

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

CAUSE NO. D6 OF 2002

BETWEEN: WADSWORTH COOLIDGE CONNOLLY

PETITIONER

AND: DAWN MARIE CONNOLLY

RESPONDENT

Appearances:

Mr. Stephen Hall-Jones instructed by Mrs. Keva Reid of McKinney Reid
& Company for the Respondent

Mrs. Sheridan Brooks-Hurst instructed by Brooks & Brooks for the
Petitioner.

Before: The Hon. Justice N. Hall (Acting)

Heard: 29th & 30th days of May 2006

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JUDGMENT

An application was brought by the Respondent herein seeking permission to remove the child of the marriage, Lewis Wiseman Connolly, permanently from the jurisdiction in order to relocate to the United States of America. The Petitioner opposes this application.

The marriage between the parties was dissolved in or about 2003. Thereafter, the parties were awarded joint custody of the minor child with care and control to the Respondent.

There have been protracted and acrimonious proceedings in this matter almost from the outset. The child has been at the centre of much of this. Each party has sought full custody of the child at different times. These applications have involved cross allegations of abuse, improper behaviour and breaches of the orders of the Court.

It is relevant at this point to highlight some of the issues which arose in the past because both sides made reference to them as well as to previous findings and orders of the Grand Court.

BACKGROUND

A. Determination of ancillaries

Following a lengthy hearing, an order was made by Madame Justice Levers on the 20th June 2003. It contained the following provisions:

1. That joint custody of the child namely, Lewis Wiseman Connolly born on the 20th March 1996 to the Petitioner and the Respondent;
2. That care and control of the said child to the Respondent as long as she lives in the Cayman Islands;
3. That access to the Petitioner are as follows:
 - i) Fortnightly Thursday evening to Monday morning;
 - ii) Non overnight access weeks – every Tuesday and Wednesday afternoons between 2:00 p.m. to 6:00 p.m.
 - iii) Half Easter, half summer and half Christmas holidays;
 - iv) Every other public holiday;
 - v) Every other Christmas day;
 - vi) Every Father's day.
4. The Petitioner to pay the sum of CI\$400.00 per month as maintenance for the said child into the Respondent's Royal Bank of Canada Account #702-063-9;

5. The Petitioner to pay all medical, educational and extra curricular expenses for the child;
6. The Respondent to consult the Petitioner as to the educational, religious and medical decisions for the child;
7. The Respondent not to take the child out of the jurisdiction without the Petitioner's written consent or the leave of the Court;
8. The Respondent to be permitted to reside at #983 Northside Drive, North Side, Grand Cayman, Cayman Islands until the child reaches seventeen (17) years or she remarries. The Petitioner to pay the taxes and insure the premises.
9. the Petitioner to pay the sum of CI\$400.00 per month for maintenance to the Respondent for two years from the date hereof into the Respondent's Royal Bank of Canada Account #702-063-9;
10. The Petitioner to pay one half of the Respondent's medical bills incurred in treatment associated with Hepatitis-C only for a period of one year;
11. The Petitioner to permit the Respondent use of the motor vehicle presently being used by the Respondent. The Respondent to insure and license the same;
12. The distribution of chattels to be as follows:-

- a) To the Respondent:-
 - i) Gold Seiko watch, if found
 - ii) Disney books; and
 - iii) Toys from grandmother

- b) To the Petitioner:-
 - i) All other chattels, including but not limited to:-
 - a) Silk rug;
 - b) Four Chinese lamps; and
 - c) Two silver coins (if found).

13. No order as to costs.

14. Liberty to apply.

B. Applications to vary order

On the 9th day of August 2004, Madame Justice Levers heard two matters together. The Petitioner brought an application seeking care and control of the child and the Respondent filed a cross application seeking sole custody of the child and permission to leave the jurisdiction. It was the Learned Judge's conclusion that the latter

application sought to deny the Petitioner access to the child completely.

In her judgment which is dated the 13th day of August 2004, the Learned Judge had strong words for the Respondent. She found that she had "flagrantly flouted" the Court's orders, tried to alienate the father and "used the child to suit her own purpose". The Learned Judge was also of the view that the Respondent was influencing the child in his statements that he did not wish to go to his father.

Both applications were dismissed. The Learned Judge expressed the view that despite her concerns about the mother, she did not consider it best for the child's interest to change his residence. This was also the Judge's stated reason for adjourning sine die, a summons for contempt brought against the Respondent by the Petitioner.

C. Allegations of breach

On the 9th August 2004, a Consent Order was made whereby both the Petitioner and the Respondent were required to hand over any passports or travel documents for Lewis, which were in their possession or control, to the Civil Registry of the Courts Office.

Following this, an allegation arose that the Respondent had failed to turn in the child's passport. An application was brought by the Petitioner seeking an order that the child not be returned to the Respondent until she complied with the terms of the order.

On the 24th August 2004, Mr. Justice Henderson made an interim order that Lewis remain in the custody of the Petitioner until further order of the Court. He stated in his judgment dated December 21, 2004 that he made the Order due to his apprehension that the Respondent would try to use the passport to remove the child permanently from the Cayman Islands.

This Order was discharged by Mr. Justice Henderson on the 15th day of December 2004 and the Order of Madame Justice Levers was restored with some variations. The Learned Judge ordered that care and control of the child was to be restored to the Respondent on the first Monday in March 2005, several months in the future. The Petitioner was ordered to repair the premises at #983 Northside Drive, North Side, by this date. If the repairs were not done by then, upon reapplication to the Court, the Petitioner had the burden of establishing that delay was beyond his reasonable control. The Respondent was required to

remove her personal effects from the premises and deliver her keys to the Petitioner by a specified date.

The Respondent was granted access to the child on the terms which were previously granted to the Petitioner, with a slight adjustment. Further, once the child was restored to the Respondent's care and control, the Petitioner's previous rights of access were to be restored. There was also an order prohibiting a male friend of the Respondent from overnight stays at any property at which the Respondent had staying access to the child.

In his judgment the Learned Judge commented on the indications on the Court file that Mrs. Connolly had, in the past, displayed an *"inadequate respect for orders of the Court"*.

The Learned Judge had considered applications by each parent for day to day care and control of the child. He found that there was no material change since the time that Madame Justice Levers made her previous orders. He further stated that he considered that both parties were involved and caring parents and that it was desirable that the Petitioner have access to the child.

D. Further allegation of breach

In her written submissions, Counsel for the Petitioner made reference to a further breach by the Respondent. In February 2005, the Respondent brought an application for care and control to be transferred back to her on the basis that the Petitioner had abused the child by disciplining him with a belt. The Respondent sought an order preventing the Petitioner seeing the child until the matter was investigated.

It was alleged by Counsel in her submissions that the Respondent decided unilaterally not to return the child to the Petitioner. Further, the matter was heard by Mr. Justice Henderson who ruled in favour of the Petitioner and restored his access to the child.

Neither of the bundles filed with the Court have a copy of this order. However, the documents before the Court included a summons and supporting affidavit filed by the Respondent seeking the order referred to. There appears to be no challenge to this assertion of fact made by the Petitioner.

THE PETITIONER'S CONCERN

It is hardly surprising, given the history of this matter that the Petitioner mistrusts the Respondent's motives. Specifically, he fears that if the child is taken out of the Cayman Islands, the Respondent will use the opportunity to deny him access to the child. He asserts that if permission is granted, the Respondent would be outside the jurisdiction of this Court and thus have no fear of sanction.

THE EVIDENCE

I was grateful for the submissions made by Counsel for both sides in this matter. Before the Court for consideration, were written submissions, a Court Bundle filed on May 19, 2006 and a Supplemental Hearing Bundle. The Court also heard viva voce evidence from Dr. Cathy Alberga.

Several affidavits were filed in support of and in response to the Respondent's application. Other older affidavits were also referred to by the parties. For convenience I will examine the evidence adduced, using some of the headings used in the Respondent's affidavit dated the 26th day of April 2006 (hereafter referred to as the "Respondent's

main affidavit"). The Petitioner replied using similar heads in his affidavit dated the 17th day of May 2006 (hereafter referred to as the "Petitioner's main affidavit"). Several of the issues under these headings, overlap.

Respondent's living conditions & financial position

In the Respondent's main affidavit, Mrs. Connolly contended that the apartment that she and Lewis live in is inadequate to meet their needs because it lacks the requisite space and amenities. She states however that the apartment is comfortable and that her son loves it. She asserts that she is looking forward to "*truly having a home for my son and I*".

Mrs. Connolly stated that she has few friends and no family in the Cayman Islands. As a result she feels isolated and lonely and unwelcome here. She stated that Lewis senses her feelings and that her difficulties are having an adverse effect on him.

As indicated previously, the Respondent had been awarded accommodation for several years in the divorce settlement. There followed a dispute about its suitability and state of repair and the

Respondent vacated it. Those premises appeared to have been larger than the one that she eventually chose to live in.

Mrs. Connolly does not have a job in the Cayman Islands. There has been evidence adduced previously by the Respondent that she has a friend and sponsor in the Cayman Islands who has made several loans to her. She further asserts that she relies on the assistance of others in order to continue to live in the Cayman Islands. Mrs. Connolly stated she needs to be able to work in order to be independent and be able to perform her role as the primary carer of Lewis.

I find that the Respondent does not establish a totally convincing case that she is experiencing a high level of discomfort in the Cayman Islands with regard to her housing situation and finances. She obviously has sufficient resources to allow for accommodation, day to day upkeep, medical treatment and court proceedings.

That being said, this Court is not of the view that it is in the best interests of any individual to have to rely on the generosity of others in order to survive financially.

It is a fact that the Respondent's status in the Cayman Islands is that of a visitor. It is also a fact that she does not have a work permit and as a visitor she does not have the right to work in the Cayman Islands. She has no such limitations in the United States of America. It is not unreasonable for any adult to desire to be independent of the charity of others and to go to a place where this would be possible.

It is important therefore to examine the Respondent's proposals for her life in the United States of America. This will be examined later.

Respondent's feelings about circumstances

A connected issue is the way that the Respondent feels about the situation that she finds herself in.

The Respondent stated that her life and Lewis's life are stressful because of the circumstances that she finds herself in. She is of the view that matters will only improve once they are away from the Cayman Islands and living in the United States of America.

The Petitioner is of the opinion that Mrs. Connolly has of her own volition added stress to Lewis's life. He considers that any action

which has the effect of lessening contact between himself and Lewis will be detrimental to the child.

There is evidence that the Respondent suffers from anxiety and depression based on her financial situation, inability to work and the unstable nature of her living arrangements.

The psychiatric report from Dr. Tahal Alrubaie exhibited to the Respondent's main affidavit concludes that Mrs. Connolly's depression will worsen if her request to leave the jurisdiction with her son is denied. Conversely, if granted, her depression will improve causing her to look for a job, become independent, look after her son and live an independent life.

These conclusions are important factors for consideration.

Respondent's health and well-being

I now turn to a related matter.

The Respondent's main affidavit indicated that she needed to focus on her own emotional and physical security and stability in order to

ensure the continued emotional and psychological well-being of Lewis. She described herself as being unhappy, fearful, anxious and demoralized by her circumstances in the Cayman Islands. She referred to Dr. Alrubaie's report for support of her claims.

In response, the Petitioner asserted that the Respondent has long had mental and other health related issues. He asserts that she has suffered from depression previously. These assertions were supported with copies of old medical reports, tests and prescriptions exhibited to the Petitioner's main affidavit. He questioned whether she would be of sufficiently stable disposition to raise Lewis if she did not have the relief which his access to the child, affords her.

The Respondent's medical issues have been raised in Court proceedings in the past. In any event it can be argued that a predisposition towards depression would simply mean that additional stress would compound the problem.

I accept Dr. Alrubaie's opinion that Mrs. Connolly's depression would improve if she left the jurisdiction with her child.

Proposals for relocation

The Respondent proposed that she and Lewis reside with her father and his wife in the state of Michigan.

The Petitioner was sceptical about this claim, alleging that Mrs. Connolly's had a bad relationship with her family. In assessing the Respondent's proposals however, I can only consider the evidence that is actually before me.

There is a letter from Mrs. Connolly father and his wife exhibited to the Respondent's main affidavit. In the letter the parties offer accommodation and care to the Respondent and Lewis.

The letter also states that the parties own rental properties which they are willing to rent to the Respondent. The letter states, in reference to Mrs. Connolly and Lewis, "they will want to be on their own and independent as soon as possible".

The letter does not clearly offer Mrs. Connolly rent free accommodation in her father's home for as long as she needs it. Further, while no time period is given for her move to one of his other

properties, clearly Mrs. Connolly would be expected to pay rent to her father at some point.

It is noted that in the absence of free accommodation, Mrs. Connolly would be required to pay rent if she desired to fulfil the dream of "truly having a home" for her and Lewis as she stated. To that end, her plans for the financing of her living arrangement are relevant.

In her affidavit dated the 4th day of December 2005, the Respondent exhibited a letter from Mary Torres dated August 31, 2005. This stated an intention to employ the Respondent at a salary of \$10.00 per hour.

This offer was apparently still open in December 2005 and is apparently still open now as evinced by the letter dated March 28, 2006 from the same party exhibited to the Respondent's main affidavit.

If one accepts that the offer of the job and the stated salary are genuine and are still open, there is still insufficient information before the Court to establish that the Respondent's salary will allow her to pay rent for premises in the neighbourhood which she has stated that she will live in with Lewis.

As a part of her application, the Respondent stated that Lewis would attend a very good public school which is in the relevant school zone near to her father's home. This home was said to be in an upper middle class neighbourhood. Although the planned period for duration in that home is unknown, it is not known if any rented premises, either from the father or another would be in the same neighbourhood.

These questions arise on the Respondent's own case. They are relevant because the Respondent has sought to present the Court with specific arrangements for the life that she and Lewis would have once she leaves the Cayman Islands.

The Respondent provided brochures to the Court concerning the school that she wished Lewis to attend and explained that she considered Michigan to be the better choice for the child. It had a quiet environment, good school and easier access to family members. The area is said to have medical facilities, churches and recreational facilities.

It must be said however, that I have no reason to believe that the Respondent would be homeless once she returned to the United States of America. Further, it would not be fatal to her application if she left

the Cayman Islands without first securing a job in the United States.

Such a feat frequently requires the personal attendance of the job applicant.

My concern about finances and the consequential place of residence arises because I have been asked to evaluate the specific proposals as they affect Lewis. Thus since a specific type of school and neighbourhood is proposed because of the amenities it will offer the child, I require some certainty that arrangements are firmly in place.

I require this certainty because of this specific case and the needs of this specific child. Lewis's welfare is my paramount consideration.

Lewis's long term interests

The parties disagree about whether the quality of Lewis's life will be improved by relocation to the United States of America. The Petitioner being of the opinion that insufficient material has been presented to the Court about the child's welfare, education, healthcare, social and extracurricular activities.

The Respondent is eager for Lewis to develop a relationship with his cousins who are close to him in age as well as other family members. This certainly would be beneficial to Lewis. It is however only a small factor in my determination of the child's best interests.

I do note that the representative of the Department of Children and Family Services could not address the issue of whether Lewis should be taken to the United States. The reason given was that information on the environment that the child was going to was required before an "informed and professional recommendation" could be given.

Access by the Petitioner

It is the Petitioner's expressed fear that the application is a ruse to remove Lewis from the jurisdiction and deny him access. He stated that she has threatened to do this in the past. He expressed the view that the Respondent has built up an excitement in Lewis to live abroad and see family that he does not know, which is not based on any genuine experience on the part of Lewis.

The Respondent denied that she ever threatened cutting off the Petitioner's access to Lewis. She stated that she fully intends to let

Lewis visit the Petitioner during vacations and to allow the Petitioner access to the child.

The Petitioner relies heavily on past breaches of Court Orders by the respondent to strengthen his contention that she will do so in the future. Counsel for the Respondent submitted that on the facts of **Payne**, the case which the Respondent relied on heavily, the mother of the child had committed more serious breaches of Court Orders. These breaches, he submitted, were not determinative of her application to remove the child from the jurisdiction permanently and the same approach should apply in this case.

The issue of access is related to the next topic for consideration.

Reasonable and Genuine nature of the Respondent's proposals

The Respondent asserted in her main affidavit that she had no desire to exclude the Petitioner from Lewis's life. She expressed a willingness to work out proposals which would give the Petitioner access to the child. She also suggested the possibility of obtaining an appropriate order concerning visitation in the United States of America which would secure the Petitioner's rights in that jurisdiction.

As stated previously, the Petitioner mistrusts the Respondent's motives. He supports this view by pointing to the reports of Dr. Alberga which recommend that he not have contact with Lewis for a long period.

Dr. Alberga's report and recommendation is referred to in greater detail below. She did however testify that based on her plan for Lewis, contact with his father would not be permanently severed and in fact ideally was to be resumed as soon as possible.

The Petitioner is a man of some means. I foresee no difficulty in him being able to afford the costs of communicating with his child long distance and also travelling to see him.

There would be a difficulty however, if the Respondent tried to frustrate the Petitioner's efforts to contact and/or see his child. Is there any possibility that she may change addresses within the state? Might she move with the child to another state? Might she refuse to let Lewis travel to the Cayman Islands to see his father? If this happened how would the Petitioner enforce his rights? If the Respondent

repeatedly changed location, would he be required to seek court orders in every state that she moved to?

These considerations are all theoretical and based on the worst possible scenario. There is unfortunately, a genuine basis for concern that the Respondent may act in this way.

Based on the history of these proceedings, I have a genuine fear that despite her assertions to the contrary, the Respondent's motivation to relocate is partly based on a desire on her part to exclude Mr. Connolly from his son's life. She may well hold the opinion that she would be entitled to do so based on her opinion of her ex-husband. If she were of that view, I do not believe that she would feel bound by any court orders to act against her own desires. Further, I have formed the view, based on a review of past proceedings, that even a recommendation by a therapist that it would be in Lewis's best interest to have contact with his father, would not alter any decision which she would make, which was to the contrary.

Mrs. Connolly's assertions do not persuade me that her future approach to her son's association with his father would be any different from her approach in the past.

As a result of these considerations, I do not find that the Respondent's desire and motivation to relocate are wholly genuine.

In contrast, I have no basis to find that in the past, the Petitioner has breached court orders with respect to access or custody. I also have no basis to assume that he would do so in the future. I do not conclude that his fears are not genuine. Further, based on the material before me, I have not formed the view that his opposition to the Respondent's application is motivated by any ulterior motive.

These assessments are not determinative of the Respondent's application but they are factors for consideration.

It is appropriate at this point to consider the evidence in relation to Lewis.

Lewis's circumstances

I believe that I can accurately summarize the case for the Respondent as follows.

If she as the primary care giver for the child, is depressed and

unhappy about her circumstances, then Lewis will be adversely affected. Consequently, if she is allowed to follow a path which will improve her circumstances and feeling of well being, she will better be able to care for Lewis and his circumstances will improve, in turn.

There is however a further deeper argument which is made by the Respondent with respect to Lewis. It is essentially, that given his strong feelings against his father the Petitioner, at present, it would be in his best interests to sever regular contact from him at least for a while. This is not the main thrust of the Respondent's argument.

However it is the Respondent's case that not only will Lewis suffer no harm if his regular interaction with the Petitioner is interrupted, but rather it is in his immediate best interests for this to happen.

It is this submission and the history of these proceedings which fuels the Petitioner's contention that the Respondent's real aim is to keep him away from his child.

The Respondent relied heavily on the reports of Dr. Cathy Alberga to establish the point that Lewis should have no direct contact with his

father for a significant period. Dr. Alberga, a licensed psychotherapist, attended and was cross-examined by Counsel for the Petitioner.

Dr. Alberga reported that Lewis was fearful of and disliked his father. She stated that the child expressed a desire to cease visitation with his father and to live with his mother. It was Dr. Alberga's recommendation that Lewis have a break from visitation with his father.

There were two reports dated March 10, 2006 prepared by Dr. Alberga. The first was exhibited to the Respondent's main affidavit and the second was exhibited to her affidavit dated the 3rd day of May 2006. It was submitted on behalf of the Petitioner that the second report painted a darker picture of the Petitioner and his impact on Lewis.

It was suggested on behalf of the Petitioner that the second report was meant to strengthen the Respondent's application to take Lewis from the jurisdiction. For her part Dr. Alberga denied that there was any substantive difference between the reports. She testified that she reviewed her first report because she realised that it was not clear about the issue of contact between Lewis and his father.

Dr. Alberga agreed that her first report did not contain the plan which she recommended in the second report. It was the second report which made reference to a six month break between Lewis and his father as well as Lewis living outside of the jurisdiction.

Dr. Alberga denied that she was suggesting that the break between Lewis and his father be a permanent one. She stated that it was her goal for Lewis to have a healthy relationship with his father. She denied embellishing her second report. She stated that she merely used evidence from her file notes to support statements that she had made in the first report.

Dr. Alberga stressed that she found no evidence that Lewis had been "coached" by his mother. She stressed that Lewis's statements to her were all voluntary.

Dr. Alberga remained unshaken in her assessment of Lewis as presented in her reports. I had no basis to conclude that Dr. Alberga was embellishing her representations to the Court in order to assist the Respondent. I did find however that her second report was worded a lot more strongly than her first report. The conclusions in both

reports however were the same; *Lewis should have a break in visitations with his father.*

Further, the "Connolly Family Rehabilitation Plan" which is attached to the second report, appears to have been prepared on the assumption that Lewis and his mother would be relocating to America. Dr. Alberga did however testify that her case plan, which was a year plan, could be implemented in the Cayman Islands.

There were some discrepancies between the reports from the various persons who assessed Lewis.

Dr. Lockhart saw Lewis on three occasions within the same month and described his manner as "calm and coherent". On the contrary, he is described as being unable to relax in his regular sessions with Dr. Alberga.

Dr. Alberga reported that Lewis does not relax at school either. She stated that his teacher confirmed that Lewis had poor social skills, was easily distracted, fought incessantly and did not perform to his academic potential. These concerns were not reflected in the school

report exhibited to the Petitioner's main affidavit. These in fact show that he is doing well at school.

The Social Work Supervisor Ms. Leonora Wynter, from the Department of Children and Family Services, reported that it was the school's view that while Lewis was doing well academically, his overall development was being stifled because of the negative relationship between his parents.

Dr. Alberga reported that Lewis did not accept that his father loved him. Dr. Lockhart, to whom Dr. Alberga referred Lewis for a psychiatric assessment made a report to the contrary. Dr. Alberga reported that Lewis wished to cease contact with his father. Dr. Lockhart stated that while Lewis expressed a desire to reduce his visits to his father, he was open to maintaining contact with him and spoke about visiting him on vacations.

All three persons involved in Lewis's assessment concurred that Lewis expressed anger and fear towards his father. The incident when he was beaten with a strap by his father had left a lasting negative impression on Lewis. This was compounded by his father's tendency to threaten him with the strap whenever he felt that he required

disciplining. All three also reported that Lewis expressed a strong desire to remain with his mother. They also reported that he spoke of a desire to live in the United States of America and to see his cousins who live there.

It is noted that Ms. Wynter is of the opinion that the Petitioner is not rigid in his viewpoints about discipline and as such is amenable to change. She was of the view that both parents required counselling in parenting techniques to lessen the divergence between their styles of parenting Lewis.

It was necessary for me to assess the evidence provided by all three agents and in particular the testimony given by Dr. Alberga.

The picture that emerges from these reports is that of a sensitive, troubled little boy. He has a close bond with his mother and it is not surprising that he is sensitive to her feelings and is protective of her. It is also not surprising that he prefers her parenting/disciplinary style to that of his father who is not only older, but of the old school. I am of the view that sensitivity to his mother's wishes impacts Lewis's negative utterances towards his father.

It was disturbing to read how fully aware Lewis is of the issues involved in the divorce and custody proceedings. Clearly he is being fed these details by one or both of his parents. I suspect that the person who does this is his mother. It is difficult to reconcile the notion of Lewis relating negatively to his father with the concept of him and the father having full conversations about the divorce. Whoever is the source; these conversations need to come to a halt.

It was noted that Dr. Alberga was the only party who made a strong recommendation that Lewis take a break from his father. I appreciate that the disciplines differ, but I am of the view that if there was any matter of danger to Lewis or any other urgent matter which called for a cessation of contact with his father, either Ms. Wynter or Dr. Lockhart would have detected this.

Both Dr. Lockhart and Ms. Wynter assert that it would be in the child's best interests if both parents co-operated despite the divorce. The contradictory approaches taken by each parent, as witnessed by school personnel when Lewis hurt his finger are the types of occurrences that should be avoided.

Despite the upheaval in his young life, Lewis continues to perform well academically at school. I am of the view that he should remain at his school.

In Dr. Lockhart's report he recommended continued psychological support for Lewis. The report states "this is needed in order for him to constructively process his ambivalent feelings towards his father, and to come to terms with his parents divorce."

I endorse this sentiment. I am persuaded that Lewis should continue receiving psychological counselling. At this point in time Lewis would probably benefit from additional counselling which addressed wider issues.

I do note that Dr. Alberga's plan for Lewis does incorporate Lewis receiving Counselling from a therapist in the United States. Such an individual has not yet been identified, which is not surprising. However, I am not of the view that it will serve Lewis's best interests to change the existing routine for his living, academic and treatment arrangements as would be required by relocation to another country.

Everything presented to me, convinces me that Lewis is too fragile emotionally for the major change in his circumstances that the suggested move requires. All other things being regular, I would have no hesitation in granting permission for the removal of a less emotionally fragile child.

I must also state that I am not persuaded at this time that it is in Lewis's best interests to halt contact with his father for either periods of short or long duration.

THE LAW

Counsel for the Respondent cited the case of **Payne v Payne [2001] 2 W.L.R. 1826** as authority for the points of consideration that this

Court should examine. In that case:

X, the mother of a four year old child, was granted permission to permanently remove the child from the United Kingdom to take up residence in New Zealand, X's country of origin. X found the United Kingdom, intolerable without the support of family and friends. She contended that this was detrimental to the child's welfare.

The father Y, appealed against the decision. He argued that the application of the established principle that a request by a primary carer to relocate would be granted unless the court found that request to be incompatible with the welfare of the child, created a presumption in favour of the primary carer which was impossible for the other party to overcome. This approach did not place sufficient importance in maintaining contact between the child and the absent parent and was inconsistent with the Children Act 1989. Further, the approach was incompatible with the father's rights under the Human Rights Act 1998.

It was held, dismissing the appeal: (1) the application of the established principle which recognized and supported the function of the primary carer, had been applied for thirty years and did not create a legal presumption. The judge had properly considered all relevant factors in a balanced way, giving the welfare of the child paramount consideration before considering the reasonableness of X's relocation request; (2) the procedural reforms brought about by the Children's Act 1989 did not require the courts to alter their approach to relocation cases since the Act merely codified existing principles, (3) the impact of the 1998 Act did not require a revision of the judicial approach since the welfare of the child remained paramount notwithstanding that it might conflict with adult rights The court had to adhere to the

paramountcy principle when balancing the conflicting rights of a fractured family.

The decision in Payne is not binding on the Cayman Islands. I did however find its approach to applications to relocation both useful and persuasive.

The Court of Appeal in Payne stated that all relevant factors had to be considered and weighed in the balance. These factors include:

- A) the reasonable proposals and motivation of a parent wishing to relocate,
- B) the effects on the child of seriously interfering with the life of a custodial parent and the denial of contact with the absent parent.

However, the welfare of the child remained the paramount consideration.

I also had the benefit of reading and considering the ruling of Mr.

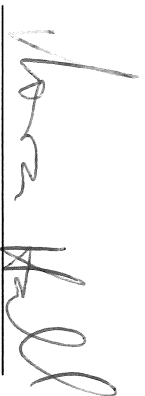
Justice Henderson in the local case of Raul Martinez Snr. v Shau Emily

not accept that this child's welfare will be best served by relocation, based on the fact that his mother will experience unhappiness upon a denial of her application.

Based on all the foregoing, I find that the best interests of Lewis at this time will not be served by granting the Respondent permission to remove him from the Cayman Islands permanently.

The Respondent's application is dismissed. I make no order as to costs.

Dated this 11th day of July 2006.



The image shows a handwritten signature in cursive script, which appears to read "Nova Hall". The signature is written in black ink and is positioned above a horizontal line.

Nova Hall

Judge (Acting).