IN THE SUPREME COURT OF BERMUDA

DIVORCE JURISDICTION
2000: No.22

M	Petitioner
-v-	
M	Respondent

(RE: M, MK AND C-PERMANENT REMOVAL APPLICATION)

RULING

Date of hearing: October 15, 2007
Date of Ruling: October 19, 2007

Mr. David Kessaram, Cox Hallett Wilkinson, for the Petitioner
Mr. Saul Froomkin Q.C., Mello Jones & Martin, for the Respondent

Introductory

1. On March 25, 2003 and June 2, 2003, respectively, the Petitioner issued her Summonses for leave to permanently and temporarily remove the children from the jurisdiction to take up residence in Canada. These applications are principally supported by affidavits sworn by her on the following dates: March 24, 2003, March 24, 2003, May 19, 2003, August 13, 2003, February 26, 2004, June 1, 2004 and July 2, 2004.

2. On May 12, 2003, the Respondent applied for care and control to be transferred to him if the Petitioner left Bermuda, in accordance with the May 22, 2001 Consent Order herein. On August 28, 2003 leave was granted to amend this Summons to seek care and control of the children in any event, the Amended Summons being issued on or about May 3, 2004. The Respondent's application was principally supported by his affidavits sworn on May 8, 2003, August 26, 2003 and July 7, 2004.

3. The mother's application for temporary removal of the children for one year was heard on July 8-9, 2004 and granted by me on July 20, 2004. The hearing of the mother's permanent removal application and the father's cross-application for care and control commenced on March 15, 2004, and after the Court Social worker was cross-examined for three days the applications were adjourned part-heard on March 18, 2007. On May 3, 2004, directions were given for the filing of expert evidence. Further directions were ordered in this regard on June 11, 2004. On January 17, 2005, I ordered that these applications should not be listed until after certain criminal proceedings, commenced against the father in March 2004, had been concluded.

4. These criminal proceedings, based on the broad allegation that the father had fraudulently obtained Bermudian Status for himself and the children of the marriage, were considered to be highly relevant to (a) whether or not the mother of two Canadian children who was their primary carer should be permitted to permanently return with the children to Canada, (b) alternatively, whether the children should be transferred into the father's primary care, in large part[1] based on the premise that the father and children could all remain in Bermuda as Bermudians, and (c) whether or not this Court should continue to exercise jurisdiction over the children of the marriage if none of the family members had any automatic right to reside in Bermuda. They followed an indication by the Immigration Department in a letter to the mother dated August 13, 2003, that the Department was proceeding to revoke the Bermudian Status purportedly held by the father and the three children.

5. On May 25, 2005, the father was convicted of conspiracy to defraud and sentenced to six months imprisonment suspended for 18 months. It is also a matter of record that his appeal against this conviction was dismissed by the Court of Appeal for Bermuda on November 23, 2006. An application by the father for leave to appeal against this decision was seemingly recently refused by the Judicial Committee of the Privy Council. It ought to be noted that paragraph 9 of the Court of Appeal judgment records that the father's Bermudian Status was confirmed on March 5, 2001. Paragraph 10 then states as follows: "*That might have been an end to it. However, in May 2003* [the father's] *former wife spoke to the Chief Immigration Officer with the result that enquiries were made*", enquiries which resulted in the criminal charging of the father and his ultimate conviction.

6. In the meantime, the mother and children were granted temporary leave to remain in Ontario, Canada by further Orders made by me on May 30, 2005 (for two years from July 20, 2005), and on July 26, 2007 (until January 31, 2008 or further order) . After the Court of Appeal unanimously dismissed the father's appeal against his conviction, the mother applied by Summons dated December 1, 2006 for the mother's application to be granted and the father's dismissed unless he could establish that he possessed Bermuda Status. At that hearing, Mr. Froomkin for the father showed me an open letter setting out his client's proposals for transferring the present proceedings to Ontario, proposals which I indicated seemed reasonable and to approximate the likely outcome of a contested hearing of the cross-applications and the jurisdiction issue. Mr. Froomkin sensibly accepted that it was unrealistic to seek to contest the permanent removal application and the mother's desire that these proceedings should be transferred to Ontario. The only outstanding issue was the terms on which the transfer was to occur.

7. When the parties were unable to agree the terms on which the jurisdictional transfer should occur, Mr. Kessaram sought to have the part-heard cross-applications concluded, and the mother applied for leave to adduce expert evidence by video-link. On September 20, 2007 I refused this application and ordered that hearing of the part-heard cross-applications listed for a five-day hearing this week should be limited to an application by the father to show cause why the Court should not decline jurisdiction in this matter. I took this course, having regard to the Overriding Objective, in order to save costs in circumstances where there appeared to me to be no genuine dispute as to how the cross-applications should in broad terms be resolved.

8. Accordingly, the only argument which took place on the morning of October 15, 2007 was as to (a) the terms on which this Court should decline jurisdiction, and (b) costs. Both counsel agreed that the Court could in its discretion decline to exercise any further jurisdiction over the children of the marriage.

[1] The father's case that care and control should be transferred to him, clearly made in response to the mother's permanent removal application, came two years after he had consented to the children remaining in her primary care.

Permanent removal application

9. The mother's application for leave to permanently remove the three children of the family from Bermuda to enable her to reside with them in Ontario, Canada, is granted. This conclusion is inevitable having regard to not simply the jurisdictional factors, but the proper approach to permanent removal applications made by the primary carer summarized in my Ruling of July 20, 2004 in the mother's Temporary Removal application. This result also takes into account the fact that (a) the children have been in Canada for the last three years, and (b) the children have been in the primary care of their mother since May 22, 2001 at the latest.

10. *In R-v-R*, Divorce Jurisdiction 1995: 224, a case where both parties were British and the father's right to remain in Bermuda was uncertain, Simmons J. in her Judgment dated November 27, 2002 concluded as follows:

> "*I accept that he is a responsible and loving parent. I accept that the boys have fun with their father, and that it is an important part of their welfare to be in a meaningful relationship with their father. All of these matters will seem like hollow platitudes to a father who will lose weekly contact with his children. However, my judicial function is to decide what is in the paramount interest of the children, that is what best ensures their welfare. With the guidelines set out in the above cases, and based on the history of this case and on the evidence, I am of the opinion that the children's welfare is best served by allowing them to leave the jurisdiction with their mother. The mother is repatriating to England and the children have every right to such repatriation.*"[2]

11. I am also guided by the following passage from the Judgment of Thorpe LJ in *Payne-v-Payne* [2001] 2 WLR 1826 at 1836-1837, where he lays down guidelines for applications by mothers as primary caregivers to remove children from the jurisdiction which are opposed by a father wishing to retain contact with the children (in *Payne-v-Payne* there was, as here, a cross-application seeking, in effect, a change of care and control):

> "*In a broad sense the health and wellbeing of a child depends upon emotional and psychological stability and security. Both security and stability come from the child's emotional and psychological dependency upon the primary carer…logically and as a matter of experience the child cannot draw emotional and psychological security and stability from the dependency unless the primary carer herself is emotionally and psychologically stable and secure. The parent cannot give what she herself lacks …The disintegration of a family unit is invariably emotionally and psychologically turbulent…often the mother may be in need of external support, whether financial, emotional or social…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 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* [than refusing relocation with a new

[2] Judgment, page 8.

partner]…*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.*"

12. However, I am further guided by the principles enunciated by the Supreme Court of Canada majority in a case on which Ms. Pearman (who appeared for the father at the first interim removal application) relied, *Gordon–v-Goertz* (1996) 134 D.L.R. (4th) 321, which supports the view that there is no presumption in favour of the mother and that a fresh inquiry, taking into account the previous Order and evidence of new circumstances, is required into what is in the best interests of the child: see Judgment of Madam Justice McLachlin, at pages 341-342. In this case the father both opposed the removal and sought custody as well. The following guidance (at page 342) is particularly helpful:

> "*..The focus is on the best interests of the child, not the interests and rights of the parents….More particularly the judge should consider, inter alia:*
>
> *(a) the existing custody arrangement and relationship between the child and the custodial parent;*
> *(b) the existing access arrangement and the relationship between the child and the access parent;*
> *(c) the desirability of maximizing contact between the child and both parents;*
> *(d) the views of the child;*
> *(e) the custodial parent's reason for moving, only in the exceptional case where it is relevant to that parent's ability to meet the needs of the child;*
> *(f) disruption to the child of a change of custody;*
> (g) *disruption to the child consequent on removal from family, schools and the community he or she has come to know.*"

13. In my view, the Canadian and English approaches are strikingly similar, with the Canadian Supreme Court (Madame Justice L'Hereux –Dube at page 358) and the English Court of Appeal (Thorpe, LJ at page 1839) both suggesting that while the welfare principle is paramount, regard must also be had to the custodial parent's mobility rights. The right of freedom of movement is protected by section 11 of the Bermuda Constitution, and matrimonial courts should surely be reluctant, even on a consensual basis, to make orders which purport to punish primary carers, be they Bermudians or foreign nationals, for seeking to exercise constitutional mobility rights. The May 22, 2001 Consent Order was very arguably invalid in purporting to direct that if the mother decided to leave Bermuda within less than five years, care and control would automatically switch to the father.

14. Having regard to these principles and the fact that (a) both parties and the children of their marriage are Canadian, (b) the children have been resident in Ontario for the last three years, (c) the father's tenure in Bermuda is highly tenuous, and (d) the children (now aged 11, 10 and 7) have been in the primary care of their mother for at least six years, the mother's application by Summons dated March 25, 2003 is granted without concluding the hearing adjourned part-heard in 2004.

Cross-application for care and control

15. The father's cross-application for care and control, which was also adjourned part-heard in 2004, was wholly or substantially based on the proposition that it

was in the best interests of the children for them to remain with him in Bermuda. He relied in part on the following provisions of the May 22, 2001 Consent Order:

> ""**WHEREAS** *the Petitioner and Respondent both acknowledge and agree that they are equally good parents capable of raising the children in a good and safe environment and that the children will be well cared for in either the care of the Petitioner or the Respondent.*
>
> **AND WHEREAS** *the Petitioner and the Respondent both acknowledge and agree that it is in the best interest of the children to remain in Bermuda for the next five years.*
>
> **AND WHEREAS** *the Petitioner has agreed to stay in Bermuda for at least the next five years;*
>
> *IT IS ORDERED:*
>
> 1. *That custody of the three children of the family…do remain in the joint custody of the Petitioner and the Respondent with the petitioner having care and control of the children until further order.* **In the event that the Petitioner leaves Bermuda within the five years for a period exceeding one month, care and control of the children will transfer to the Respondent immediately.**
> 2. *That the Respondent do have access to the children from time to time as agreed…*
> 3. *…*
> 4. *That travel restrictions be waived upon either party giving the other their written consent to the removal of the children from the jurisdiction and their undertaking to return the children upon conclusion of the trip.*" [emphasis added]

16. The formulation and unravelling of the agreement that care and control would switch automatically unless the mother stayed in Bermuda for five years was intimately connected with the Bermudian Status issue. Less than three weeks before this Consent Order was signed, the father fraudulently obtained confirmation of his Bermudian Status. The five year element of the Consent Order was obtained on the premise, now proven to be false, that the father and the children all had Bermuda Status[3]. Two years after the Consent Order was signed, the mother's meeting with the Department of Immigration, no doubt in response to the father's application to enforce the Consent Order, apparently triggered the investigations which resulted in that Department taking steps to revoke that Bermudian Status and to launch a criminal investigation into the father's conduct in this regard. The father's Summons dated May 12, 2003 (as amended by Order dated August 28, 2003) was primarily an attempt to enforce the Consent Order. Paragraphs 1, 3 and 4 sought (a) dismissal of the mother's removal application on the grounds that no material change justifying a variation of the Consent Order had taken place, (b) dismissal of the mother's removal application so that the Consent Order stayed in place, save as to terms of access and (c) an order that if the mother did leave Bermuda, the father should have care and control pursuant to the Consent Order.

17. It is of course correct that the Court Social Worker, in a report prepared before the father was convicted of, in effect, conspiring to fraudulently obtain Bermuda Status, did recommend that the father's cross-application be granted. This was in part based on hotly disputed clinical findings that the mother had a borderline personality disorder, and the conclusion that the father had better parenting skills.

[3] See the father's Second Affidavit dated March 12, 2001, paragraph 4, sworn in support of his interim custody and care and control application, which was compromised in the May 22, 2001 Consent Order.

However, the Court Social Worker was questioned over three days before me in March, 2004, before I made the first temporary removal order of July 20, 2004. At the end of her examination on March 18, 2004, Mrs. Elaine Charles (under questioning from the Court) concluded by stating: "*I try to create some coming together*." She implied that the real purpose of her recommendations was to encourage the mother to stay in Bermuda to retain care and control of the children. This is consistent with the fact that the father, clearly the dominant party in economic terms, was content to agree to the mother having care and control, albeit while being tied to Bermuda for a five year period from May 22, 2001, and to agree in the recitals to the Consent Order that she was as competent a parent as he was. For these additional reasons I granted the Petitioner's temporary removal application on July 20, 2004.

18. Against this background, three years on, there is no material before the Court in October 2007 which would justify acceding to the father's cross-application for care and control as virtually[4] the entire legal and factual basis for it has fallen away. It is of course true that he may make a fresh application in Ontario, most sensibly once his own future residential plans are clearer, but the part-heard application before the Court must stand or fall with the mother's permanent removal application. His Summons dated May 12, 2003 as amended must accordingly be dismissed, without prejudice to his right to make a fresh application in Ontario.

Undertakings in relation to transfer of jurisdiction over children to Ontario

19. It was common ground that this Court could require the parties to give undertakings as a condition of declining jurisdiction over the children of the family and facilitating the commencement of fresh proceedings in Ontario. As I indicated during the hearing, my main concern is to avoid any period of limbo between the time when an application is filed in Ontario and the time when the Ontario Court is able to decide any contentious issue. Access for the father has been contentious in terms of dates, and child maintenance payments have been controversial in terms of the timing of payments as regards school fees.

20. The mother was unwilling to agree to an order that the current maintenance payments should stand until varied being entered by consent in Ontario, because this might prejudice her ability to apply for the issue of child maintenance to be revisited *de novo*. I found this position implausible and unreasonable. I formed the distinct impression that the mother is planning to launch a money-grabbing application in Ontario, rather than simply seeking reasonable child maintenance which the father has always been willing to pay. This is supported to some extent by open correspondence from her attorneys, which was placed before this Court after the conclusion of the hearing. It must be remembered that she based her original removal application in part on the premise that her living expenses in Ontario would be lower and her earning capacity greater. Having received her own capital contribution under the May 22, 2001 Consent Order, in lieu of maintenance, it is to be hoped that she appreciates that she is entitled to no further financial support from the father in her own right. What the father should contribute towards the children's maintenance is entirely another matter which will fall fully within the competence of the Ontario Court.

21. There has never been any basis for suggesting that the financial aspects of the Consent Order are in any way tainted by the Bermuda Status-related fraud of which the father was subsequently convicted. The suggestion made by her attorneys in their August 21, 2007 letter to the father's attorneys that the financial aspects of the Consent Order are, at this late stage, liable to be revisited has no

[4] It is true that the father, by way of amendment, sought a change of care and control in any event, but this application was in substance underpinned by his insistence that he would be vindicated in his right to remain in Bermuda, and no independent support for his assuming care and control elsewhere was ever obtained.

obvious merit under Bermuda law[5]. Although it is the current practice of this court to insist that parties to ancillary relief consent orders expressly confirm that full disclosure has been given by each party as to their financial position, this was not the practice in 2001 and the mother was legally represented when the Consent Order was signed. It would be an abuse of the process of this Court for the mother, in Ontario, to seek to launch a collateral attack on elements of the May 22, 2001 Consent Order which are *res judicata* and which remain within the proper jurisdictional competence of this Court[6]. No doubt similar common law principles apply under Ontario law.

22. In light of the mother's refusal to agree to a continuance of the existing maintenance payments being incorporated in an Ontario Court order, until varied by such court, I do not consider it would be appropriate to require the father to undertake to maintain the existing payments. The mother has, in effect, agreed to assume the risk of no payments being made before she obtains a fresh order from the Ontario Court. I see no risk of the children going wanting in the interim at all, even if the father adopts the improbable position that he will not continue to pay at the existing level.

23. As far as access is concerned, most disputes over the last three years have revolved around the father's insistence that the mother does not wish him to have sufficient time with the children and the mother's insistence that the father fails to appreciate the importance of the children's extra-curricular activities to them. I feel that the mother, who has effectively won on all major matters in this litigation since 2003 and assisted the prosecution in the criminal proceedings which resulted in his conviction, has been surprisingly unsympathetic about the father's understandable anxiety about the ongoing strength of his relationship with the children. Nevertheless, the father has frequently given the impression of being so concerned with enjoying access for his own legitimate parental needs, that he has minimized the need to schedule his access around the children's extra-curricular activities. While most disputes have focused on matters of detail rather than the principle of access, there is an obvious risk of parental conflict and emotional fallout for the children if the access position is left entirely in limbo between January 6, 2008 (when the terms of the present Order of this Court expire) and whatever date (in my judgment possibly as late as the middle of 2008) fresh access provision is made by the Ontario Court.

24. The mother essentially agrees not to oppose an order of the Ontario Court (on the father's application) in terms of (a) the access schedule set out in paragraph 2 of the Order of this Court dated July 26, 2007 (until January 6, 2008), and (b) thereafter, access "*according to the general pattern of access heretofore enjoyed*"[7]. Certain dates are disputed[8].

25. The mother concedes the father should be entitled to Easter access this year, but asks for that access to commence on March 16, 2008 instead of March 14, 2008 (as suggested by the father in his July 17, 2007 Affidavit), because she has booked a conflicting trip since the July 26, 2007 Order was made. In the course of various previous applications, the mother has asked for holiday time access to be reduced in a minor way, and the father has complained that this has shortened his access. I have generally agreed with her contention that the children should return to Canada from Bermuda more than one day before school starts, a position which may be subject to change as the children are growing older and will likely need less time to adapt to increasingly familiar travel between their parents' respective homes. But it is difficult to identify a good reason for the mother booking a trip

[5] It is entirely possible that I have read this letter in an unfairly cynical light. But the financial position of the father has never really been an issue in the child maintenance applications which I have considered, and his objections to any payments sought have been based more on reasonableness than on his ability to pay.
[6] While custody and maintenance of children can be reviewed from time to time, lump-sum payments to one spouse cannot.
[7] Cox Hallett Wilkinson August 21, 2007 letter to Mello Jones and Martin, page 2.
[8] She was willing, if requested, to undertake not to oppose an application by the father for an Ontario order as respects some but not all of the access he sought.

during a period of the father's requested access while that access application was still pending. The result would be a two-day reduction in the access period requested by the father, who may well have made plans of his own during the period in question. In my view, the mother should reschedule her plans, and the father should be able to enjoy the access he requested during this period.

26. The mother agrees to the term-time access requested by the father generally but points out [9] that she wishes M to be able to participate in a Swim Championships, scheduled to take place between June 13 and June 15, 2008. The father has requested access in May, well before this event, and in the second half of June, well after this event. It is nevertheless possible that preparations for this significant sporting event may require M's attendance for training sessions prior to the main event. In these circumstances the father ought to exercise his access rights in such a way as to permit M to attend any significant swim events in the period leading up to the Championships. Subject to this *caveat*, the mother should undertake not to object to an order on the father's application in the Ontario Court for access for the periods (a) covered by the July 26, 2007 Order of this Court, in terms of paragraph 2 of the said Order, and (b) from January 7, 2008 until June 30, 2008, in terms of the access periods set out in paragraph 1 of the father's Summons dated July 10, 2007. In both cases, access should be exercisable within and without Canada in accordance with paragraph 3 of the July 26, 2007 Order. This should afford the Ontario Court sufficient time to become properly seized of the access issue.

27. Provided that the mother gives such an undertaking, I would (a) grant the application for permanent removal and dismiss the cross-application for care and control; and (b) decline to exercise further jurisdiction over the children of the marriage, deferring to the courts of Ontario where the children have resided for more than three years. To ensure compliance with this undertaking, however, I would further order, as requested by Mr. Froomkin, that the mother post security in the amount of $50,000[10] in a form to be agreed or, in default of agreement, in a form satisfactory to the Court. It seems to me that the appropriate amount to secure an undertaking not to oppose an access order must be considerably less than that previously ordered ($100,000) to secure the mother's undertaking to return the children to Bermuda.

Costs

28. It was common ground that, subject to any costs orders that have already been made, each party should bear his/her own costs in respect of all applications save for the permanent removal and care and control applications. It is the costs of these applications which fall to be determined.

29. Mr. Froomkin sought to argue that the care and control application had not really been lost, and I was almost swayed by this argument. But the reality is that the care and control application was substantially a cross-application which stood or fell depending on how the permanent removal application was determined. Mr. Kessaram sought indemnity costs, primarily on the ground that the father's vain attempts to retain his and the children's Bermudian ties had led the court on a "wild goose chase". In my judgment, the father's denial of guilt and pursuit of his criminal appeal rights cannot constitute anything akin to misconduct in relation to the present applications, no matter how deplorable his fraudulent actions in the run-up to the May 22, 2001 Consent Order may have been. The father's counsel, as soon as his client had exhausted his appeal rights in Bermuda, very sensibly sought to compromise these matters. The mother should have the costs of both cross-applications to be taxed, if not agreed, on the standard basis, subject to the following findings.

[9] Cox Hallett Wilkinson letter dated October 16, 2007 to the Court, page 1.
[10] This amount may be in either Canadian dollars or US dollars, at the election of the mother. This amount was previously posted to secure her undertakings to return the children to Bermuda.

30. In an open letter dated January 7, 2007, Mello Jones and Martin, on behalf of the father, made settlement proposals which were rejected by the mother, although I indicated that these proposals appeared reasonable. These proposals were shown to the Court on January 11, 2007. Mr. Froomkin submitted that the mother was being obstinate in rejecting these proposals, and Mr. Kessaram retorted that the mother was not being obstinate in insisting on costs. If costs were the only impediment to an agreed order, the parties should have invited the Court to resolve the costs issue. Having regard to the parties' duty to assist the Court to achieve the Overriding Objective, the father ought not to have refused to agree all other items unless all his proposals were accepted as a package, and the mother ought not to have insisted in pursuing a full contested hearing if the only matter in controversy was costs. In any event, the proposals made were as follows: (a) access to continue to the end of July 2007 in accordance with this Court's August 15, 2006 Order, (b) continuation of existing child support payments, subject to a material change of circumstances, (c) joint custody to continue, (d) internet access to the father, (e) all of the foregoing to be the subject of a court Order in Bermuda and a Consent Order in Ontario, and (f) each side to bear their own costs.

31. The abbreviated hearing which ended up taking place on October 15, 2007, nine months after the January 11, 2007 hearing, has resulted in an Order in which proposals (a), (c) and (e) have been in substance adopted, with (d) not argued and (b) not so much as rejected as not pursued. Proposal (d) was resolved in the mother's favour, seemingly the main issue in controversy at the January 11, 2007 hearing. If both parties had behaved more constructively, these matters could have been resolved at a short hearing in January of this year. In these circumstances I would make no order as to the costs of the cross-applications for the period from January 12, 2007 to the conclusion of these matters before this Court.

Conclusion

32. For the above reasons, I would grant an Order in the following or substantially similar terms:

> *" UPON hearing counsel for both parties*
>
> *AND UPON the Petitioner undertaking not to oppose an application by the Respondent to the appropriate Ontario Court for an order granting him access to the children of the family on the terms herein after set out*
>
> *This Court doth hereby ORDER as follows:*
>
> 1. *The Petitioner's application for leave to permanently remove the children of the family [names and dates of birth to be inserted] from the jurisdiction to reside with her in Ontario, Canada, is hereby granted and the Respondent's cross-application for care and control is hereby dismissed.*
>
> 2. *For the avoidance of doubt, the first sentence of paragraph 1 of the Consent Order of this Court dated May 22, 2001 placing the children in the joint custody of both parties but under the care and control of the Petitioner is hereby confirmed as being in full force and effect until further order of the Ontario Court.*
>
> 3. *Subject to the terms of this Order, this Court declines jurisdiction over the children of the family, and all issues relating to custody, access and their financial support, in favour of the competent Ontario Court. The children have resided mainly in Ontario for a continuous period in excess of three years.*
>
> 4. *The Respondent shall have access to the children of the family from the date of this order until June 30, 2008 in accordance with paragraph 3 of this Court's Order dated July 26, 2007 as read with paragraph 1 of the*

Respondent's Summons dated July 10, 2007 (which defines the relevant access periods):

> *Provided that the Respondent shall exercise his access in a manner which does not impair the eldest child of the family's ability to adequately prepare for the regional Swim Championships which he presently hopes to participate in during the month of June, 2008.*

5. *In order to secure the undertaking given by the Petitioner and referred to in the recitals to this Order, the Petitioner shall furnish security in a form agreeable to the Respondent or, in the absence of agreement of the Court, in the amount of $50,000 in US or Canadian dollars at the Petitioner's sole election. The signing of this Order shall signify that the said security has been satisfactorily given.*

6. *Without prejudice to any costs which have already been awarded, no order is made as to the costs of the various applications in respect of access or child maintenance. The costs of the permanent removal and cross-application for care and control are awarded generally to the Petitioner; however no order is made as to any of the costs in respect of these applications for the period after January 11, 2007, in respect of which each party shall bear their own costs.*

Dated this 19th day of October, 2007

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KAWALEY J