramount. The relevant parts of the 'welfare checklist' which is found at s.3(3) Children Law (2012 Revision) assist the Court in that exercise. I have considered it all and have incorporated it, either directly or indirectly into my analysis in this Judgment. To that I would add the following:

- 
- (a) **The ascertainable wishes and feelings of L** – Due to L's age and lack of understanding, despite him on occasions making statements about his time at each parent's home and about Mexico to the Welfare Officers (some of which may well have been as a result of parental influence), I am unable to form a view about his wishes and feelings, save that he clearly loves his parents and enjoys his relationship when with either parent.
- (b) **Physical, emotional and educational needs:** I am satisfied that L's physical needs are being met by each parent when he is in their care and that his educational needs are being met at a good school here. On the evidence placed before me by the mother, and in the absence of any additional detail from or investigation by the Welfare Officer, there is

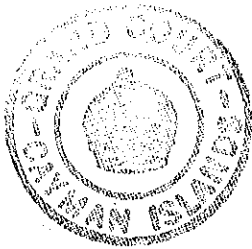
less certainty about L's short, and in particular, long-term educational needs if he was to move to Mexico. I am satisfied that the mother would be able to meet his physical needs in the short-term, but the details to enable me to form a view about his medium to long-term physical needs is lacking. I make this finding despite having had concerns about the parties' financial positions, arrears of maintenance pending suit which I am told is to be discharged and recent arrears of school fees.



In relation to L's emotional needs, I have very carefully considered the views of the Welfare Officers about the effect of the parent's conduct towards each other and their co-parenting flaws on his emotional wellbeing. For L's longer-term emotional development, it is imperative that the parents take up the opportunity to receive counselling to improve their communication skills and the manner in which they jointly parent L. If the mother and L were to leave to Mexico, it is unlikely that this would be adequately addressed which would considerably hinder the emotional development of this young boy over the many years until he reaches majority.

I accept that geographical distance between the parents may reduce the mother's stress caused by the difficult interaction with the father and remove L from the immediate friction, but the father who is utterly bonded to L and desperate to maintain his relationship with him would be so distraught and unaccepting of the situation that there would be a complete

breakdown in co-operation between the parties which would have a knock on effect with his relationship with L. I accept that, if L is to remain in the Cayman Islands, the father may still have a negative response, albeit to a lesser degree, to an order varying the current child arrangements and an order for temporary removal. The father should think very carefully about his reaction and how it manifests itself. Despite the fact that the Court expects these child proceedings to come to an end after this Judgment, a Grand Court Judge may consider that there needs to be a further change to the terms of the orders as a consequence of actions by a party if such a course would be in L's best interests. However, I hope that the stress that understandably comes with the involvement in what have been drawn out Court proceedings will now cease and this will assist the parties to concentrate solely on the welfare of L.



It is clear that L enjoys a close relationship with his father, who is a significant care giver to him, and at his age it would be upsetting for him for this to be curtailed. Prior to the mother's abduction of L to Mexico, she had clearly been the primary carer for L, but that is no longer the case and L is older and has formed a stronger bond and attachment with his father since that time.

If the mother is unable to relocate, I have considered whether there would, as a consequence, be an impact on the mother's sense of well-being and whether that would be transmitted to L. Although she would be greatly



disappointed if not able to return to her homeland and her family members, there is no evidence that a refusal would detrimentally affect her health or ability to care for L. When I reach the above conclusion I am acutely conscious that the mother would emotionally benefit from not having to deal with the father on a regular basis, but I also note that she has told the Court that she has grown stronger since her return and is not in the fragile state that she says she was in and which she says motivated the abduction in 2013.

I accept Ms. DaCosta's recommendation that now that L is attending school, his emotional needs would be best met by a routine being established with him gaining certainty resulting from having an established and consistent base during the school week.

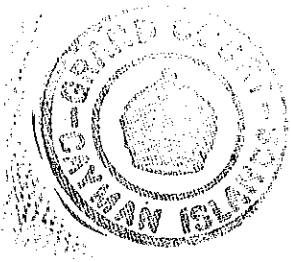
- (c) **The likely effect of any change in circumstances:** L is settled into a way of life in which he sees a great deal of each parent. Despite some toiletry health issues which appear to be improving, he appears to be a settled member of his school and Ms. DaCosta reports that he is more than holding his own academically there. She reports that he likes the school and has lots of friends there. He is focusing more at school and making a lot of progress as well as developing outside interests.

A move to Mexico would not mean the complete loss of all of this, but it would involve a major disruption and a significant loss. If leave were granted there would be a change of country for L to one which, due to his

tender years, he has only a degree of familiarity with and memory. L would be living full time with the mother and there would be a detrimental change in the quantum and circumstances in which L would see his father. A permanent move would involve a significant number of changes, which if not necessary, would not be in L's best interests.

- (d) **Age, sex, background and any characteristics the court considers relevant:** L is a bilingual and, one would hope, a bicultural almost 6 year old child. It is important that this is maintained and if a permanent relocation is not granted, it is an important factor when considering whether each parent should be able to temporarily remove him from the jurisdiction to the parents' countries of origin. There has been quite a bit of evidence given by the parties about L's health and toilet issues and the reason for them, but the conclusion reached by Ms. DaCosta is that "*for the most part*" he is a healthy child with typical illnesses for boy of his age who is attending school.

- (e) **Any harm which L has suffered or at risk of suffering:** I have expressed my concerns about the effect of the communication difficulties between the parties and their damaging interaction, on occasion in the presence of L. It is imperative that the parties address these issues and that they seek assistance with co-parenting, for a failure to do so will likely result in emotional harm to L. The parties must sensitively handle the

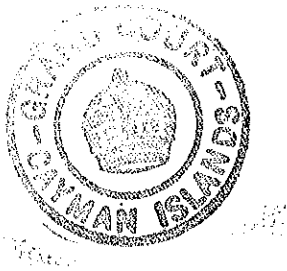


outcome of the decision in this judgment, shielding L from their displeasure about any of the orders made.

(f) **How capable are each of the parents in meeting the children's needs?:**

Both parents are capable of meeting L's needs. They both play significant roles in L's care, which they adequately discharge when he is in their care. It is in L's best interests that the parents retain this important input in his life.

(g) **Range of powers available to the Court:** I have considered what orders could be made to ensure that L and his father maintain a meaningful relationship if a permanent relocation was permitted, which includes arrangements during school holidays to compensate the reduction of regular direct contact with the father. I have balanced this with whether it is in L's best interests by weighing up all the relevant considerations for and against a move to Mexico. I have also considered the range of powers that I have in relation to arrangements under a shared residence order if L were to remain in the Cayman Islands and whether orders granting leave for temporary removal should be made.



172. Having carefully considered all of the evidence, the guidance from the case authorities and the welfare checklist I have come to the conclusion that the welfare of L compels me to refuse the mother's application for leave to permanently relocate with L to Mexico. When doing so I have balanced the

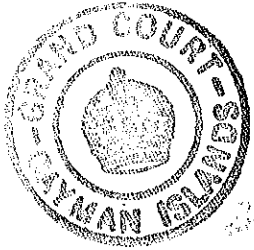
importance of L maintaining a meaningful relationship with the father against the mother's genuine desire to return to her homeland and family. I have regard to the upset which will be caused to the mother, who is totally dedicated to L, due to her wish to relocate not being fulfilled and how that might impact on her care of L. This is not one of those cases, on the evidence before, where there is a need for the mother to move to Mexico.¹⁶ There would be a detrimental impact on L's relationship with the father and direct and indirect contact would not be sufficient.



Temporary Removal

173. In the absence of a prohibited steps order, the holder of a residence order may take the child out of the jurisdiction for up to 28 days at a time, without the need to seek the consent of the others who have parental responsibility or to seek the leave of the Court. In this case, I make a Final Shared Residence Order to replace the Consent Interim Shared Residence Order made on 2 June 2014. For avoidance of doubt, I renew, until further order, the Prohibited Steps Order made by consent on 2 June 2014 preventing the removal of L from the Cayman Islands without an order of the Court or written consent from the other parent. With this in mind, I am, based on the submissions made and on the considerable amount of evidence before me, in particular concerning the efficiency of the Family Court in Mexico City and Mexico's compliance with its Hague Convention obligations, able to determine whether orders for temporary removal should be made.

¹⁶ For example such as an employment opportunity, health reasons, to maintain a relationship with a current and serious partner.



174. The starting point is s.3 of the Law. L's welfare must be my paramount consideration. In determining what is in his best welfare interest I have regard to each of the factors set out in the welfare checklist in s.3(3) of the Law. I must have regard to the general principle set out in s.3(2) of the Law that any delay in determining the questions before me is likely to be prejudicial to L's welfare. I must have regard to the BOR Article 9 rights of both parents and of L. The orders I make must be proportionate and in L's best welfare interests.

175. The case authorities mostly arise in circumstances where the proposed temporary removal is to a Non-Hague Convention country. That is not the case here, as Canada and Mexico are both parties to the Convention. The approach to be applied by Courts when determining an application for temporary removal from the jurisdiction to a Non-Convention country requires great caution and ordinarily mechanisms to be put in place to ensure the return of the child at the end of the period for which leave has been given. Having regard to the mother's abduction of L in 2013, I still conduct a careful analysis when considering granting her leave to remove temporarily to a Convention country and therefore, some of the guidance in the temporary removal to non-Convention cases is helpful.

176. The approach to be applied by Courts in such cases has been considered by the Court of Appeal in England and Wales in a number of cases, including *Re K (Removal from Jurisdiction: Practice)* [1999] 2 FLR 1084, *Re M (Removal from*

Jurisdiction: Adjournment) [2010] EWCA Civ. 888, **Re R (A Child)** [2013] EWCA Civ. 1115 and **Re H (A Child)** [2014] EWCA Civ. 989.

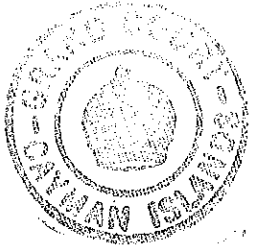
177. Patten L.J. stated at paragraphs 23 and 25 of **Re R**, where he stated:

"23. The overriding consideration for the Court in deciding whether to allow a parent to take a child to a non-Hague Convention country is whether the making of that order would be in the best interests of the child. Where (as in most cases) there is some risk of abduction and an obvious detriment to the child if that risk were to materialise, the Court has to be positively satisfied that the advantages to the child of her visiting that country outweigh the risks to her welfare which the visit will entail. This will therefore routinely involve the Court in investigating what safeguards can be put in place to minimise the risk of retention and to secure the child's return if that transpires....

....

25.[A]pplications for temporary removal to a non-Convention country will inevitably involve consideration of three related elements: (a) the magnitude of the risk of breach of the order if permission is given; (b) the magnitude of the consequences of breach if it occurs; and (c) the level of security that may be achieved by building in to the arrangements all of the available safeguards. It is necessary for the judge considering such an application to ensure that all three elements are in focus at all times when making the ultimate welfare determination of whether or not to grant leave."

178. In **Re H**, Ryder L.J., at paragraph 12 of his Judgment, observed:



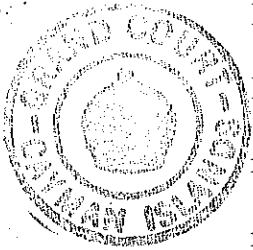
"When dealing with the risk element in cases such as this, it is important to take into account not just the facts as they appear from the evidence of the parties but also the opinions of those agencies that provide assistance to courts and to individuals when asked to do so."

179. For reasons already set out herein when conducting the balancing exercise in relation to the permanent removal application, I have no doubt that it is in L's best interests to be able to spend time in the countries of his parents origin, Canada and Mexico, and be part of his wider family in both countries. He is bilingual and bicultural and it is in his interest that those important characteristics are nurtured and developed. L knows he has family members in those jurisdictions and they are and will be important figures to him as he grows up. It is also in L's interests for his mother to be able to visit her family and homeland with L and have what Ms. DaCosta refers to as being *"time and space to breathe."* To prevent the mother from travelling with L to spend time in Mexico would cause her great emotional stress, which might have an understandable knock on effect on the level of care she would be able to give to L.

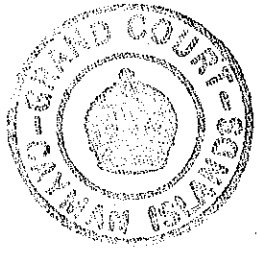
180. I am satisfied that the mother, who on a number of occasions during the final hearing and these proceedings forthrightly expressed genuine regret for what she did in 2013 and accepts that it was inappropriate, would comply with the temporary removal order and any conditions attached. She is clearly in no doubt

about what the possible consequences of any further breach could be, especially as L is habitually resident in this jurisdiction by order of this Court which has been recognised by the Family Court in Mexico City in February 2014.

181. Although the abduction in 2013 was most regrettable, the circumstances surrounding L's return to the jurisdiction are extremely helpful in my determination. The Mexican Authorities and the Family Court in Mexico City efficiently handled the return and fully complied with their obligations under the Hague Convention. This, coupled with the evidence from the father's Mexican lawyer, although he had some negative things to say about Mexico, has fortified my view that, if there was a breach due to the mother acting in a similarly illegal manner in the future, due process would be effectively followed in Mexico and that L would be returned.



182. The father's adamant refusal to ever agree to L visiting Mexico during his minority is unrealistic. Although his all-consuming fears are understandably grounded on the events of 2013, the father is unable to recognise the detrimental effect on L of not being able to develop his Mexican cultural and family ties. The father fails to acknowledge mother's flawless conduct in this regard since their return to the Cayman Islands and her recognition that what she did was unacceptable. Although I have carefully considered the father's opposition and

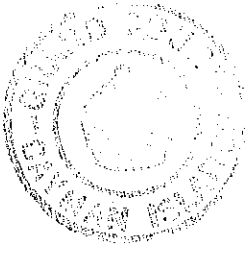


the reasons he has given for the same, I grant leave to both parents to remove L temporarily from the jurisdiction.

183. At this stage, unless the parties agree in writing to widen the locations, whether in or outside Mexico, the leave for the mother is restricted to taking L to Mexico City and Tlalpan, where the evidence before me indicates that the Authorities and the Courts efficiently comply with their Hague Convention obligations. I do so recognising that Mexico City is a massive and sprawling city. I have balanced the risks that come with permitting L to travel to that city with the best interests of L, which I feel would not be met if he was unable to travel and develop a proper relationship with his wider family members there with his mother.

Arrangements under the Shared Residence Order

184. For the avoidance of doubt, the starting point is again s.3 of the Law. L's welfare is my paramount consideration. In determining what is in his best interests I have regard to the 'welfare checklist' in s.3(3) of the Law. This is an exercise that I have already conducted when conducting my detailed review of the evidence when determining the leave to remove application.
185. The current arrangement does not promote a routine for L during the school week, and I share the welfare officer's view that this is something that he now requires. I also feel that the friction that comes at handovers is disruptive and a reduction of



the frequency of the same would be in L's best interests. I note that Ms. DaCosta in her reports and in her oral evidence highlights that, although L clearly enjoys the time when he is under the care of his father, he appears more settled and calm when she has seen him under the care of the mother. The Welfare Officer informed the Court that L was relaxed and engaging when she saw L at his mother's home but was guarded when she asked him questions about what he does when with his father. I accept that Ms. DaCosta has not seen L recently with the father, but this is the fault of the father who refused to see her and cooperate with the preparation of her Addendum Report. It is the responsibility of both parents to co-operate with the reporting process and if the Welfare Report does not contain elements which may assist the Court to obtain information about L's interaction with the father, in such circumstances, he cannot complain if that detail is missing.

186. Although Ms. DaCosta seems to place emphasis on the level of cleanliness in each home, that is not a factor I take into account when reaching my decision. I feel that the mother has been more child centric at handovers, the father has on occasion allowed his desire to protect himself in these proceedings to lead him to act in manner which has not been in L's best interests and has caused L to be drawn into disputes and increased tension between the parties often in L's presence.

Orders

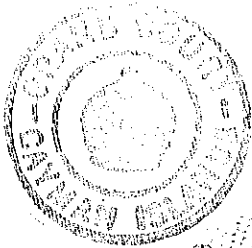
187. I am satisfied that the following orders should be made:

- (a) A Shared Residence Order,
- (b) L to reside with the father in a cycle of 3 out of 4 weekends from Friday after school until Monday school. An arrangement which the father informed the Court he would not be opposed to. This will reduce the handovers between the parents and enable L to see that his father has a role to play in his school routine when he attends there to collect and return L. If the parties cannot agree the actual weekends in the cycle, I direct that the first three weeks in each cycle will be with the father and the fourth weekend with the mother. This will enable the mother to have relaxing weekend leisure time with L on her weekend which is in his interests and enable the mother to make arrangements in advance for his care if she has to work at all on the weekend.
- (c) During the week prior to the weekend L is due to spend with the mother, L should be with the father on one weekday evening from after school until 7pm. If the parties cannot agree which evening that should be, I direct that it be on the Thursday evening,
- (d) L will spend alternate public holidays with the parents during term time. If the parties cannot agree the cycle the first holiday will be with the father.
- (e) L will spend half of each half-term with each parent. The parent who has the first half of the half-term will have the second half of the next half-



term. If the parties cannot agree the cycle, the half-term in the Autumn term will be with the father.

- (f) At all other times during the school term L will reside with the mother.
- (g) When L is with one parent overnight, reasonable Skype or telephone contact should be facilitated with the other parent. This may be once daily at a time to be agreed by the parties.
- (h) The long school holidays are to be split equally between the parents. If the parents cannot agree how to split the dates, then the first half of the Summer holiday in 2018 is to be spent with the mother and the second half with the father. In 2019 the first half is to be with the father and the second half will be with the mother and that two year cycle will then continue.



- (i) When L is with the mother in the Summer she has leave to remove him to Mexico City for up to 30 days and when L is with the father he has leave to remove him to Canada for up to 30 days. The parents may remove L to other locations out of the jurisdiction or for more extended periods of time if they agree in writing. Each parent is to provide the other at least 28 days in advance of departure with flight details, details of where they will be staying, and contact details. When L is with one parent, reasonable Skype or telephone contact should be facilitated for the other parent. This may be once daily at a time to be agreed by the parties.
- (j) The parties are to share Easter school holidays. If they cannot agree how to split the dates then the first half of the Easter holiday in 2018 is to be

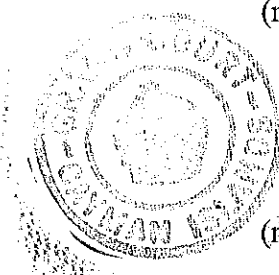
spent with the mother and the second half with the father. In 2019 the first half is to be with the father and the second half is with the mother and the two year cycle will then continue. When L is with one parent, reasonable Skype or telephone contact should be facilitated for the other parent. This may be once daily at a time to be agreed by the parties.

- (k) When L is with the mother at Easter she has leave to remove him to Mexico City for that period and when L is with the father he has leave to remove him to Canada for that period. The parents may remove L to other locations out of the jurisdiction or for more extended periods of time if they agree in writing. Each parent is to provide the other at least 28 day in advance of departure with flight details, details of where they will be staying, and contact details. When L is with the one parent, reasonable Skype or telephone contact should be facilitated for the other parent. This may be once daily at a time to be agreed by the parties.

- (l) The parties are to equally share Christmas school holidays. If they cannot agree how to split the dates for Christmas 2017, then all of Christmas Eve to 10am on Christmas Day will be with the mother and the rest of Christmas Day and all of Boxing Day will be with the father. That arrangement will be reversed in 2018 and thereafter the two year cycle will continue. The parties may agree a variation to those dates and also may consent in writing to allow the other to travel out of the jurisdiction for an agreed period during the Christmas school vacation. When L is with



one parent, reasonable skype or telephone contact should be facilitated for the other parent. This may be once daily at a time to be agreed by the parties.

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- (m) Father's Day should be spent with the father and Mother's Day spent with the mother and the parties should share L's birthday. They may alternate L's birthday if they agree that variation in writing.
 - (n) The parties are entitled to vary the terms of the above shared residence arrangements if they both agree the variation.
 - (o) A Prohibited Steps Order preventing the removal of L from the Cayman Islands unless leave is granted in this or any other order or unless written permission is given by the other parent.

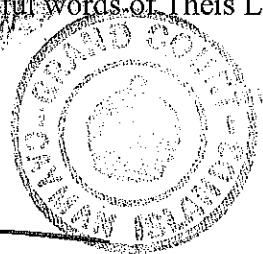
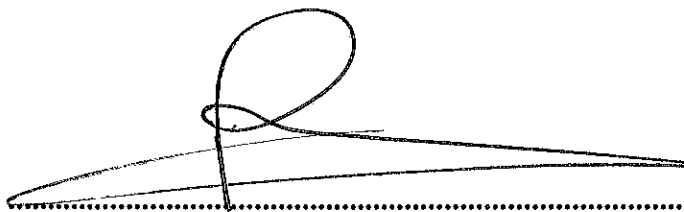
Footnote

188. I realise that both parties may have a degree of discontent about some of the orders made. I have had to make them because they have sought the Court's assistance, being unable to resolve numerous issues themselves. They, being L's parents, must recognise that moving forward it is their responsibility, rather than the Court's, to make arrangements and work together for the sake of L's wellbeing. If they bear this in mind and seek any assistance that may be available to address their co-parenting issues, this order should now enable a routine to be established which will give more stability and certainty, as well as establishing a routine and structure that ensures that both parents and his international wider

families play an important role in L's development. Having regard to the circumstances in the matter before me, it is worth repeating the following from Theis L.J. in the concluding paragraph of her decision in *C v C (International Relocation: Shared Care Arrangement)* [2011] 2 FLR 701 at 723 and which I set out in *B v B*:

"There are no winners and losers in this situation, all the court has endeavoured to do is reach conclusions on the evidence that are in the best interests of the children. Both these parents have to take responsibility to protect the children from their ongoing communication difficulties and take steps to improve their method of communicating with each other, which can only benefit the children."

The parents should carefully consider these insightful words of Theis L.J.



.....
The Honourable Mr. Justice Richard Williams
JUDGE OF THE GRAND COURT

The Judgment in this matter is being distributed on a strict understanding that in any report no person other than the attorneys (and any other person identified by name in the Judgment itself) may be identified by name or location and in particular the anonymity of the child and the adult members of their family must be strictly preserved.