IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN THE FAMILY DIVISION

CLAIM NO. 2010 HCV-2702

BETWEEN	F	CLAIMANT
AND	B	DEFENDANT

Ms. Ayana Thomas instructed by Nunes Scholefield DeLeon & Co. for the Claimant.

Mr. Gordon Steer instructed by Chambers Bunny and Steer for the Defendant.

Heard: **27th January, 2nd March, 11th April, 2nd and 3rd May, 2nd June, 1st July and 16th September, 2011.**

CUSTODY – CARE AND CONTROL OF 5 YEAR OLD GIRL – WELFARE OF THE CHILD – PARAMOUNTCY PRINCIPLE – RELOCATION APPLICATION – PRACTICE AND PROCEDURE – APPLICATION TO STRIKE OUT PORTIONS OF AFFIDAVITS MADE AT TRIAL – UNDESIRABILITY OF SUCH PROCEDURE AT TRIAL – MAINTENANCE – RESPONSIBILITY OF BOTH PARENTS

MANGATAL, J:

[1] "F" and "B" were married in March 2005. L is their five year old daughter. F is L's mother and B is L's father. Both are loving parents who have come before the Court to resolve issues which unfortunately they have not been able to resolve amicably. This Court is faced with the difficult task of deciding as between these two parents, amongst other matters, which of them should have care and control of young L. I shall in this Judgment refer to the parties simply by initials in order to protect their privacy.

[2] F by way of Fixed Date Claim Form filed June 4, 2010 is seeking orders from the Court, including orders that F and B have joint custody, with F being granted care and control of L. She seeks the Court's permission for her to take L outside of the jurisdiction to live in the Bahamas with her. F was born and grew up in the Bahamas. She has also made proposals for B's access to L and is seeking that B pay maintenance in respect of L.

[3] On the 11th of August 2010, an interim order was made by Brooks J. in the following terms:

Pending the determination of the claim and until further order of the court:

a. (F) is to have the care and control of the relevant child of the marriage, (L).

b. (B) is to have access to the relevant child as follows:

   i. During the school term on every alternative weekend beginning at 3:30 pm on Fridays and ending at 4 pm on Sundays. (L) is to be collected by (B) at (F)'s residence at 3:30 p.m. on Fridays. (L) is to be collected by (F) at (B)'s residence at 4 pm on Sundays.

   ii. Residential access for half of all major holidays namely Christmas, Easter and Summer. For the remainder of the Summer vacation for 2010 (B) is to have access to (L) every alternative week ending the 27th of August 2010 with access on alternative weekends to resume on the 10th of September 2010 and continue on an alternative weekend basis.

c. By consent, (B) is to pay (F) the sum of $12,000.00 per month for the day to day maintenance of (L) in addition to her school fees and extra curricular activities of swimming and ballet. The payments are to commence on the 1st of September 2010 and are to be made on the 1st day of each month thereafter.

d. All medical, dental and optical expenses for (L) are to be borne by the parties equally.

e. Social Enquiry Report and a means report are to be requested from the Family Court Probation Office.

f. (L) is not to be removed from the jurisdiction without the permission of the Court.

[4] On the 15th of September 2010, after F's application had been filed, and after the interim order had been made, B filed an application seeking to have care and control of L granted to him to be carried out here in Jamaica, with liberal access to F.

[5] The parties have filed numerous affidavits, and F's mother MF has also filed an Affidavit on behalf of her daughter. The trial has been lengthy, with extensive cross- examination taking place. The Court has in addition been provided with a Report from the Family Court Probation Office.

Applications to Strike Out Hearsay in Affidavits

[6] At the commencement of this trial, a considerable period of time (over a day and a third), had to be spent dealing with without notice applications. This matter was originally fixed for one day only. These applications sought to have substantial portions of Affidavits and exhibits, which were filed some time ago, struck out on the grounds that they constitute hearsay evidence. Since the advent of the Civil Procedure Rules 2002, "the C.P.R.", I have noticed a practice developing in civil matters in both Chambers and Open Court trials. Attorneys make these applications to strike out portions of Affidavits or Witness Statements during the time that has been fixed for the trial or substantive hearing. Often the application is made on the basis that the evidence consists of hearsay statements. The judge will in my opinion likely feel obliged to hear the application because he or she does not want to have before the Court impermissible hearsay evidence. I find this practice inappropriate and/or undesirable at this stage for two reasons. Firstly, one would hope that at First Hearings or Case Management Conferences, the estimated length of trial is being proffered and set after proper thought and contemplation of the realistic length of time it will take for the completion of the trial. I doubt that when these trial dates are being fixed, Attorneys in suggesting the appropriate number of days or hours take into consideration, or advise the Case management judge that, at the trial they

contemplate making applications to strike out significant portions of the evidence. These applications are often long, extensive and contested, as in the instant case, and consume precious trial time. Secondly, I frankly don't see what the point is of having pre-trial reviews, or case management conferences or other Chambers hearings which occur, or which can be applied for after the allegedly offending document has been filed or exchanged, if the judge at trial will now have to deal with such applications. Obviously when they are made at trial, they can throw out the time estimated for completion of the trial or substantive hearing. This often causes the matter to be part heard, occasioning delays and necessitating further protracted hearing dates, with all the attendant costs and other consequences. There may be the odd instance when it may reasonably not have been appreciated until near trial that a statement should be struck out. However, by and large it is my view that they should be made at an earlier stage of the proceedings. We must be careful not to whittle away some of the gains made in the trial process since the advent of the C.P.R. I think the practice is particularly undesirable in matters to do with custody and maintenance of children, some of which are urgent, but all of which are delicate and emotionally loaded for the parties.

[7] At the initial stages of this matter, Mr. Steer, Counsel appearing for B, also made an oral without notice application for L to be examined by a Child Psychologist in order to assess what impact going to a new environment would have on L. He submitted that this would ensure that the best evidence concerning the welfare of L is put before the Court and relied upon **B(M) v. B(R)** [1968] 3 All E.R. 170 at page 173 c. The application was opposed by Ms. Thomas, Counsel appearing for F.

[8] I refused the application upon a number of grounds. Firstly, no proper application, indeed no written application at all, was filed and there had been no compliance with Part 38 of the C.P.R. which deals with Expert Evidence. However, even more fundamentally, I considered the fact that the proposals of both parents involve a relocation and consequently a different environment. Thus I did not consider that the Report was likely to be useful to any significant

extent. I took the view that the advantages, if any, to be gained from obtaining a psychologist's report, were outweighed by the disadvantage of the delay that would be occasioned while awaiting the examination and report. I considered further that the Court had already been provided with a Probation Report, and ruled that in this case there was no requirement for a psychologist's report to be produced in order for the Court to determine the relevant issues.

BACKGROUND

[9] F and B met in Jamaica in 2001. F is a medical doctor and B is a businessman. At that time F was engaged in a Clinical Training Programme in the Bahamas and was not yet fully qualified. She was however in Jamaica pursuing a six week elective at the Faculty of Medicine, University of the West Indies, Mona Campus. The parties started a relationship and after the elective was completed and F had returned to the Bahamas, they maintained a long distance relationship and ultimately got married in March 2005. By the time of the marriage, F had become a fully qualified Medical Doctor and was working as a Senior House Officer in internal medicine at the Princess Margaret Hospital in the Bahamas.

[10] The marriage took place in the Bahamas, and shortly thereafter F and B returned together to Jamaica to live as man and wife in Mandeville, in the Parish of Manchester where B resides. L was born on the 28th of December 2005. L is F's only child. B is the father of L and C.B.

[11] It is F's evidence that she had told B of her intention to do post graduate studies in internal medicine prior to the marriage and to L's birth. When L was born F stayed at home with L at the matrimonial home in Mandeville she states until L was nine months old. B states that when L was seven months old F decided to go back to work in Kingston, having previously applied to the University to pursue the Internal Medicine Specialty. B says that when F came to Jamaica she could have opened her practice anywhere in Jamaica and that F became a Jamaican citizen in 2008.

[12] When L and F came to Kingston, they resided primarily in a two bedroom rented townhouse in the Long Mountain Country Club complex. These premises

are in relatively close proximity to the University Hospital of the West Indies (U.H.W.I.) where F commenced working and pursuing a residency programme in internal medicine, and where F was currently engaged at the time of filing her application.

[13] It is F's evidence that she asked B to come to Kingston with her. She states that he agreed to do so, saying that if she could move to a new country because of him, he could move a few miles for her. B did not come to Kingston. However, it is his evidence that because of their different jobs, it was decided that F would live in Kingston and B would continue to live in Mandeville. B claims that he recommended to F that L should stay in Mandeville since she was so young and the demands of F's work would not allow her any time with L. Further, that a helper raising L would not be in the best interest of L. He states that he adamantly insisted that L would be better off growing up under his and his parents' guidance. F did not agree. F on the other hand states that B did raise the question of L staying in Mandeville as an option, but did not adamantly so insist. It is F's evidence that she rejected this option for a number of reasons, including that L was so young and was still breastfeeding and very attached to her. Further, that B worked extensive hours in his businesses and was gone from home for the entire day during the week.

[14] The marriage broke down and F and B started living separate and apart in the latter part of 2009. From the age of nine months up to today, L has resided in Kingston with L and since the date she reached school age, has attended school in Kingston.

[15] On ceasing to reside in Mandeville, F had taken the helper who had been working with the parties in Mandeville, to work with her in Kingston. F had to work some, (B says most) weekends. B would collect L in Kingston on Friday evenings and take her to Mandeville to spend the weekend with him. F would join them sometimes on a Saturday, sometimes on a Sunday and then F would drive back to Kingston with L. Other weekends F would spend with L and B in Kingston, and sometimes there were occasions when B did not come to Kingston.

[16] Twenty-four hour call (being on duty at U.H.W.I.) was a part of F's job requirement. During those times when F was on call, which was usually at least once, sometimes twice per week, B sometimes stayed with L in Kingston. When B was not available, F would arrange with the nanny, Jennifer, to spend the night and take care of L. F advised the Court during the latter part of the hearing, that Jennifer no longer works with her, due to recently discovered alleged misconduct on Jennifer's part. Previously F had in fact indicated that if granted permission by the Court to relocate to the Bahamas with L, she had intended to take Jennifer with her to the Bahamas.

[17] After the separation, B had access to L, on F says, alternative weekends. B states that he only had access to L at the whim and fancy of F.

ISSUE AS TO WHICH PARENT IS THE PRIMARY CARE GIVER

F'S –THE (MOTHER)'S CASE

[18] F states that she has always been L's primary care giver from the moment of her birth. During the period up to nine months, she breastfed her, fed her, changed her diapers, nurtured and pampered L, and stayed home by choice until L was nine months old. The helper mainly performed domestic duties and functioned as a housekeeper around the house during this period. F says she did 95 % of the diaper changes and general care at night.

[19] Since moving to Kingston, F states that she has been actively involved in L's life and that a significant portion of L's everyday care is done by her and not the nanny. She maintains that L has always been her priority and that she has tried at all times to maintain a balance between work, studying and her parental responsibilities. She has been taking L to and from school and picking her up from her extra-curricular activities for some time. She also reviews L's homework, and helps her practice her reading and spelling. She takes L out on many outings and recreational activities, including going to the zoo, cinema, picnics, trips to the country, to museums and also arranging play dates at their home or a friend's home.

[20] In November 2010, F's contract at the University Hospital having expired, she took up a job offer in Montego Bay in the Parish of Saint James at the Cornwall Regional Hospital and was currently working there up to the time of the hearings, as far as I am aware. The fact that she had commenced this employment was brought to the attention of the Court by B in an Affidavit. In an Affidavit in response, F avers that she did not tell B about this job, and maintains that she has no obligation to discuss her job or how she earns a living with B now that their marriage was ended, though she remains happy to discuss with him matters concerning L's welfare. She stated that she took this job because she could only find work in the rural areas in Jamaica, not in Kingston, and that this was the only job that did not stipulate that she would have to relocate. She says that she took the job because the application to relocate to Bahamas was still to be heard and in the meantime she had to earn a living to support L and herself. F decided not to relocate to Montego Bay, but to continue living in Kingston. Thus she commutes to Montego Bay daily and back again, sometimes by motor vehicle sometimes by airplane. Her mother MF came from the Bahamas to stay with F and L and to assist with taking L to and from school and to extra curricular activities. F states that all of the weekends that she has been on call at the Cornwall Regional Hospital, L has been in Montego Bay with her and that the seniority of the position allows her to briefly review patients in the morning and to call from a phone. F states that despite the fact that she has been working in Montego Bay, she is still able to do most of the things she usually does with L because most days, she reaches home before 4 p.m. She does not work on Thursdays, so she is still able to pick L up from school sometimes. She still reviews L's homework and eats dinner with her and other such things. She opines that L's environment has, by reason of these several circumstances and measures, remained stable notwithstanding her commuting.

B'S – (THE FATHER)'S CASE

[21] B states that ever since L's birth, whilst the parties all lived in Mandeville together in Mandeville, they had a helper or nanny for L who worked from 8 – 4

Monday to Friday and every other Saturday. He avers that the nanny is the one who looked after L to a great extent, even though F was at home. B indicates that F always handed L over to him as soon as he came home and that he and F shared evenly the night time feedings and diaper changes.

[22] B states that after F and L began living in Kingston, for the first year and a half he would pick L up every weekend and take her to Mandeville and look after her by himself. He would give up his work duties in order to do so. Amongst the things he would do were to cook breakfast, bathe L and plait her hair, take her to the beach, the playground and to church.

[23] B indicates that in addition to weekends, whenever F was on call, which he says was two to three times a week, F would be at the hospital from 8 a.m. until 6 or 7 p.m. the next day. B would on most of those days come into Kingston and release the helper, and look after L and take her out to play. The next morning he would drop L off to school before heading back to Mandeville. After working on call, F would sleep as soon as she got home until she went to work the following morning.

[24] B states that despite the fact that L resides with F, he has spent more time with L than F has, and that the bond between himself and L is strong. He claims that F is not comfortable caring for L, to the extent that even when she takes L to visit her parents in the Bahamas, she has to carry the helper from Jamaica. He denies that F has been the primary care-giver for L and avers that while in Kingston it is the nanny or helper who cares for L.

[25] B also states that after the marriage was declared over by F, he had access to L only at the whim and fancy of F until the Court made the interim orders in August 2010 granting him access in a more structured manner. B claims that F's commuting to, and working in, Montego Bay has been disturbing for L.

ASSESSMENT OF L

[26] From all accounts, overall, L is a happy, intelligent well cared for and much loved little girl. She is sociable and well-adjusted and the many reports

exhibited in this matter indicate that she is doing very well in school. She is well-rounded and engages in extra curricular activities such as swimming and ballet.

RECOMMENDATION IN PROBATION REPORT

[27] A Probation Report, or Social Enquiry Report, was prepared pursuant to the interim order and is dated October 12, 2010. The Probation officers prepared their report understandably, without being able to assess or examine F's proposed relocation plans. They did not view the proposed home or school or environs in the Bahamas and in preparing their report they were only able to examine L's environment and circumstances, including home and school in Kingston, and the environment, including home and school in Mandeville proposed by B. To that extent therefore, the Probation Report, though useful, is limited. Though the recommendation of the Report is that the status quo remain, the plans proposed by both parties involve relocation, one abroad, one to a different Parish of Jamaica.

[28] The Report closes as follows:

> ***ASSESSMENT AND RECOMMENDATION***
>
> *Although the parties have not been able to concur on a number of issues, they seem to be in accord as it relates to the well being of the child. They have advanced exorbitant expenditure although that of the Respondent far exceeds the amount he said is his income.*
>
> *The home environs of both parents appear conducive to the upbringing of the child even though the child has advanced her preference to reside with the mother.*
>
> *Information from the authorities at the school which the child currently attends suggests that (L) is doing well academically, has been settled, and shares a cordial relationship with both her classmates and the teachers. Officer also observed (L) in the school environment and she appeared quite comfortable. It would be unwise at this time to remove her from such an environment as this is likely to have a negative physical impact on her.*

It is encouraging that both parties have demonstrated a high level of interest in the child's social welfare, even though they have been separated. Based on the aforementioned it is being recommended that the status quo as it relates to custody and control not be altered and that the Honourable Court exercise its wisdom as it relates to the matter of maintenance.

THE LEGISLATIVE PROVISIONS IN RELATION TO CUSTODY

[29] The relevant sections of our law are to be found in **THE CHILDREN (GUARDIANSHIP AND CUSTODY) ACT**, "the Act" notably sections 7 and 18.

[30] Section 7 of the Act provides as follows:

> ***7. The Court may make order as to custody***
>
> *7.(1) The Court may, upon the application of the father or mother of a child, make such order as it may think fit regarding the custody of such child and the right of access thereto of either parent,* ***having regard to the welfare of the child, and to the conduct of the parents, and to the wishes as well of the mother as of the father,*** *and may alter, vary, or discharge such order on the application of either parent, or, after the death of either parent, of any guardian under this Act; and in every case may make such order respecting costs as it may think just.....*
>
> *(3) Where the Court under subsection (1) makes an order giving the custody of the child to the mother, then, whether or not the mother is then residing with the father* ***the Court may further order that the father shall pay to the mother towards the maintenance of the child such weekly or other periodic sum as the Court, having regard to the means of the father, may think reasonable.*** (My emphasis)

[31] Section 18 of the Act provides as follows:

> ***18. Principle on which questions relating to custody, upbringing etc. of children are to be decided.***

Where in any proceeding before any Court the custody or upbringing of a child or the administration of any property belonging to or held on trust for a child, or the application of the income thereof, is in question, the Court in deciding that question, ***shall regard the welfare of the child as the first and paramount consideration,*** *and shall not take into consideration whether from any other point of view the claim of the father, or any right at common law possessed by the father, in respect of such custody, upbringing, administration or application is superior to that of the mother, or the claim of the mother is superior to that of the father.*

[32] Some of the issues which arise for consideration are therefore the issues of:

(A) The meaning of custody.

(B) What it means to have "regard to the welfare of the child as the first and paramount consideration".

(C) The conduct of the parties.

(D) The considerations that are encompassed in the concept of the welfare of the child.

(E) The guiding principles when the application for custody involves an application to relocate.

I will deal with each of these in turn.

(A) THE MEANING OF CUSTODY

[33] It would appear from the case law that the word "custody" bears two different meanings. On this issue I found instructive the judgment of Sachs L.J. in **Hewer v. Bryant** [1969] 3 All E.R. 578, cited by Ms. Thomas. At page 585 D-G, the learned English Judge of Appeal stated:

In its wider meaning the word "custody" is used as if it were almost the equivalent of "guardianship" in the fullest sense-whether the guardianship is by nature, by nurture, by testamentary disposition, or by order of a court. ....Adapting the phraseology of counsel, such guardianship embraces a "bundle of rights", or to be more exact, a

"bundle of powers", which continues until (age of majority)...These include power to control education, the choice of religion, and the administration of the infant's property. They include entitlement to veto the issue of a passport and to withhold consent to marriage. They include, also, both the personal power physically to control the infant until the years of discretion and the right (originally only if some property was concerned) to apply to the courts to exercise the powers of the Crown as parens patriae. It is thus clear that somewhat confusingly one of the powers conferred by custody in its wide meaning is custody in its limited meaning, i.e. such personal power of physical control that a parent or guardian may have.

[34] The issue of care and control of L, in respect of which F and B have each filed their respective applications, therefore is encompassed in the determination of "custody" within the meaning of sections 7 and 18 of the Act. This is the aspect of "custody" with which this Court will be most concerned.

(B) WHAT IT MEANS TO HAVE REGARD TO THE WELFARE OF THE CHILD AS THE FIRST AND PARAMOUNT CONSIDERATION

[35] In **J v. C** [1969] 1 All E.R.788, the House of Lords, had for its consideration, section 1 of the then English Guardianship of Infants Act, which is similar to our section 18. Lord McDermott at page 826, in considering the construction of the section, in particular the scope and meaning of the words "shall regard the welfare of the infant (child) as the first and paramount consideration, stated:

Reading these words in their ordinary significance, and relating them to the various classes of proceedings which the section has already mentioned, it seems to me that they must mean more than that the child's welfare is to be treated as the top item in a list of items relevant to the matter in question. I think they connote a process whereby, when all the relevant facts, relationships, claims and wishes of parents, risks, choices and other circumstances are

taken into account and weighed, the course to be followed will be that which is most in the interest of the child's welfare as that term has now to be understood.

(C) THE CONSIDERATIONS THAT ARE ENCOMPASSED IN THE CONCEPT OF THE WELFARE OF THE CHILD

[36] In the oft-cited case of **Re McGrath** (1893) 1Ch. 143, Lindley L.J. stated:

The dominant matter for the consideration of the Court is the welfare of the child. But the welfare of the child is not measured by money only or physical comfort only. The word welfare must be taken in its widest sense. The moral and religious welfare of the child must be considered as well as its physical well-being. Nor can the ties of affection be disregarded.

[37] In **Poutney v. Morris** [1984] FLR 381, at page 384 Dunn L.J. made a statement which I think is entirely accurate as follows:

There is only one rule; that rule is that in a consideration of the future of the child the interests and welfare of the child are the .....paramount consideration. But within that rule, the circumstances are so infinitely varied that it is unwise to rely upon any rule of thumb, or any formula to try to resolve the difficult problem which arises on the facts of each individual case.

I have also found a number of statements and considerations discussed by the learned author of **Bromley's Family Law**, 8th Edition, Chapter 11, pages 385 - 390 helpful. Although the authors there discuss a statutory check list provided in the English **Children Act**, they make the point that most of the considerations set out in the checklist are drawn from, and build upon previous practice and case law which preceded that Act. At page 384 it is stated:

Another key to understanding the decision-making process is to appreciate that essentially the court's function is to determine which of the options set before it best accommodates or, at any rate, is least detrimental to the child's interests.

.....

Among the most agonizing cases are those where the court has to decide which of two capable, loving and caring parents should look after the child. It is in these cases where the check-list that we are about to discuss come most prominently into play. Of course it is in the nature of a finely balanced case that some facts will weigh heavily on the side of one claimant while others will favour the other but it is clear that in reaching its conclusion the court should consider all the circumstances of the case, and in the light of the evidence adduced, make the best decision it can.

[38] Some of the relevant considerations may be the following:

(a) The child's physical, emotional and educational needs.

(b) The child's age, sex and background.

(c) The likely effect on the child of any change in her circumstances.

(d) How capable each of the child's parents, and any other person in relation to whom the court considers the question to be relevant, is of meeting her needs.

(D) THE CONDUCT OF THE PARTIES

[39] Section 7 of the Act speaks to the conduct of the parties. Although I accept F's evidence, (which B has not specifically denied), that B did remove F and L's passports from the home in Long Mountain without F's knowledge and consent, I do not in the circumstances consider that this conduct weighs against B in relation to the matters which I have to consider in deciding on a suitable custody order. Ms. Thomas has also referred in her closing submissions to the fact that B did not join F and L in living in Kingston as being part of the conduct that I should have regard to, in contrast to F's actions which she described as self-sacrificing. I have taken these matters into account, but in a more general way, in my consideration of L's welfare, and not under the heading of "Conduct" as such. As my brother Campbell J found in paragraph 12 of his judgment in **DMH v. DH** Claim No. 2000/115 delivered April 3rd 2008, there is nothing before

me in relation to the conduct of the parents that separates them to any considerable extent.

(E) THE GUIDING PRINCIPLES APPLICABLE IN A RELOCATION APPLICATION

[40] One of the critical features of this case is that it is what is referred to as a relocation case, which addresses the situation where one parent wishes to take the child outside of the jurisdiction to live with him or her. In the recent unreported decision of **BP v. RP** Supreme Court Civil Appeal No. 51/08, judgment delivered 30th July 2009, our Court of Appeal examined, and endorsed the principles set out in some of the leading English cases treating with this area of Family Law. Harrison J.A., who delivered the Judgment of the Court, cited with approval the decisions in **Poel v. Poel** [1970] 1 WLR 1469, **Payne v. Payne** [2001] ECA Civ 166, and **A v. A** [1980] 1 FLR 380.

[41] The headnote in **Poel v. Poel** indicates that a mother made an application to the court for leave to remove her son out of the jurisdiction and the trial judge refused the application on the ground that it would cut the boy off from all contact with his father. The mother's appeal as allowed. The Headnote reads in part as follows:

> *Held, allowing the appeal, that on an application for leave to take the child out of the jurisdiction the primary consideration being the welfare of the child and whether it would be in the child's best interests to grant the application, regard had to be had to the welfare of the parent who had custody, since if he or she became unhappy it might adversely affect the child and, therefore, there should be no interference with any reasonable mode of life selected by the parent having custody unless it was absolutely essential ..., and that since the judge had not considered the effect of a refusal of leave on the mother's new life he had come to an erroneous decision and leave would be granted to take the child to New Zealand subject to the usual undertaking to return the child to the*

jurisdiction if called upon by the court and to the deposit of £100 for payment of the child's fare back if his return becomes necessary...

At page 1473 Sachs L.J. said:

When a marriage breaks up, a situation normally arises when the child of that marriage, instead of being in the joint custody of both parents, must of necessity become one who is in the custody of a single parent. Once that position has arisen and the custody is working well, this court should not lightly interfere with such reasonable way of life as is selected by that parent to whom custody has been rightly given. Any such interference may, as my Lord has pointed out, produce considerable strains which would not only be unfair to the parent whose way of life is interfered with but also to any new marriage of that parent. In that way it might well in due course reflect on the welfare of the child. The way in which the parent who properly has custody of a child may choose in a reasonable manner to order his or her way of life is one of those things which the parent who has not been given custody may well have to bear, even though one has every sympathy with the latter on some of the results.

[42] The judgment of the English Court of Appeal in **Payne v. Payne** provide useful guidance. At paragraphs 26 and 32 Thorpe L.J. stated:

26. In summary a review of the decisions of this court over the course of the last thirty 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...

32. 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.

[43] Thorpe L.J. also had regard to the applicant parent's right to freedom of movement and to determine her own place of habitual residence. He pointed out however that this had to be balanced with the respondent's right to a fair trial. Whilst Jamaica does not have a Human Rights Act, Chapter III of our Constitution secures certain fundamental rights and freedoms. Section 16 of the Constitution guarantees one's freedom of movement and section 13 treats with the right to respect for family life. Our Constitution, section 20, also decrees the right to a fair trial. Paragraph 40 of the Judgment does provide useful guidance for us here in Jamaica:

40. 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.

[44] At paragraph 42, Thorpe L.J. provides guidance for dealing with cross applications by the father:

Cross Applications

42. In very many cases the mother's application to relocate provokes a cross application by the father for a variation of the residence order in his favour. Such cross applications may be largely tactical to enable the strategist to cross examine along the lines of: what will you do if your application is refused? If the mother responds by saying she will remain with the child then the cross examiner feels that he has demonstrated that the impact of refusal upon the mother would not be that significant. If on the other hand she says that she herself will go nevertheless then the crossexaminer feels that he has demonstrated that the mother is shallow, or uncaring or self-centred. But experienced family judges are well used to tactics and will readily distinguish between the

cross application that has some pre-existing foundation and one that is purely tactical. There are probably dangers in compartmentalizing the two applications. As far as possible they should be tried and decided together. The judge in the end must evaluate comparatively each option for the child, one against another. Often that will mean evaluating a home with mother in this jurisdiction, against a home with mother wherever she seeks to go, against a home with father in this jurisdiction. Then in explaining his first choice the judge will inevitably be delivering judgment on both applications.

[45] At paragraph 85 Dame Butler- Sloss, also provides a useful summary.

Butler -Sloss P. :

Summary

85. In summary I would suggest that the following considerations should be in the forefront of the mind of a judge trying one of these difficult cases. They are not and could not be exclusive of the important matters which arise in the individual case to be decided. All the relevant factors need to be considered, including the points I make below, so far as they are relevant, and weighed in the balance...

(a) The welfare of the child is always paramount.

.....

(c) The reasonable proposals of the parent with a residence order wishing to live abroad carry great weight.

(d) Consequently the proposals have to be scrutinized with care and the court needs to be satisfied that there is a genuine motivation for the move and not the intention to bring contact between the child and the parent to an end.

(e) The effect upon the applicant parent and the new family of the child of a refusal of leave is very important.

(f) The effect upon the child of the denial of contact with the other parent and in some cases his family is very important.

(g) The opportunity for continuing contact between the child and the parent left behind may be very significant.

[46] At paragraph 86 Butler-Sloss P. makes a useful point distinguishing cases where the question of which party the child is to reside with is in issue and those in which it is not. She states:

> *86. All the above observations have been made on the premise that the question of residence is not a live issue. If, however, there is a real dispute as to which parent should be granted a residence order, and the decision as to which parent is the more suitable is finely balanced, the future plans of each parent for the child are clearly relevant. If one parent intends to set up home in another country and remove the child from school, surroundings and the other parent and his family, it may in some cases be an important factor to weigh in the balance. But in a case where the decision as to residence is clear as the judge in this case clearly thought it was, the plans for removal from the jurisdiction would not be likely to be significant in the decision over residence. The mother in this case already had a residence order and the judge's decision on residence was not an issue before this Court.*

[47] Perhaps the last point just discussed is an appropriate point at which to start applying the law to the facts in this case. In this case, there has not been any court order as to custody of L save the interim order, and that order was made as an interim decision, pending a full consideration of the merits of this case. In this case, F first filed for an order for care and control of L and B filed his own application some months after. In this case, therefore, the parties are not agreed, and no court order has been made after full consideration, granting care and control to either party. The interim order did, however, grant care and control

of L to F. It is important therefore for the Court to look at this issue, and as part of that issue, the future plans of each parent for the child, including F's plans to relocate with L.

[48] I also wish to refer to the case of **Re AR (A Child Relocation)**, or **F v. M** [2010] EWHC 1346 (Fam), which was cited by Mr. Steer on behalf of B. It is a very interesting decision by Mostyn J. In this case Mostyn J. expresses the view that, albeit he appreciated that he was bound by the **Poel v. Poel** and **Payne v. Payne** line of cases, in these authorities too great an emphasis was placed on the emotional reaction, wishes and feelings of the relocating parent, and too little on the harm that can be done to children as a result of a permanent breach of the relationship the child has with the parent who is left behind. He is in favour of a more neutral approach, and found support for his position in other jurisdictions, as well as in a Declaration in March 2010 at a gathering of judges in Washington D.C. on International Family Relocation. In **Re AR** the application by the mother was a second application by the mother to relocate the relevant child from England to France. Although the first application had been successful the mother had taken the child only for a brief period before returning to England. The second application was refused, largely because Mostyn J. was of the view that a refusal of the application would not have an overall detrimental effect on the mother as she retained significant and manifest attachment to England and its way of life, and therefore would not adversely affect the welfare of the child.

[49] At paragraph 12 Mostyn J. states:

> *Certainly the factor of the impact on the thwarted primary carer deserves its own berth and as such deserves its due weight, no more, no less. The problem with the attribution of great weight to this particular factor is that, paradoxically, it appears to penalize selflessness and virtue, while rewarding selfishness and uncontrolled emotions. The core question of the putative relocator is always "how would you react if leave were refused?" The parent who stoically accepts that she would accept the decision, make the most of it, move on and work to promote contact with the other*

parent is far more likely to be refused leave than the parent who states that she will collapse emotionally and psychologically. This is the reverse of the Judgment of Solomon, where of course selfishness and sacrifice received their due reward.

[50] In my view, whatever the validity of the criticisms of what was termed "subsidiary guidance" in **Poel** and **Payne**, ultimately the English Appellate Court reiterated that the decision in a relocation case turns on the application of the paramountcy principle. See per Wilson L.J. in **Re H** (Lawtel 19/5/10).

F's PLANS

[51] F proposes to return to the country where she was born, the Bahamas, and to take L with her. It is proposed that L will reside with F in her parents' five bedroom house which has all the usual amenities and also has a swimming pool and large surrounding grounds. The plan is for L to attend Queens College in the Bahamas. This is the same school that F attended and it is located in close proximity to the home of F's parents. Photographs of the parents' home and information in relation to Queen's College were placed before the Court.

[52] F has indicated that her parents are very close to, and love L very much. M.F. has also given evidence to this effect and has indicated that she and her husband, F's father would be overjoyed to have F and L living with them and are more than happy to assist in the care and upbringing of L. L has previously spent time with F and F's parents, her maternal grandparents in the Bahamas and M.F. has spent time here in Jamaica with F and L upon numerous occasions for varying lengths of time, the longest stint being for a month. F points to an extended family in the Bahamas, including F's brother, wife and many cousins and she is of the view that this family network will surround L with great love and affection.

[53] F has indicated that she would take L to the Anglican Cathedral in the Bahamas, which is a church that she is a life member of, and is a church which her family in the Bahamas attends. She has taken L to the St. Margaret's Anglican Church here in Jamaica. In order for L to stay in touch with her Catholic

roots, F will on occasion let L attend her godmother's church, her godmother being a Catholic nun.

[54] F gave evidence of having received a job offer to work in the Post of Senior Registrar for the Infectious Disease Service at the Princess Margaret Hospital in Nassau, Bahamas. The salary for that position was in excess of US$48,000.00 per annum which was far greater than her salary here at U.H.W.I., which was J$2,283,510 per annum. However, the position at the Hospital in the Bahamas will no longer be held open for her due to her delay in accepting the offer, which in turn she indicates is due to the fact that these proceedings have not yet been concluded. The post was however still vacant (up to the date of her last Affidavit), and she has resubmitted her application. She has also applied to two private entities in the Bahamas and received favourable responses, notably from Epcot Medical Center and St. Elizabeth Women's Medical Centre. F indicates that both Centers are in proximity to her parents' home and she would have ample time to pick L up from school and to engage in recreational activities as she is accustomed to in Jamaica. F also indicates that the salary at Epcot Center would be US$35,000 per annum plus medical insurance. She was supported on this issue by the Affidavit of Dr. Eleanor Fung Chung, Medical Director at Epcot Center. F would also have the opportunity to work elsewhere. At St. Elizabeth's there would not be a fixed salary, but she would bill patients directly. F opined that this promised to be quite lucrative because the Bahamas does not like Jamaica have a system of free medical care. I should indicate that Mr. Steer had objected to the admission of the Affidavit of Dr. Fung Chung, as he had to a letter from Dr. Fung Chung. I had earlier ruled the letter inadmissible on the grounds of hearsay, no notice seeking its admission for reasons set out in the Evidence Act having yet been filed. However, I allowed the Affidavit to stand, it was not lengthy or complex, and in my judgment this evidence satisfied the requirements of the Evidence Act as I was satisfied, as set out in Notice now given to B's Attorneys by F's Attorneys, that it was not reasonably practicable for F to secure Dr. Fung Chung's presence here in Jamaica for cross-examination.

In relation to B's access to L, F proposes that B should have access to L one half of all Summer, and Easter holidays and one half of alternate Christmas holidays, alternating Christmas, New Year's and L's birthday on the 28th of December. F has indicated that she is prepared to pay the cost of L traveling to Jamaica to see B once per month, commencing on Friday and ending on Sunday or at least twice during the school term, subject to L's activities and schedules. F is also prepared to facilitate B having access to L in the Bahamas upon giving her at least 2 weeks notice and subject to L's activities and schedules. She states that she will continue to facilitate B speaking to L every day on the telephone or on skype which has the advantage of using a webcam so that they can see each other when they speak.

B'S PLANS

[55] B proposes that L should come to live with him in Mandeville where he has a two bedroom home with all the usual amenities and L will have her own room. L has stayed at this home with B many times and this accommodation is fairly close to B's parents' home. L is quite close to B's parents and B states that they love her dearly. B proposes that L attend Belair Preparatory School, a school which B also attended. At Belair Prep. L would be able to continue her dancing and swimming and the school has other extra-curricular activities which L would be able to pursue, such as music or athletics.

[56] B states that he will continue to take L to church at St. Paul's of the Cross and he will hire a nanny to work with him and to be at home with L while he is at work. B indicates that his mother will also assist him with L's care.

In terms of B's proposal for F to have access to L, B has stated that F should have liberal access to L, including but not limited to alternate weekends, half of all major school holidays and any other time agreed by the parties.

[57] B's case is predicated on the maintenance of what he states is a very close relationship with L, which relationship would be disrupted profoundly were L to go to the Bahamas.

RESOLUTION AS TO THE ISSUE OF WHO IS THE PRIMARY CAREGIVER

[58] Having looked at all the facts and circumstances, whilst I think that B has played a very significant role in caring for L from her birth until now, and whilst I appreciate that F's chosen career is a demanding one which sometimes requires her to be away from L for considerable periods of time, in my judgment F has been the primary caregiver of L throughout her life. I accept that from birth until L was nine months old and F took her to live with her in Kingston, F was breastfeeding L and had her primary care while F stayed at home and B went to work. I accept that F was tending to their newborn, despite the fact that the nanny assisted, particularly with housekeeping, washing and other domestic duties. I accept that F also played a significant role at night in tending to L, even though B also played his part. F admitted that shortly after B came home from work she would hand him the baby. However, given that she would up to that point have been at home with L all day, and that B would not have had the opportunity to spend much time with L, I cannot view that as a shortcoming on F's part, or as a sign from which to draw an inference that in the daytime it was mainly the helper, and not F who took care of L.

[59] Since leaving Mandeville, L has always been under F's overall care and supervision. The fact that B did take care of L many weekends in Mandeville, and in Kingston when F was on call, does not affect my assessment that F was the overall primary caregiver. The fact that as a professional working woman F required, and needed assistance with L whether from the nanny or from her mother from time to time does not at all disturb the fact that she was primary caregiver. I accept that she has assisted L with her homework, reading, taking her out on extra curricular outings and activities, and taken her to the doctor when sick. I also accept that B too has performed similar functions, but to a lesser extent. I accept F when she states that one of the reasons she wished to specialize was so that she could have more control over her own time and balance her career with her maternal responsibilities. I accept her evidence that she has balanced her career and duties as L's mother so that L has still received adequate attention and care from her. Just by dint of the fact that L has been

physically living with F from birth, means that she has had the opportunity to perform more day-to-day care of L than B has.

[60] I have no doubt however, that B has also performed as a very involved parent, both in terms of the quantity and quality of time spent with L. I wish it to be noted that it is not that I am rejecting B's credibility on this issue; it simply means that I find that his perspective was mistaken.

[61] Since the interim order which granted F care and control of L, F has been the parent who has had physical control of L and has throughout that period and before been, I find as a fact, L's primary caregiver.

THE RELOCATION CASES

[62] I now turn to an examination of the type of considerations suggested by Thorpe L.J. in **Payne v. Payne**:

> **(a) Is F's application genuine in the sense that it is not motivated by some selfish desire to exclude B from L's life? Is F's application realistic; founded on practical proposals both well researched and investigated?**

[63] In my judgment F's application is genuine in that I accept that she feels that her marriage having failed, she and L will be better off in the Bahamas where she has a support system of family and friends. I find that the motivating reason that F came to live in Jamaica was because she was marrying B who lived in Jamaica, and that now that the marriage has broken down, she feels the urge to return home. I believe her when she states that the separation between herself and B has been emotionally draining and that she as such feels greater need for a support system. I find credible her evidence that she does not regard B and his family as her support system, now that the marriage has broken down. Further, although I accept B when he states that F has colleagues and friends here in Jamaica, which F admits, I think it plausible that F should feel a need to be closer to friends and family who she has known for a longer time within the familiar setting of her home country.

[64] I accept that she does genuinely feel that she has better employment options and opportunities in the Bahamas and that she intends if her application is granted, to take up a position as Senior Registrar at the Princess Margaret Hospital or at the Epcot or St. Elizabeth Women's Medical Centers. I accept the evidence which F gave that there was at the time of her enquiry no Consultant position available at U.H.W.I. in Kingston Jamaica. In addition, that most of the jobs available to someone with her specialization in hospitals are available in rural parts of Jamaica and were she and L to relocate there they would be strangers to the environment. I appreciate that she could perhaps practice as a General Practitioner in Kingston as B has indeed suggested she could. However, I consider it reasonable that someone who has specialized in Internal Medicine would prefer to practice that discipline, having taken the time to train in it, and the greater control and flexibility that specialty may bring.

[65] I am also of the view that F's application is realistic and well-researched. She has provided a very clear and definite overview of the home (detailed photographs and all), and school which she proposes for L, and has provided great detail about the Bahamas, including statistics which suggest that the Bahamas enjoys a much lower crime rate than obtains here in Jamaica, and the fact that in the Bahamas L would be exposed to many foreign languages such as French, Spanish, Mandarin (Chinese), German, Italian and Creole. She has indicated, and I accept, that the climate in the Bahamas is similar to that in Jamaica.

[66] I am of the view that F's application is genuine and is not motivated by spite or malevolence towards B, and she is not selfishly trying to exclude B from L's life.

(b) Is B's opposition motivated by genuine concern for the future of L'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 L, were the application to be granted? To what extent would that be offset by extension of L's relationships with the maternal family and homeland?

[67] F maintains that B is opposing this application to spite her, and that he has told her that he would be content to have the same kind of arrangement that he has in relation to his other child CB who lives in Florida. That arrangement is access to CB for the bulk of the holidays, and also, that B should have to pay very little maintenance. However, I have no doubt that B is opposed to F's application because of genuine concern and anxiety about L's welfare. On the other hand, his cross-application, and the timing of it, suggests to me that his interest in having day-to-day care of L does not have an independent existence. I think it stems from the fact that F is applying to take L out of the jurisdiction. In my view, it is quite clear that F has had the primary care and control, and custody in that sense, of L since her birth and that until this application, B has not shown any overt signs of dissatisfaction with those circumstances, once he could have liberal access to L. Indeed, it is important to note that in this case, even when the marriage was not yet broken down, L went to live with F in Kingston from she was nine months old, and B did not in any of that time apply to the Court, or strenuously object to F about L living with her. This is so even after the breakdown of the marriage in 2009. I prefer the evidence of F that at the start before the move to Kingston, B had suggested that L stay in Mandeville but had not been adamant about that.

[68] In relation to the question of the detriment to B and his future relationship with L, I think that B would miss L terribly, and that is understandable. He appears to be a very loving father. So I think the fact that he would clearly be able to spend less time with L, will affect both him, L and also B's family. On the other hand, I think that B and his family appear to be from a fairly well-off financial background. B is a well-established businessman, and international travel and airline costs should be well within his means and that of his parents. He has in the past travelled to the Bahamas, with both F and L. F has indicated that there are airline flights to the Bahamas twice per day and the flights are approximately an hour and a half in duration. In addition, I take into account the fact that communication these days has been made cheaper and easier by advances in technology. The skype mode of contact suggested by F, and the fact

that she is offering to pay for L to come to Jamaica to see her father as set out above, would go some way in alleviating the void that B and his family would undoubtedly encounter if the order to relocate is granted.

[69] In addition, to his credit, B has maintained a great bond with his other child CB even though CB lives in Florida and visits B in Jamaica mostly during holiday periods. Overall, I think that the effect of granting the order sought by F would affect B more in terms of the quantitative, rather than the qualitative time that he would spend with L.

[70] L would also miss seeing her father more regularly. To some extent, the effect on L of a separation from her father B would be offset by her relationship with her maternal grandparents and extended family in the Bahamas. M.F. gave evidence and was cross-examined so I had a good opportunity to observe her demeanour and manner. I formed a very positive opinion of her both as a parent and as a grand parent. I believe her when she says that she and her husband maintain frequent contact with L via telephone, and I find that M.F. has spent time in Jamaica for weeks looking after, and assisting her daughter F with L, particularly during the period that F has had to be commuting to work in Montego Bay. I formed the impression that M.F. is a very caring grandmother who loves L dearly. She is someone selfless enough, and loving enough, to assist her daughter, and by extension L, as and when needed. I am of the view that F would be ably and lovingly assisted by L's grandparents in rearing L and that MF will add a gentle touch to that upbringing.

[71] However, I agree with B that the grandparents' care is no substitute for his fatherly care and I accept that B's parents too are loving grandparents who, (although they have not filed any Affidavits confirming this), would assist B if his application was granted, particularly B's mother.

In relation to C.B., L's brother, I am of the view that the bond that they have should be able to be substantially maintained since F has indicated her willingness to send L to Jamaica to spend time with B here in Jamaica in the Summer when C.B. is here. I appreciate of course that quantitatively less time would be spent by the siblings together.

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

[72] This is the nub of the contest as argued between Counsel for F and B, since in fact both rely upon the same guiding authority of **Payne v. Payne**. Mr. Steer makes the powerful submission that in this case L has, on this critical issue, led no evidence as to the likely effect of a refusal on her future psychological and emotional stability. Mr. Steer has also argued that this Application by F is really all about a job and money which F feels she can earn in the Bahamas and it is not the case that F would be adversely affected if the application is refused. Ms. Thomas in reply submitted that although the information was not in the form of a psychiatric report, the same information is before the court in the evidence, particularly as regards the relationship and close bond of mother and child.

[73] In my judgment, F has given evidence, which I accept, that the breakdown in the marriage has been emotionally draining for her and that whilst she has some friends and colleagues here in Jamaica, she feels she would have a vastly superior support system in the Bahamas, and she would be happier there. In cross-examination F indicated that it is difficult, sometimes lonely living in Jamaica alone, without family support in crisis, as well as in every day situations. F in one of the earliest Affidavits, stated that she desperately needed to return to the Bahamas to take up her employment offer. Whilst it is true that there is no specific paragraph directed to the question of how a refusal would affect F psychologically and emotionally, I agree with Ms. Thomas that the Court does not need to have before it a report by a Psychiatrist or Psychologist in order to assess what the effect would be. Indeed, in many of the cases, such evidence was not put before the Court before the conclusion was reached that the refusal would have a detrimental effect on the mother and hence on the welfare of the child. In our Court of Appeal's decision in **B.P. v. R.P.** the Court allowed the appeal of the mother against the trial judge's decision refusing her application to relocate. This was largely on the basis of fresh evidence put before the Appellate Court, which had not been available to the learned judge at first instance. This

evidence took the form of a Psychiatrist's Report attesting to the detrimental effect that a refusal was likely to have on the mother. However, I do not understand the Appellate Court to have been indicating that it was only on the basis of a psychiatrist or psychologist's report that the Court could be satisfied on this issue of whether there would be a detrimental effect on the applicant.

[74] In my view, the evidence before the Court as to F's reasons for wanting to return to the Bahamas, so that she can have family support and be less lonely, as well as:-

(a) her demeanour;

(b) the fact that her marriage to B was the only reason that she came to reside in Jamaica in the first place and that the marriage has broken down; and

(c) the fact that family support is an important part of her upbringing;

allows this Court to infer that a refusal would have a detrimental effect on F and her well-being, and that she would be unhappy. Those negative feelings can in turn, in circumstances of separation, adversely affect the welfare of L since L will be better off with a parent who is herself emotionally and psychologically stable and secure. As Thorpe L.J. sagely stated at paragraph 31 of **Payne v. Payne**:

> *31.* ***Logically and as a matter of experience the child cannot draw emotional and psychological security and stability from the dependency unless the primary carer is herself emotionally and psychologically stable and secure. The parent cannot give what she herself lacks****. Although fathers as well as mothers provide primary care I have never myself encountered a relocation application brought by a father and for the purposes of this judgment I assume that relocation applications are only brought by maternal primary carers. The disintegration of a family unit is invariably emotionally and psychologically turbulent. The mother who emerges with the responsibility of making the home for the children may recover her sense of well-being simply by coping over a passage of time. But often the mother may be in need of external*

support, whether financial, emotional or social. Such support may be provided by a new partner who becomes stepfather to the child. The creation of a new family obviously draws the child into its quest for material and other fulfillment. Such cases have given rise to the strongest statements of the guidelines. ***Alternatively the disintegration of the family unit may leave the mother in a society to which she was carried by the impetus of family life before its failure. Commonly in that event she may feel isolated and driven to seek the support she lacks by returning to her homeland, her family and her friends****. In the remarriage cases the motivation for relocation may well be to meet the stepfather's career needs or opportunities. In those cases refusal is likely to destabilize the new family emotionally as well as to penalize it financially.* ***In the case of the isolated mother, to deny her the support of her family and a return to her roots may have an even greater psychological detriment and she may have no one who might share her distress or alleviate her depression****.* (My emphasis)

[75] In my view, whilst the evidence from F on this point could have been more fulsome, the above statements apply to F.

[76] In paragraph 35 of her Affidavit sworn to on the 26th of January 2011, F states that if the court does not grant permission for her to relocate with L to the Bahamas, then she would relocate to Montego Bay with L once a permanent post becomes available. She says however, that this is a last resort as there is no family support system there, but she does not want to leave L behind in Jamaica. She also declared that it was of paramount importance to her health and well-being that the matter proceed on the 27th of January 2011.

[77] In **Poel v. Poel** (page 1471) and in **Payne v. Payne** (paragraph 31) even statements from the applicant mothers that they would be prepared to give up their plan and to stay in the country were the application to be refused, did not prevent the English Court of Appeal from deciding that the proper order would be

for the mother to be allowed to take the child out of the country. I conclude that the primary carer does not have to give evidence that she will completely collapse emotionally and psychologically for her application to be granted. The matter has to be looked at in its totality and on balance. What is important is for the Court to assess, in addition to all the other matters to be considered, whether refusing the application will affect the applicant adversely, and if so, how much so, and in turn whether a refusal could be detrimental to the child's welfare.

[78] As regards the point which Mr. Steer makes about F being focused solely on money and job opportunities, I reject that submission and accept F's evidence that there is a combination of reasons which she has for wanting to relocate. However, even though Mr. Steer appeared to downplay the importance of the parent's career preferences, in the case of the custodial parent or primary caregiver, it is a counsel of prudence calling for consideration, that it may not be in the child's best interests to frustrate that parent's reasonable plans. In **Payne v. Payne**, Butler-Sloss P at paragraph 70, discussed the decision in **Chamberlain v. de la Mare** as follows:

> (This) *was an application by the mother with custody of two children to take them with her new husband to New York for his job requirements. Balcombe J, at first instance, having referred to the two decisions of this Court* (**Poel v. Poel** and **Payne v. Payne**), *said that he did not propose to be a judicial iconoclast but the only principle which applied was that set out in section 1 of the Guardianship of Minors Act 1971 that the child's welfare was the first and paramount consideration. He decided that the welfare of the children required the mother to remain in England with them so as to maintain contact with their father. This Court allowed the appeal. Ormrod L.J. considered that the judge had misunderstood the judgment of Sachs L.J. in* ***Poel*** *and said at page 442:*
>
> *"What Sachs L.J. was saying, I think, is that if the court interferes with the way of life which the custodial parent is proposing to adopt so that he or she and the new spouse are compelled to adopt a*

manner of life which they do not want, and reasonably do not want, the likelihood is that the frustrations and bitterness which would result from such an interference ***with any adult whose career is at stake would be bound to overflow to the children***. (My emphasis)

[79] At paragraph 81 of **Payne v. Payne** Butler-Sloss P discusses in **Re A (permission to remove child from jurisdiction: human rights** [2000] 2 FLR 225, where the father was refused permission to appeal from a decision by the Recorder giving leave to the mother 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.

[80] The matters discussed in paragraphs [62] to [79] above are some of the specific matters that should be considered in relocation applications. There are also a number of other factors that must be weighed in the scales, and taken into account when assessing the paramount consideration of L's welfare.

These are some of the other factors which in my judgment arise for consideration in this case.

PHYSICAL, EMOTIONAL AND EDUCATIONAL NEEDS

PHYSICAL NEEDS

[81] In my judgment both parties are well capable of taking care of L's needs. They are both income earning persons from relatively well off backgrounds and they have both demonstrated an ability and willingness to spend sums on L and to provide for her physical needs as and when required. This view seems to have been shared in the Probation Report.

[82] In addition, the accommodation proposed by F in the Bahamas at her parents' home and the accommodation proposed by B in Mandeville here in Jamaica both seem to be comfortable and adequate to provide for L's needs. L is also familiar with both sets of surroundings, though B's accommodation has the greater familiarity to L as she has spent more extended and frequent time in that environment when she visits with her father. Both sets of surroundings would

involve L living in comfortable accommodations in affluent neighbourhoods, in a manner to which she is presently accustomed.

[83] F suggested that B cannot physically manage the rigours of caring for a small child and running several businesses all over the island because he has a heart condition, a coronary artery disease. I accept the evidence of B that he has had surgeries that have rendered him healthy and able enough to manage raising and caring for L. In my judgment, B's heart condition is not an impediment to B taking proper care of L.

EMOTIONAL NEEDS

[84] B has alleged that L is not properly cared for emotionally by L. He has further stated that F is not comfortable caring for L to the point that when F goes to visit her parents in the Bahamas she has to carry the helper from Jamaica.

[85] In my judgment, it is quite clear that F is more than capable of taking care of L emotionally, as is B himself. There really is no sound evidence from B in support of this blanket assertion. I accept F's evidence that she is comfortable taking care of L. I am of the view that L would be very unlikely to be such a happy well-adjusted child if F, who spends a lot of time with her, were incapable or poor at taking care of L's emotional needs. L seems to be thriving, and neither her school reports nor the Probation Report suggest that L is deprived emotionally. To the contrary, they depict a picture of L as a child who is glowing with physical and emotional health and well-being, and who is surrounded by love and nurture. Even L's Easter term report, which would cover a period after F started to work in Montego Bay, and in respect of which period B's complaint is heightened, is excellent. Indeed, the principal's comment is that L "has improved both socially and academically this term".

[86] The impression that I formed is that F is a very organized person, but I accept some aspects of B's opinion of F in that she could appear to be very focused on her work and strongly career oriented. I do not however, view that as of such a degree or nature, that L's care, emotional needs, and nurture would, or have been, adversely affected. Indeed, I formed the impression that F is

somewhat of a perfectionist and carries out the balancing exercise of mother and career woman quite well. On balance, I am of the view that these traits do not affect F's ability to satisfy L's emotional needs.

[87] I accept F's evidence that the helper Jennifer did not on every occasion accompany F when she took L to the Bahamas. I further find that the fact that F may chose to take the helper with her on those trips does not signify that she is uncomfortable taking care of L.

[88] On the point generally regarding the assistance of a nanny or helper, the evidence in cross-examination was that both F and L agreed that a helper/ nanny would be employed, indeed from the time of her birth, to assist in taking care of L. It is not uncommon for families where both the mother and father are employed in the working world, and where the parties are of a financial standing to afford the cost, for helpers to be employed in assisting with the care of children. The point is astutely made with great clarity by the Former Chief Justice the Honourable Lensley Wolfe, O.J. in **Lord v. Lord** (1981) 18 J.L.R.288. In that case, the respondent mother contended that in their present situation the children "are uncontrollably exposed to the influence of the applicant's domestic staff none of whom have shown that they have the potential to set the right example for the children." Wolfe J., as he then was, stated at page 292 D:

> *In our present economic situation where mother and father are required to seek employment, such exposure has become a fact of life. Many children in our society owe their upbringing, moral and spiritual to faithful and devoted household helpers".*

[89] In my judgment, the fact that during some Hurricanes or when there was a malaria outbreak in Kingston F allowed or asked B to take L to Mandeville, do not support B's contention that F is not comfortable looking after L. I accept F's explanation that with regard to Hurricanes, she was or might have been required to be on call at the Hospital during such an emergency, and with regard to the malaria outbreak, that since there was no known outbreak in Mandeville, she thought it in L's best interests to take her to Mandeville. I apply the same reasoning to the occasions when F let L stay in Mandeville with B during the

outbreak of violence and State of Emergency in Kingston in May 2010 since L was already in Mandeville with B.

[90] I also note that in the Probation Report, the Officer indicated that L has indicated a preference to live with her mother F. Because of L's tender age, I have attached negligible weight to this reported preference in arriving at a decision as to which parent it is in her best interests to live with. This expressed preference may well be influenced by the fact that L is already living with F. However, it seems to me that if that expression of preference points to anything, it points away from F being unable to satisfy L's emotional needs.

EDUCATIONAL NEEDS

[91] Education is without a doubt an important aspect of a child's upbringing. As stated in **Bromley's Family Law**, page 388, occasionally parental attitude to education can be a significant factor. In my judgment, both schools being proposed by F, Queen's School in the Bahamas, and by B, Belair Preparatory in Mandeville appear to be excellent schools where L would flourish and develop academically, as well as by participation in extracurricular activities, and otherwise. The information about these schools indicates that they are of the same sort of high caliber as the school that L presently attends in Kingston.

[92] It is F's evidence that she pays keen attention to L's educational needs, including supervising L's homework, spelling practice and reading of additional material. Her evidence is that B does not pay as much attention to ensuring that L does her homework or practices her spelling. She stated in paragraph 45 of her Affidavit filed on the 30th of September 2010:

> *That I have noticed that when (L) goes to Mandeville for the weekend, her homework remains undone and she does not practice her spelling ...As a result of not practicing the words on the weekend with her father L performed poorly on her spelling tests the following week at school.*

[93] In response, in his Affidavit filed on the 29th of October 2010, paragraph 73, B states:

That as to paragraph 45, I say that the test was on a Tuesday and although we went through the words, her mother would have or should have reviewed same on the Monday evening before her test on Tuesday.

[94] B has said that the nanny assists L with her homework whilst F maintains that she personally assists with L's homework. I am satisfied that F does pay a lot of attention to L's educational needs, and spends time personally overseeing and assisting with homework and spelling. B is not in my view in a position to give first hand evidence about what goes on in the home in Kingston in terms of supervising L's homework and spelling practice and I prefer F's evidence to B's on this issue.

[95] I have had the opportunity of seeing the parties, observing their demeanour and extensive cross-examination has taken place. I am of the view that F does pay relatively greater attention to L's educational needs, but I do not consider this a major factor in the equation. This is because I find that B has as a father been interested and has participated in filling those needs as well. Further, F has admitted that in relation to major issues such as schooling, she and B had in the past been able to agree, and participate together in decisions relating to this important issue.

AGE, SEX AND BACKGROUND

[96] There is some overlap between this subject and the question of emotional needs. L is a little girl who is five, almost six years old. Under the umbrella of emotional needs, the question will arise as to the attachment of the child to a particular parent. One consideration that must be taken into account is that it is natural for young children to be with mothers. This is a consideration and not a presumption. As Dame Butler-Sloss L.J. expressed it in **Re S (A Minor) (Custody)** [1991] F.L.R. 388, 390:

There are dicta....to the effect that it is likely that a young child, particularly perhaps a little girl, would be expected to be with her mother, but that is subject to the overriding factor that the welfare of

the child is the paramount consideration. When there is a dispute between parents as to which parent should take the responsibility of the care of the child on a day-to-day basis, it is for the justices or for the judge to decide which of those parents would be the better parent for the child, who cannot have the best situation since they are (not?) together caring for her. I would just add that it is natural for young children to be with mothers but where it is in dispute, it is a consideration but not a presumption.

[97] In **Re A (A Minor) (Custody)** [1991] 2 FLR 394, the point was made that the consideration carries even greater weight where the maternal care has been continuous. In other words, it is an important consideration but it has to be weighed in the balance with other relevant factors. At page 400, Butler-Sloss L.J. said:

In cases where the child has remained throughout with the mother and is young, particularly with a baby or a toddler, the unbroken relationship of the mother and child is one which it would be very difficult to displace unless the mother was unsuitable to care for the child. But where the mother and child have separated, and the mother seeks the return of the child, other considerations apply, and there is no starting- point that the mother should be preferred to the father and only displaced by a preponderance of evidence to the contrary.

[98] Closer to home, in the Jamaican Court of Appeal decision **Edwards v. Edwards** (1990) 27 J.L.R. 374, Rowe P. pointed out that the preferred role of a mother is not a rule of law, but rather is a rule of common sense. At page 377H-I the learned Justice of Appeal stated:

It would seem to be self-evident that a young female child should be reared by her mother if that can be accomplished without harm to the child.

Rowe P. went on to discuss the fact that in Australia the Courts treat "the mother factor "as simply a factor to be weighed with other features of the particular case.

[99] In the instant case, one of the concerns that F has expressed about B's parenting style is that he has on occasion allowed L to sleep in the same bed as himself and CB, who is now a teenager. In his Affidavit in response B indicated that CB does not sleep with L, but sleeps on an air mattress and that L has her own room. B did not deny in cross-examination that on some occasions L and CB fall asleep in the same bed with him after he has read them bedtime stories. He accepted the suggestion in cross-examination that the better practice would be to read the children bedtime stories in their own beds. In answer to the question whether he would continue to read CB and L bedtime stories in his bed, he said that he would. However, he indicated that he sees no problem with him continuing to sleep in the same bed with CB and L after they fall asleep because he comes from a big family, accustomed to many of them sleeping in the same bed. The important thing, B opines, is to teach children right and wrong and not put stereotypes in their minds.

[100] In answer to a question from me as to where he keeps the airbed when CB sleeps on it, B indicated that it is in the room where L is.

[101] I have cited this example not to suggest that B is not a good parent, on the contrary, one can see that he is a caring and loving parent and his explanation as to how he sees this matter is quite understandable. Further, he seemed prepared to some extent to adjust and to remain somewhat flexible on this issue. However, it appears to me that this may be one instance that supports the view that a young girl may be better off being reared by her mother, since a mother's instincts, both as a mother and as a woman, are important. It is however, a consideration and not a presumption.

[102] I think that it is important to note that this matter of the "mother factor " consideration arises for contemplation not because of any right of the mother, but rather, because of the usual or natural impact that it is likely to have on the welfare of the child. It therefore is quite independent of, and does not offend, the declaration in section 18 of the Act that the Court shall not take into account whether any right of the mother(or of the father) is superior to that of the father (or of the mother).

SIBLING

[103] In his evidence B has indicated that CB lives in Florida. CB, who is now a teenager, visits B on all holidays, and B states that CB is very close to L. He states that all of this interaction will be disrupted if L is taken to the Bahamas to reside. F on the other hand, has stated that she would send L to spend time with B here in Jamaica in the Summer when CB is in Jamaica and is willing to arrange to visit CB when she and L may be in Florida, so that such bonds as there are would be maintained.

THE CONTINUITY OF CARE, OR STATUS QUO FACTOR

[104] According to the **Bromley's Family Law**, page 388, it has long been recognized that removing a child from a home that he or she has known can have long-term damaging consequences. In **Dicocco v. Milne** (1983) 4 FLR 247, at page 259, Omrod L.J. stated:

> *...it is generally accepted by those who are professionally concerned with children that, particularly in the early years, continuity of care is a most important part of a child's sense of security and that disruption of established bonds are to be avoided wherever it is possible to do so.*

[105] Academician Leighton Jackson in his book **"The Law Relating to Children in Jamaica"** [1984] at page 70 refers to the effects of change of environment upon the welfare of a child. He states:

> *This forms an extremely important consideration in the deliberations of the Courts today, and in competition with an unimpeachable parent, this consideration usually sways the balance in favour of the person who already has custody of the child.*

[106] This question of the status quo is a factor to be considered when deciding what is in the best interest's of L's welfare. Mr. Steer in his written submissions has appeared to suggest that maintenance of the status quo means that it is in L's best interest not to be removed from the jurisdiction. On the other hand, Ms.

Thomas has suggested that the status quo requires that the natural and real bond between F and L as mother and daughter should not be lightly broken. She submits that maintaining the status quo means maintaining the status of F having care and control and day-to-day management of L outside the jurisdiction in the Bahamas.

The Interim Order

[107] The interim order granting F care and control of L with access to B was made on the 11th of August 2010. I agree with Ms. Thomas that it would appear that the interim order has been working well and L's life has been proceeding smoothly and comfortable on this court-ordered track. Whilst B has at one point indicated that the present arrangements, with F working in Montego Bay is making L unhappy, F denies this and has also indicated how much her mother M.F. has been assisting in keeping things at home running smoothly while F has to work in Montego Bay. I accept that this is so.

[108] In my judgment, both F's plans and B's plans involve changes to Lauren's life, and an uprooting from the places and physical environment with which she is most familiar, that is her home and school and activities in Kingston. It is true that B's plan involves less physical upheaval, since the move would be to Mandeville, simply another part of the country, to a place and environment that L is already familiar with. However, both plans would bring about change to the present care of L. Thus both plans carry with them the risk of uncertainty and import change. Therefore the critical aspects of the status quo which the Court must have as a consideration is in my judgment, the question of which parent presently has the day to day responsibility for L's care. F is the parent who has had de facto care of L prior to the interim Court order, from her birth, and by way of court order after the 11th August 2010. Indeed, the interim order was itself a measure to preserve the status quo, pending the determination of the present applications.

[109] In my view, one consideration for the Court is that in the present case, L , who is a little girl of tender years, has remained throughout her life with her

mother. The unbroken relationship of mother and child is one which it may be difficult to displace unless the mother F is unsuitable to care for the child.

[110] The Court will shy away from the disruption of established bonds if it is possible to do so and unless it is in the child's best interests so to do. As the famous Scientist Albert Einstein is reported to have once remarked "The environment is everything that isn't me". It seems to me that an important element in L's environment is the continuous and uninterrupted presence and care of her mother F. It is a consideration that it may be desirable to preserve this environment.

How capable are F or B of Meeting L's needs

[111] In my judgment, both F and B are capable of meeting L's needs. However, because of the fact that L is a young child, of tender years, a girl child who has been accustomed to her mother being her primary care giver, and who appears to be thriving under her care, I think that F is considerably more able to meet L's needs than B is.

ASSESSMENT AND RESOLUTION

[112] So now comes the delicate balancing exercise that the Court must perforce perform.

[113] On the one hand, to be considered is the close relationship which L has with B and with B's parents, her paternal grandparents. If F takes L to live with her in the Bahamas, this will plainly have a dramatic effect on the relationship between L and B and L and B's parents and family. This is a factor to be weighed in the balance and which would point away from the granting of F's application for relocation.

[114] On the other hand many relevant considerations point in the direction that it is best for L's welfare that she be under F's care and control. Notably L is a little girl, she is only five years old, and importantly, F has always been her primary carer. Indeed, prior to the interim order, F had de facto care and control of L. L is thriving under the care of both her parents, but with F playing the major role in

the child's life. F is in my judgment better able to fill L's emotional and educational needs. To take L away from F's day-to-day care would cause great upheaval and could prove upsetting to the stable and promising path that L is presently on. The interim order has been working well. I have found that there is no evidence on the basis of which F could be said to be an unsuitable parent. I note that it was not until F filed this application for care and control and to relocate that B filed his own application. It does not appear that B was so dissatisfied with F's care of L as to warrant an application to the Court. As described by Thorpe L.J. in **Payne v. Payne** at paragraph 42, B's cross-application does appear to have been provoked by F's application to relocate and it has no pre-existing foundation. The Probation Report has described the home environment provided by F in Kingston as a safe and comfortable environment for L, conducive to her upbringing and has recommended, that as between the two options of living with B in Mandeville and with F in Kingston, the status quo as it relates to custody and control not be altered. (My emphasis). In my judgment, the question of which parent is more suitable is not finely balanced in all the circumstances. The decision as to care and control in my view clearly ought to be in favour of F, whether L continues to reside with her in Jamaica or in the Bahamas.

[115] F desires to continue her care and control of L by relocating to the Bahamas. I am of the view that F's application is genuine, realistic and understandable. It has been well-researched and investigated. F's plans are reasonable. Whilst B's opposition to the application is genuine, and motivated by real concern for L's welfare, his cross-application for care and control of L does not have any pre-existing foundation. In my judgment, L will be best placed living with her mother F in the Bahamas rather than continuing to live in Jamaica with F, whether remaining in Kingston or relocating to Montego Bay. Whilst L's relocation to the Bahamas will affect B and his future relationship with L, I think that these effects can be mitigated somewhat by the fact that B and his family have the financial means to travel, and F will also pay for L to visit B in Jamaica. I think that it would be appropriate for L to do so for at least one weekend per

month as well as the other occasions proposed by F in the draft order. Technology, which the parties can afford, such as Skype can also assist in maintaining contact between B and L and B's family. There is no replacement for a father's love and care. However, to some extent the effects on L will be offset by the fact that L will be with loving and supportive maternal grandparents and extended family on F's side, and MF will ably and lovingly assist in L's upbringing. F's situation in Jamaica is an emotionally draining and lonely one and it is likely that her discontent, which I infer, will not allow her to provide L with the emotional and psychological security that she needs. A refusal of F's reasonable proposals are likely to impact detrimentally on L's welfare. F has had L in her continuous day-to-day care from birth and has an interim custody order granting her care and control and which maintained the status quo. Things have been working well in those circumstances and L has been thriving. B has fallen far short of proving that F is an unsuitable mother so as to uproot L from her care. The interests of F in relocating and the interests of L are not incompatible, though I do think that L's interests and rights may be affected adversely in the sense that while she is growing up, L would have a right to meaningful participation by both parents in her upbringing.

[116] F has indicated that if the application is refused, she would as a last resort relocate to Montego Bay with L. However, this is not a case like **Re AR** where I could assess a refusal as having little impact on the applicant mother, or assess F as having real significant attachment to Jamaica and its way of life. Although F has acquired Jamaican citizenship, I accept her evidence that she applied for citizenship on B's suggestion and that this was before the marital friction reached a crescendo. In this case, there is no feature such as there was in **Re AR** where the mother was making a second application, not having firmly acted upon a successful first application to relocate. In my judgment, this is a case where F's impetus to come and to live in Jamaica was because of her marriage with B and their family life. Their marriage having broken down, I believe the ties that F has had with this country have either disintegrated, or become more like shackles.

[117] At the end of the day, whatever the state of the evidence, I have to make the best decision I can in the circumstances. I reject B's cross-application for care and control. F has always been L's primary caregiver and it is plainly in L's best interest that she should continue so to be. It would cause severe dislocation and emotional disturbance in L if this status quo were to be altered. I am of the view that in all the circumstances, the paramountcy principle of the child's welfare, viewed in its totality, favours the grant of F's relocation application.

[118] I should add that whether I were to apply what Mostyn J in **Re AR** termed a "presumptive tendentious route" (in favour of the primary caregiver or custodial parent), which I have not, or whether I have followed a "neutral non-presumptive path" which I believe I have, I would reach the same conclusion that L's welfare will best be served by granting F's relocation application and refusing B's cross-application for care and control.

[119] The issue of maintenance remains to be decided. I do not intend to go into this aspect of the evidence in any great detail. Most of the arguments in this case have been centred around the issue of care and control. Indeed, Mr. Steer's closing submissions do not even address this issue, though of course there is material in the Affidavits filed on behalf of both parties. Suffice it to say that pursuant to the Maintenance Act 2005, both parents have a responsibility to maintain L, according to their respective means and capacity, and based on L's needs and the reasonable expenses associated with her care. I find that B does receive a much higher income than he has disclosed, and that, he occupies the economic strata of proprietor, or at the very least, a high managerial position in relation to his families' business, particularly A Little Pastry Place Limited. He is not simply a salaried employee, as his Affidavits suggest. Indeed, he admits that his family makes up any shortfall in his income relative to his expenses. I further find that the costs of maintaining L in Jamaica, that F has set out in her Affidavits, is reasonable. I accept her evidence, (B has not disputed this) that the cost of living in the Bahamas is higher. However, since I have not really had any estimate or projection of expenditure provided to me, I am not minded to award US $1,000 per month as F has requested. Further, I do not think her request

takes proper account of the fact that B has consistently and repeatedly borne sole financial responsibility for L's school fees and the cost of the extracurricular activities of swimming and ballet in Jamaica, which F's application also seeks to have continue in the Bahamas. F too has a responsibility to maintain L, and she in my view has the means and potential, as a medical doctor specializing in Internal Medicine, and based upon her projected potential income in the Bahamas. I am satisfied that B is in a position to pay, and that maintenance in the sum of US$500.00 per month would be reasonable in all the circumstances. In addition B is to pay, as he did in Jamaica voluntarily, the cost of L's school fees and extra-curricular activities of swimming and ballet and to share equally with F in reasonable medical dental and optical expenses.

[120] As I stated at the beginning of this judgment, this is a very difficult decision, and I appreciate how distressing it has been for the parties. It must be particularly so for B, whose relationship with L will be profoundly affected by this decision. There will of necessity be grave and tumultuous change which unfortunately B will be forced to bear. I sympathize with the trauma that B and his family will no doubt go through. However, I trust that the parties will take the opportunity, and will have the maturity, to alleviate some of the pain by making amicable and peaceful decisions in relation to L's future welfare. It is also in L's interest to have her parents be facilitative and cooperative in relation to B's access to their daughter, little L.

[121] I make the following orders:

1. F and B are granted joint custody of the relevant child, L, born on the 28th of December 2005.
2. F is to have care and control of L, who shall reside with F.
3. Permission is hereby granted to F to take L outside of the jurisdiction to Nassau in the Bahamas to reside with her there.
4. B is forthwith to hand over to F, L's passports and Certificate of Foreign Birth.
5. B is to have access to the relevant child L as follows:

a. One half of all major school holidays namely of Summer holidays, Easter holidays, Christmas holidays. The parties are to alternate yearly residential access to L on Christmas days, New Year's days and L's birthday unless otherwise agreed. The travel expenses for the relevant child on these holidays is to be borne by the parties equally.

b. B is to have residential weekend access to L on one weekend each month, save for the holiday periods described in 5a above. Such access is to commence on Friday afternoons at 7 p.m. and end on Sunday at 1 p.m. or at such reasonable times so as to facilitate travel arrangements. The cost of this air travel of L to and from the Bahamas to Jamaica is to be borne by F.

c. B may in addition have access to L in the Bahamas upon giving F two (2) weeks notice and subject to L's activities and schedules. The cost of his air travel is to be borne by him.

d. B is at liberty to visit the school attended by L from time to time for events, activities or functions routinely attended by parents.

e. B is to have access to L by telephone at all reasonable times and via any other mode of communication such as the internet.

6. Until L attains the age of 18 years, F will provide B with the telephone numbers, addresses and email addresses (if any) of L's:
   a. Residence
   b. Cellular phone
   c. Schools
   d. Church
   e. Medical Practitioners
   f. School Reports
   g. Extra-curricular activities
7. That any changes in the details provided above will be notified to B by F.

8. B and F are to notify each other of any changes in their respective work addresses and of telephone numbers, including cellular numbers. B is also to provide F with any changes in respect of his current residential address.
9. B is to pay the sum of US$500.00 per month towards the day to day maintenance of L until she attains the age of eighteen (18) years or completes her tertiary education. B is also to pay the reasonable school fees and cost of extra curricular activities of swimming and ballet for L and F is to present documentation in support of these items. The parties are to share all major medical dental and optical expenses equally.
10. B's Notice of Application for Court Orders filed on the 15th of September 2010 is hereby dismissed.
11. No order as to costs on either application.
12. Liberty to Apply.