[2021] JMSC Civ.155

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CIVIL DIVISION

CLAIM NO. 2018 HCV 01677

IN THE MATTER of the Children (Guardianship and Custody) Act A N D IN THE MATTER of the Custody of minor child COLIN MICHAEL WHITTINGHAM born February 7, 2017

BETWEEN	**AMANDA WHITTINGHAM**	**CLAIMANT**
AND	**COLLIN S. WHITTINGHAM**	**DEFENDANT**

Mr. Kevin Williams and Ms. Anna-Kaye Brown instructed by Messrs. Grant, Stewart, Phillips and Co. for the Claimant

Mr. Jovell Barrett instructed by Nigel Jones & Co. Attorneys-at-Law for the Defendant

Heard: April 26 – 27, 2021, June 29, 2021, July 1, 2021 and September 20 and 28, 2021

Custody - Welfare of the child is of paramount importance – The impact of domestic violence on an application for custody - Factors for consideration in an application to remove the child from the jurisdiction – Maintenance – ability of each parent.

CARR, J.

Introduction

[1] Amanda McLean (**The Claimant**) met Colin S. Whittingham (**The Defendant**) while on a trip to Jamaica for spring break. At the time, she was residing in England with her parents. The two formed a romantic relationship and she subsequently moved to Jamaica in October 2014. After an aborted wedding ceremony, the couple eventually married in 2016, and their only child Colin Michael Whittingham **(CMJ)** was born on the 7th of February 2017. The relationship was characterized by arguments and allegations of violence and the couple separated shortly after their son's birth. Their divorce was finalized in the United States on the 1st of January 2020.

The Claim

[2] The Claimant filed a Fixed Date Claim Form on the 30th of April 2018. She subsequently filed an Amended Fixed Date Claim Form on the 2nd November 2018 seeking the following orders:

(i.) legal custody Sole, care and control of the said minor child be granted to the Claimant and the Defendant be allowed rights to supervised access and visitation.

(ii.) The Defendant be ordered to pay half of all costs associated with the maintenance and upbringing of the said child.

(iii.) The Claimant and the Defendant shall each pay one half of the education, medical, dental and optical expenses of the child.

(iv.) The Claimant be granted permission to reside with the minor child outside the jurisdiction in England.

(v.) That there be such further and/or other relief as this Honourable Court deems fit.

The Issues

[3] (a) Does the evidence support an order for sole custody?

(b) Is the application for relocation to England in the best interest of the child?

(c) Is the request for maintenance reasonable in all the circumstances and if so is the Defendant in a position to pay the amount?

The Law

[4] Generally, applications for Custody and Maintenance are governed by several pieces of legislation, including the Children (Guardianship and Custody) Act **(CGCA)** and the Maintenance Act **(MA)**. It is a well-known principle of law that in cases of custody and relocation the welfare of the child is paramount. This position is solidified by statute, and a court in determining these issues must have regard to the welfare of the child, as well as the conduct and wishes of the parents.[1] In applications for maintenance, the **MA** provides, that there is an obligation on each parent to contribute to the maintenance of a child in so far as they are able so to do. The germane consideration, where there is no objection to this obligation, is the ability of the parent to meet the financial needs of the child given their own economic circumstances. I am also guided by the principle that each case is to be determined on its own facts.

The Evidence

[5] This case has had many interim applications for various reasons. The main point of contention has been access. The Defendant has filed several notices of application seeking access to his son and the Claimant has filed her own applications seeking to limit that access. As a result, the evidence before this court comprised of in excess of forty affidavits, inclusive of those filed by the parents of the parties. The court was also assisted

[1] Children (Guardianship and Custody) Act Section 7

by the provision of expert reports from Dr. Kai Morgan and Drs. Avril Daley and Carole Mitchell as well as a means report from the Child Protection and Family Services Agency.

[6] It is not possible to rehearse the evidence of each party neither is it necessary to regurgitate the submissions of counsel on either side. In analyzing the issues to be determined therefore, reference will be made to the relevant sections of the evidence and submissions as required. Any emphasis or omission should not be seen as an indication of the importance or lack thereof of any particular aspect of the evidence.

Discussion

Does the evidence support an order for sole custody?

Submisions on behalf of the Claimant and the Defendant

[7] It was submitted by Counsel Mr. Williams on behalf of the Claimant that the application for sole custody is justified for the following reasons:

(a) The Defendant has abused the Claimant.

(b) They are unable to communicate with each other in a manner that is likely to advance the welfare of the child.

(c) The experts have declared that the Defendant is not in a position to at this time have access to his son without supervision. They would not recommend residential access or unsupervised visits unless and until he has participated in parental classes.

[8] In contrast Mr. Barrett on behalf of the Defendant has submitted that there is a presumption of joint custody and that the Claimant has the burden of proving to this court that such an order is not suitable in the circumstances. He countered that;

(a) The allegations of domestic violence have been strenuously denied by the Defendant.

(b) The couple has no challenge working together in making decisions for the benefit of **CMJ**. The challenges outlined by the Claimant in her affidavits have to do with the relationship she has with the Defendant and not the Defendant's relationship with **CMJ.** It was argued that the discussions between the parties via WhatsApp messages support a finding that the couple has a difficulty communicating in respect of their own relationship and not in relation to the child. It was also suggested that the Claimant is purposefully creating the impression that they cannot communicate in order to bolster her case before the court.

(c) The Defendant has never harmed **CMJ** and only wants the opportunity to have a real relationship with his son without the need for supervision. The Claimant, has at every opportunity, denied him of his right to access and has deliberately prevented **CMJ** from making a connection with his father.

Analysis

[9] An order for sole custody vests decision making in the hands of the parent who has care and control, it does not prevent the other parent from having a say in the educational, religious or health concerns of the child. This principle was affirmed in the dicta of Brooks JA (as he then was) in the Court of Appeal decision of **LMP v. MAJ**[2]. At paragraph 47 he stated:

> *"It is important for the guidance of these parties going forward, to note that the grant of custody to one party does not entirely deprive the other party of any right to an input in respect of the major decisions to be made concerning the child and the child's welfare. That used to be the thought concerning orders for custody, but it is an erroneous approach. Ormrod LJ in **Dipper v Dipper [1981] Fam 31** explained that the correct approach is that whereas in day-to-day matters the party, who is granted custody, is naturally in*

[2][2017] JMCA Civ. 37

control, neither parent has a pre-emptive right over the other in major or life changing matters. He said at page 45:

> ***"It used to be considered that the parent having custody had the right to control the children's education - and in the past their religion. This is a misunderstanding. Neither parent has any pre-emptive right over the other. If there is no agreement as to the education of the children, or their religious upbringing or any other major matter in their lives, that disagreement has to be decided by the court. In day-to day matters the parent with custody is naturally in control. To suggest that a parent with custody dominates the situation so far as education or any other serious matter is concerned is quite wrong...."***

[10] An order granting sole custody is therefore not a termination of the rights of a parent. The alternative is an order for joint custody. A joint custody order provides each parent equal custodial rights to a child. It presumes that the parents are able to communicate sufficiently to make the major decisions in a child's life. In the unreported case of **Robert Fish v. Fenella Victoria Kennedy**[3] the learned judge stated that;

> *"Leaving parties to decide between themselves the best direction in which the child's life should proceed requires a level of civility and co-operation between the parties."*

[11] Whether the application is one for sole, or joint custody, the principles gleaned from the plethora of legal decisions on this issue have established the following:

a) First and paramount is the welfare of the child.

b) The court can consider the wishes of the minor provided he or she is of an age to form a proper view.

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[3] SCCA Claim No. HCV 373/2003 judgment delivered on February 2, 2007 para.25

c) The court is obliged to consider any other material information which may be provided such as social enquiry reports or psychological assessments.

[12] In this case **CMJ** is a child of tender years, therefore it would not be appropriate to seek to ascertain his wishes in respect of this application. The focus of this court will be on the first and third principles. Ultimately a decision as to custody must be in the best interest of the child.

[13] In order to determine what is in a child's best interest regard must be had to the **"child's happiness, its moral or religious upbringing, the social and educational influences, its psychological and physical wellbeing and its physical and material surroundings, all of which go towards the true welfare"**.[4]

[14] In her affidavit filed in support of the fixed date claim form, the Claimant outlined her reasons for seeking sole custody of their son. She indicated that the Defendant was physically abusive, and mentally unstable. He was in her view unfit to raise a child or to be left alone with one. She referred to a physical incident between the Defendant and herself that occurred in Florida sometime in December 2017. The Defendant was subsequently charged for the offences of Domestic Battery by Strangulation, False Imprisonment and Touch or Strike Battery/Domestic Violence.

[15] The Claimant outlined in subsequent affidavits, a relationship that was plagued by physical abuse. The Defendant pleaded no contest to some of the charges against him in the United States and was placed on a probation order. A part of that order included, what we would term in our jurisdiction, a protection order. He was to have no physical contact with the Claimant and he was not to have any access or contact with **CMJ**.

[16] Following those events Amanda relocated to Jamaica and **CMJ** has been exclusively in her care. Additionally, by virtue of a court order made by Anderson, J on

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[4] Forsythe v. Jones SCCA 49 of 1999 unreported judgment delivered on April 6, 2001 p. 8

the 30th of July 2018, the Defendant's access to his son has been limited to supervised visitation. Despite several applications for a variation of this order the Defendant has been unsuccessful. It is apparent therefore that **CMJ** has known no other home outside of the one with his mother.

[17] In his Affidavit in response the Defendant denied being physically abusive to his then wife. He stated that this was a fabrication and that he had always been a good father to his son and that he wanted to play a major role in his life. He asked the court to make an order for joint custody with care and control to the Claimant and access to his son every other weekend, half of all major holidays, father's day, his birthday and alternate Christmas days and any other times that could be agreed upon with her.

[18] By his own evidence the Defendant has indicated that there is no great concern with the Claimant maintaining care and control of the minor child. There is also no evidence before the court that the child is not receiving quality care, neither is there any evidence that he has been mistreated by his mother. The overall opinion of the experts is that she is a good parent and that the child is well adjusted and doing well in school.

[19] The same cannot be said about the Defendant. Although the experts concluded that he loved his son, the recommendation at this time is that he is to continue to have only supervised access to him until he completes parental counselling courses. Following which he will be reassessed. At this time therefore, he is not in a position to have daily care and control of **CMJ**. The two appointed court experts agreed on that issue and I have accepted their evidence in that regard.

[20] The specifics of this case raises an issue that cannot be ignored or minimized, that is the issue of domestic violence and its impact on applications for custody. This is not a case of two people having an argument in what in local parlance is referred to as "where teeth and tongue meet". This is a case where the Defendant has pleaded no contest to a count on a domestic violence case some four years ago. In spite of his denials this is the record before this court.

[21] How does the court treat with such an issue? Unfortunately, there is no assistance to be had from the legislation referred to previously, as there is no mention of this in the **CGCA** apart from a reference at Section 14 to the conduct of the parent when considering Section 7. The conduct outlined does not contemplate domestic violence but instead refers to abandonment and desertion.

> *"Where the parent has –*
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> *a) Abandoned or deserted his child; or*
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> *b) Allowed his child to be brought up by another person at that person's expense for such a length of time and under such circumstances as to satisfy the Court that the parent was unmindful of his parental duties."*

[22] The Matrimonial Causes Act (**MCA**) is also unhelpful as although it gives the court the power to grant injunctions or any other orders for the protection of a party to the marriage or any relevant child it does not define or detail the conduct that the court should consider in determining whether the party is in need of protection.

[23] The advent of the Domestic Violence Act (**DVA**) in 1996 with amendments in 2004 sought to address what was increasingly becoming a problem in Jamaica. The rising incidents of violence towards women, children and members of shared households have continued to plague this society since then. There is however no clear definition of domestic violence in the **DVA.** The legislation only refers to the circumstances under which a protection order may be made. Section 4 (2) provides;

> *a) The respondent has used or threatened to use, violence against, or caused physical or mental injury to a prescribed person and is likely to do so again,*
>
> *b) Or having regard to all the circumstances, the order is necessary for the protection of a prescribed person."*

[24] In England and Wales in addition to the Domestic Violence and Matrimonial Homes Act 1976, practice directions have been issued to deal with matters relating to domestic violence. One of the areas of concern is whether or not there is an admission on the part of the perpetrator. If not then they will embark upon a fact finding hearing. The standard of proof in those cases is on a balance of probabilities as the matter is of a civil nature. The court is therefore not expected to refer to the criminal standard to satisfy itself as to whether or not the allegations are proved.

[25] As we have no such parameters within our jurisdiction this court is compelled to focus on whether or not the conduct of the Defendant is such that it will interfere with CMJ's psychological and physical well-being.

[26] The England and Wales Court of Appeal decision of **Re H-N and Others** [5] which was delivered by Lady Justice King and Lord Holroyde addressed four appeals from the Family Court. The court recognized the effect of domestic violence on applications for custody at paragraph 4 of the judgment-

> *"Despite the high volume of cases, the need to identify and, where necessary, decide upon issues of domestic abuse is a matter that is rightly afforded a high level of importance in Family Court proceedings. Where past domestic abuse is found to have taken place, the court must consider the impact that abuse has had on both the child and parent and thereafter determine what orders are to be made for the future protection and welfare of parent and child in the light of those findings. Depending upon the circumstances, such orders may substantially restrict, or even close down, the continuing relationship between the abusive parent and their child".*

[27] The court also made the following comment at paragraph 24-

> *"Obsolete too is the approach often seen in the 1980s where, although 'domestic violence' had been established and an injunction granted, judges regarded that violence as purely a matter as between the adults and not as a factor that would ordinarily be relevant to determining questions about the welfare of their children. Fortunately, there has been an ever-increasing understanding of the impact on children of living in an abusive environment.*

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[5] 2021 EWCA Civ. 448

> *A seminal moment in the court's approach to domestic violence (as it was still called) was the Court of Appeal judgment in four appeal cases that were, like the present appeals, heard together: Re L (Contact: Domestic Violence); Re V (Contact: Domestic Violence); Re M (Contact: Domestic Violence); Re H (Contact: Domestic Violence) [2000] 2 FCR 404; [2000] 2 FLR 334. The central conclusion from Re L, which was based on the Court of Appeal's acceptance of authoritative expert child psychiatric evidence, was that there needed to be a heightened awareness of the existence of, and the consequences for children of, exposure to 'domestic violence' between parents and other partners."*

[28] The dicta highlights three things a) domestic violence or abuse may be a contributing factor in a court's decision to deny a parent's rights in certain circumstances. b) an allegation of domestic violence or abuse ought to be considered in determining what is in the best interest of a child and c) domestic abuse is injurious to a child even where that child is not a victim of physical abuse.

[29] In applying the court's observations to the circumstances of this case, an examination of the Claimant's evidence shows a continuing pattern of abuse. Apart from the first incident in the United States the Claimant also recounted other incidents of physical abuse which she supported with photographs of bruises to her person. It was also her evidence that she was harassed by the Defendant who she alleged egged her car. I observed the Claimant as she gave her evidence and I found her to be a truthful witness. I accepted her evidence that the Defendant had been physical and mentally abusive towards her subsequent to the incident in 2017. I find and accept on a balance of probabilities that the Claimant has been a victim of domestic violence at the hands of the Defendant.

[30] On each occasion the Defendant either denies that there was any violence or he tries to explain it away. I reject his assertions that he has never physically abused the Claimant, the evidence is palpable and cannot be ignored.

[31] The effect of this violent conduct on the Claimant must be of concern to this court as it considers the application for sole custody. I am also acutely aware of the fact that **CMJ** has been present for most of these encounters, thereby causing him both psychological and emotional harm.

[32] At present the parties do not communicate with each other. They have blocked each other on their phones and they communicate through third parties. The Claimant describes the relationship as a never ending cycle of toxicity. Should a court seek to force a victim of abuse to place herself in constant contact with her abuser? Is that in the best interest of the child?

[33] Dr. Kai Morgan the first expert appointed by the court conducted co-parenting sessions with both parties and provided a report which was dated July 28, 2020. At page 2 of that report she opined;

> *"There is a significant sense of distrust that pervades the relationship between these two individuals. It is something that requires time to work through and process, as many things have been said and done that have impacted the nature of their relationship. This severely impacts their ability to co-parent as that is based on trust. The trust is more severely deleterious from Ms. Mclean to Mr. Whittingham and so she finds it difficult to find a space within which to allow more child care / involvement when she believes he will violate all the agreements that have been made."*

[34] On the 25th of September that same year following further sessions and observations Dr. Morgan reported her interpretations at page 3 of that report as follows;

> *"That there is no doubt in my mind that the hostility between these two parents is impacting their child, and will continue to impact their child…that there is risk to CMJ's emotional safety if certain provisos are not adhered to with regards to appropriate parenting especially in the case of a divorced couple or family. That this high sense of distrust between parents lead to deception and manipulative behaviours (mainly Mr. Whittingham) and high levels of anxiety and controlling behaviours (Ms. Mclean) which makes their relationship untenable."*

[35] It was also Dr. Morgan's observation that the Claimant was still suffering from the effects of domestic violence and that she needed to undergo individual therapy sessions in order to cope with her own emotional issues.

[36] This is not a case in which the parties can find middle ground, I do not accept Mr. Barrett's submissions that the Claimant is exaggerating the abuse and lack of communication as a means of convincing this court to see her application favourably. I find and accept that the Claimant has suffered from domestic abuse even after the end of her relationship. She is now trying to navigate a new relationship with her child's father while seeking to protect herself from further trauma.

[37] I cannot find that this is a matter where forced interaction between these parties would be useful or a benefit to the child. In fact, I find the contrary. A court order compelling the Claimant to be in constant contact with the Defendant regarding decisions about the child may be more harmful to her over time and may result in a further deterioration not just of their relationship but her own emotional stability. The forced interaction would therefore by extension have a negative impact on **CMJ.**

[38] In addition to the incidents of domestic violence the court is also concerned with the parental aptitude of the Defendant. The necessity for supervised access has also been discussed by the experts. Dr. Avril Daley was asked to respond to questions posed by Mr. Barrett which form a part of the evidence before this court. I will highlight the questions and answers that are relevant to this aspect of the case.

> *(a) Q. Mr. Whittingham has now indicated that he wishes to have daily care and control of "CMJ". What difference, if any, would Colin Spencer Whittingham's current wishes regarding daily care and control make to your recommendations regarding which parent should have daily care and control of "CMJ"*
>
> *A. At this moment, my recommendations would not change. Mr. Whittingham did not display adequate understanding of the growth and development expectation of children and based on CMJ's age it is crucial for him to be in daily care of someone who understands this construct.*

(b) Q. In light of the Claimant's moves with CMJ over the last year, what is the basis of the conclusion that the Claimant appears to have a lower risk and a more nurturing environment at the moment?

A. The Claimant's presentation of the measures to assess parenting skills had her at lower risk. Also she maintained her residence and her temporary relocation. However, I asked that Ms. Whittingham should ensure that her living conditions are suitable.

(c) Q. In your opinion is Colin Whittingham able to learn and develop the skills he may currently be missing, if he is given daily care and control of CMJ.

A. In my opinion, Mr. Whittingham will need to acquire more adequate parental and childrearing attitude and behaviours before he is given daily care and control of CMJ.

(d) Q. What is the basis of the recommendation that an adult care giver (nanny) should be with Colin Whittingham at all times during his access visits with his son?

A. This is based on the parental support that Mr. Whittingham needs as he takes care of his son. This is to be during his home visit.

[39] Dr. Daley did not find that the Defendant was a physical threat to his son. She makes that very clear. She did however find that he is more likely to use corporal punishment as a means of correcting **CMJ** and that he would need assistance in order to find other methods of discipline. She also said that the Claimant had that tendency.

[40] Based on the opinion of Dr. Daley, the Defendant does not have the skills required to have unsupervised access to his son. There is no indication in his affidavits that he has completed successfully the parental classes which were recommended by both experts. Giving the aforementioned reasons and my findings I am not of the view that the particular facts of this case support an order for joint custody. The application for sole custody is therefore granted.

Is the application for relocation in the best interest of the child?

Submissions on behalf of the Claimant and the Defendant

[41] Mr. Williams submitted that the Claimant moved to Jamaica solely for the sake of the Defendant. Now that the relationship is at an end she wants to return to England where her parents and other relatives reside. It was argued that she has very few family members in Jamaica and that the friends she has here are friends of the Defendant. Whilst in Jamaica she is dependent on the Defendant for financial support, whereas, in England she would be able to support herself on her own.

[42] Mr. Barrett submitted that the Claimant's intentions were not true. The move to relocate he argued was part of a plan by the Claimant to deprive the Defendant of his son. Her need to relocate is neither genuine nor practical and the application should be refused. He raised the following objections:

(a) There is no guarantee that **CMJ** will become a citizen of England. The fact that his mother is a British national is insufficient to give him status.

(b) There is no suitable accommodation for the Claimant in England.

(c) The Claimant has no job prospects in the UK and the offer letter presented to the court is a sham and cannot be relied on.

(d) The Claimant's true intention is to leave the country with **CMJ** without respecting the Defendant's rights to access.

Analysis

Is the application genuine and practical? Is it motivated by selfishness?

[43] Is the welfare of the child best met by his mother's move overseas? In arriving at an answer to this question consideration must be given to the Claimant's reasons for wishing to relocate. Those reasons should not be motivated by selfishness.

[44] It was held in the Court of Appeal decision of **B.P. v. R.P.**[6] that;

> *"in 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"*.

[45] The phrase "you cannot drink from an empty cup" springs readily to mind. Is the relocation necessary for the health and emotional well-being of the Claimant and as a result necessary for the overall well-being of **CMJ**? Dr. Morgan in her report indicated that it was apparent that *"Ms. McLean feels more emotionally and financially secure in the United Kingdom with her parents who are more able to provide physical support with CMJ and increased opportunity for earning."* The Psychological report dated April 17, 2021 of Drs. Daley and Mitchell found at page 8;

> *"Ms. Whittingham has some support of friends and family, but her desire for her parents being physically closer to offer support is noted. She can take care of her son but will not be able to maintain the lifestyle that he is used to without the financial support of Mr. Whittingham here in Jamaica. Her relocation to England would be more beneficial for her, however, due to her refusal at times to allow Mr. Whittingham access to his son as ordered by the court, it seems unlikely that she would allow him access if she is living in England and this would not be in the best interest of the minor child. Ms. Whittingham would have to show her compliance with new structured arrangement in Jamaica before any new arrangement re custody can be made."*

[46] The concern of Drs. Daley and Mitchell is shared by Counsel Mr. Barrett. He relied on a whatsapp conversation between the parties while the Claimant was in England with **CMJ** in 2017. In that conversation she told the Defendant to stay away from her, that she would make a report so that he would be arrested and that he would never see his son

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[6] SCCA 51/08 para. 11

again. In cross examination she told the court that she was angry at something that he did and she lashed out in that way. She said that the Defendant knew it wasn't true because he blocked her after she sent the message.

[47] There is no denial by either party that subsequent to that conversation the Claimant went to the United States with **CMJ** and lived with the Defendant. The couple had reunited up until the incident which sparked his arrest. Mr. Barrett argues that the Claimant made good on her threat and caused the Defendant to be arrested. Since he pleaded no contest to the charges I cannot find that statement to be true.

[48] Since then, it was submitted, the Claimant has done everything to prevent the Defendant from having a relationship with his son. The evidence, however, does not support this. In spite of the violence and abuse the Claimant continued to be in the Defendant's company. On several occasions following the incident in the United States she messaged the Defendant in order to give him an opportunity to speak with his son as well as to visit with him per the court supervised order. On the Defendant's return to Jamaica she went on trips with him and **CMJ,** in order to give them an opportunity to bond as father and son. Those trips ceased because invariably their interactions resulted in arguments and sometimes violence.

[49] In cross-examination the Defendant admitted that the introduction of four and a half hours of supervised access was suggested by Dr. Morgan so that she could see how he interacted with **CMJ.** He agreed that the Claimant consented to this arrangement.

[50] I therefore cannot find that on a totality of the evidence the Claimant is opposed to her son having a relationship with his father. Due to her concerns about his conduct however, she has lost faith in his ability to stick to the rules or conditions of the court order. Her stubbornness in that regard ought not to be viewed as a deliberate attempt to prevent her son from seeing his father, but as the experts described it, is as a result of her need to control the situation to ensure her son's safety. I do not accept having observed her as she gave her evidence and noting her demeanour that her intention is to remove the Defendant from his son's life.

[51] Her desire to return to England I find is based on her need to be independent. The Defendant's mother, Mrs. Whittingham, who also gave evidence in this matter referred to the fact that they offered the Claimant an apartment and she refused. The Claimant is struggling to maintain the lifestyle that she and **CMJ** are accustomed to in Jamaica. The salary she presently earns is incapable of supporting herself and **CMJ** without the assistance of the Defendant and her parents. Although money ought not to be a primary factor in making these decisions, it cannot be downplayed. While the Claimant resides in Jamaica, she remains dependent on the Defendant.

[52] I cannot find that **CMJ** is best served by a parent who feels isolated in a country that she no longer considers home. Her parents and support system are in England, she has very few friends in Jamaica, and she is financially dependent on her ex-husband. This is untenable considering the nature of their present relationship.

[53] The court finds and accepts that what the Claimant needs is a fresh start, an opportunity to put her relationship with the Defendant behind her so that she can focus on her own emotional well-being. This will enable her to be a better mother for **CMJ.** The alternative is a situation that is unhealthy not just for the Claimant but also for her son.

[54] As it relates to Mr. Barrett's other concerns. They can be dealt with summarily.

Citizenship

[55] The application process for citizenship for **CMJ** by the Claimant's own evidence is not a straightforward and it may require the child to be a resident in England for a period of time. However, the court notes that she herself is a British citizen. This court finds it hard to accept that in circumstances where the Claimant is a citizen and her child is a minor that the authorities in England would not ultimately grant her request for citizenship for her son. Further the evidence is that her parents have already secured the services of an attorney to start the process once this matter is completed. In the event that her application is refused it would simply mean that the child would have to return to Jamaica. I do not accept that this is a valid argument for the refusal of the application.

The suitability of accommodations

[56] The Claimant's evidence is that if the application is granted she will reside with her mother and father at their one-bedroom flat in Croydon. She has never visited them there before, however, it is a good neighbourhood and quite safe and secure. The objection of Counsel Mr. Barrett is the size of the apartment. While living in Jamaica she resides in a room in the home of her Aunt. She and **CMJ** share that room together. What then is the difference? I cannot find any.

Job prospects

[57] The Claimant presented to the court an offer letter for employment which was dated sometime in 2018. It is clear that there is no guarantee that this offer is still open to her. However, what it does show is that she has the necessary qualifications to obtain employment in the UK. Indeed prior to her sojourn to Jamaica she was gainfully employed there. Any move to another country brings with it the risk of temporary unemployment. This though cannot be the sole determining factor in an application for relocation.

[58] I find and accept that the Claimant's future psychological and emotional stability will be affected by a refusal of her application and that this would not be in the best interest of her son. The application for relocation is therefore granted.

Maintenance

[59] The Defendant has not denied that he has a duty to maintain his son. His objection is as to the amount. In cross examination he was asked if he would be able to afford Fifty Thousand Dollars a month and he agreed. When asked if he could go to Eighty Thousand Dollars a month he said he may be able to but he would need to check his finances at this time he was uncertain. The Claimant in her affidavit has outlined her projected expenses in England in the sum of approximately Two Thousand Fifty-Eight Pounds.

Rent – 1275.00

Groceries – 250.00

Electricity and gas – 78.00

Council Tax - 138.00

TV lic – 13.00

Cable – 50.00

Mobile phone plan – 38.00

Half of school fee – 216.67

[60] The equivalent in Jamaican currency is approximately Four Hundred and Twenty Thousand Three Hundred and Thirty-Six Dollars. Unfortunately, there is no way for this court to authenticate these figures. However, it is noted that her mother in giving her evidence indicated that she pays approximately Six Hundred Pounds for rental of her one-bedroom flat, that sum in Jamaican currency is in excess of Eight Thousand Jamaican Dollars. I find that even if the expenses have been grossly exaggerated the sum of Eighty Thousand Dollars is not unreasonable, given today's economic climate and the basic expenses of a single family.

[61] The Defendant's evidence is that he would not be able to afford that amount at present. In cross examination he said that he resided at his parents Melwood property where he pays rent. He accepted that he does not have any rent receipts nor does he have a lease or rental agreement to support this. He also did not provide any utility bills. He gave his salary to the probation officer as Three Hundred and Twenty- Five Thousand less tax. He pays the sum of Ninety Thousand Dollars for rent, Sixty Thousand for grocery and educational expenses on behalf of his son, those expenses were not listed in the report provided by the probation officer. He gave his net income as One Hundred and Eighty-Three Thousand Three Hundred and Thirteen Dollars and Seventy-Two Cents, and indicated that after the deduction of his expenses he would only have approximately Ninety-Seven Thousand Dollars remaining. It is noted that there was mention of a compulsory deduction for the sum of Ninety Thousand Dollars from his salary and this was not explained. Additionally, by way of discovery it was ascertained that the Defendant has other types of investments that would supplement his income.

[62] He was challenged as to his expenses in cross examination and he admitted that he no longer paid alimony nor lawyer's fees on account of his divorce. He also accepted that the living expenses mentioned to the probation officer did not amount to the rental and grocery sum proffered in another affidavit. I do not find that he has been completely honest as to his expenses.

[63] Even so, from all indications, even with the expenses outlined above, the Defendant is in a fairly comfortable financial position. He resides in a cottage on his parent's property and he drives a partially maintained company vehicle. The Claimant will have to undertake the cost of relocation without assistance. I find that the sum of Eighty Thousand Dollars cannot be considered to be burdensome given the financial stability that the Defendant has.

[64] On the 20th of September 2021 subsequent to the delivery of the judgment Counsel for the Claimant requested that the court reserves on the issue of costs and that he be permitted to address me on same. The matter was adjourned to the 28th of September for this purpose. After hearing the submissions of both Counsel for the Claimant and the Defendant I am not of the view that this is an appropriate case for a departure from the usual orders as to costs which are made in these types of proceedings. The acrimony between the parties resulted in a hotly contested matter with each party filing several applications seeking orders from the court. I do not believe that their conduct was so reprehensible or unreasonable to justify an order for costs against either party.

Orders made on September 20, 2021:

1. The Claimant is granted sole custody, care and control of the child Colin Michael Whittingham born on February 7, 2017.

2. The Claimant, is permitted to emigrate to England with the child at any date after January 2, 2022.

3. The Defendant is granted supervised access to the child while he remains in Jamaica every Friday between the hours of 2:00pm and 6:00

pm and every Saturday and Sunday between the hours of 9:00 am and 4:00pm. There shall be no overnight visits.

4. The Claimant is to employ a nanny from a reputable agency for the purpose of these visits within fourteen days of this order, and the cost of these services is to be borne solely by the Defendant, failing which the Defendant is permitted to employ a nanny from a reputable agency and the cost of such services is to be borne solely by the Defendant.

5. The Defendant is to pick up the child at a location arranged by the Claimant to facilitate these visits.

6. The Defendant is granted supervised access to the child while in England for a period of two hours per day at the end of each school day during the school term for no more than a period of two weeks during any school term and the Defendant shall give two weeks written notice of his planned visits.

7. Dianne and Michael McLean are permitted to act as supervisors for these visits. In the event that they are unable or unwilling to do so a Nanny or other suitable person is to be employed by the Claimant for this purpose and the cost of such services shall be borne by both parties equally.

8. The Defendant is granted supervised access on half of all summer holidays and every other Easter and Christmas break commencing February 2022 and these visits are to be supervised by a Nanny or any other suitable person employed by the Claimant and the cost of such services shall be borne by both parties equally.

9. The Defendant is to pay to the Claimant the sum of Eighty Thousand Dollars for maintenance for the child commencing the 30th of September 2021 in addition to half medical and optical expenses and half educational expenses.

10. The Claimant shall provide through her attorneys the relevant bank account details to facilitate the maintenance payments.

11. Liberty to apply.

12. The Claimant's attorney –at – law shall prepare file and serve this order.

Orders made on September 28, 2021

Each party is to bear their own costs.