



In The Supreme Court of Bermuda

DIVORCE JURISDICTION

2008: No.:67

BETWEEN:

M. T.

Petitioner

-and-

P.T.

Respondent

Dates of Hearing: 18-22 January 2010

Date of Judgment: 3 March 2010

Conyers Dill and Pearman, for the Petitioner;

Marshall Diel & Myers for the Respondent.

JUDGMENT

1. There are two applications before the court. First, I will consider the application by the Respondent, wife (as I will call her) for ancillary relief in which she seeks an order that the Petitioner, husband (as I will call him) pay for her benefit, a lump sum

payment, equal to one half the equity in the matrimonial assets as well as periodical payments. The wife also seeks secured periodical payments for the benefit of the child of the family.

2. Second, I will deal with the husband's application for defined access to the child of the family.
3. Even though the wife and husband differ on the value of the matrimonial assets, at the end of the hearing, during final submissions, it became clear that the parties were united that there should be equal division of the net matrimonial assets. Mr. DeSilva submitted that there should be equal division of the net matrimonial assets but on a 'clean break basis'. The husband is prepared to pay periodical maintenance for the child but not at the level being sought by the wife. He strenuously resists and argues against any periodical payment order for the benefit of the wife.
4. The substantial contentious issues are:
 - The actual value of the matrimonial asset
 - Whether there should be a clean break or whether there should be an order for continuous periodical payments for the wife's benefit. If yes, the level of payments.
 - The level of periodical payments which the husband should make for the child.
 - The terms of defined access.
5. I have heard evidence and arguments over a period of five days. The wife filed two affidavits and the husband filed one affidavit. The exhibits filed were extensive. They were both cross-examined.
6. Let me state at the outset that I have come to the conclusion that where the parties evidence conflict, I prefer the evidence of the wife to that of the husband who has been less than frank or forthright. For example, as soon as the parties separated in

March 2008, he moved out of the former matrimonial home and embarked on a course of conduct to either hide or dispose of matrimonial assets to reduce the wife's entitlement in her ancillary relief claims. He has failed to satisfy me that he is unable to remember important financial transactions when he is tested on important matters that were exclusively under his control. When he was tested under cross-examination as to details of certain transactions he retorted with his standard answers of – "I cannot recall", "I do not know" or "I cannot remember."

7. The parties were married in the United States on April 17, 1998 – it was a second marriage for both of them. They separated in March 2008. The husband petitioned first and the wife cross-petitioned. Decree nisi was pronounced on the wife's cross petition on August 29, 2008, on the grounds of the husband's unreasonable behaviour, and was made absolute on December 17, 2008. They were married for 10 years. There is one child of the marriage who was born on February 12, 2000.
8. The husband is a British National and the wife is an American citizen. Both have two children each from their first marriages. The husband is now 47 years of age and the wife will be 47 in February 2010.
9. The wife's two children from her former marriage were in her custody and resided with them in the United States until the first child turned 18 years in 2002 and the second child until 2003 when he turned 19 and went off to university.
10. The husband's two children from his former marriage reside with their mother in England. These two children are still partially dependent on the husband as they are both pursuing university education.
11. The husband is a re-insurance broker and currently employed by an insurance company. He was the sole breadwinner during the subsistence of the marriage. The wife was a stay at home mom. Before the parties married the wife worked as a sales person for an office furniture company. After the marriage the wife reluctantly agreed to abandon

her job as a sales person and cease working. After the birth of their child it was agreed that the wife would not seek employment and would continue to stay at home to care for the child and manage the household.

12. In 2003 the husband obtained employment as President of an insurance group. The family – husband, wife and the child of the family – moved from the United States to Bermuda.

13. When the parties relocated to Bermuda there was an added barrier to the wife working as the husband's work permit specifically restricted her ability to work. She had not worked for some 10 years after her marriage to the husband but since her return to the United States after the breakdown of the marriage she has sought and obtained employment.

14. In the latter years of the marriage (September, 2006) the wife returned to the Bermuda College on a full time basis where she began to pursue a degree in culinary arts, leading to her qualification as a pastry chef. She completed this training in 2009.

15. The husband worked with his first employer from January 2003 to December 2007. He earned a very high income; in his final year he earned an annual salary of \$310,000 plus a housing allowance of \$186,000.

16. After the husband left his first employer employment in 2008 he commenced employment with the second group of companies at a salary of \$350,000 per annum and, a housing allowance of \$14,000.00 plus a bonus which represented 75% of the net profit in excess of \$100,000. As regards his pension arrangement with his current employer he contributes 5% of the husband's salary towards a pension scheme while the husband makes a similar contribution of 5%.

17. There is an issue as to husband's present actual earnings. Due to the downturn in the economy the husband's salary was reduced to \$275,000 effective March 1, 2009. His salary was further adjusted to \$200,000 per annum on April 1, 2009. Mrs. Marshall referred to a letter dated February 2, 2009 from his employer which explained why the salary was reduced. The extract reads:

"In order to implement the revised business plan for 2009, the Company decided that [the husband] was required to have a reduction in salary for 2009 in order to stop the tide of loss and meet the economic objectives of the organization. The adjustment effective 1 April 2009 was made to ensure the gross salary agreed for the accounting year 2009, was accounted for correctly, recognizing the payments up to 1 March 2009 had been made at the old salary and including existing housing allowance payment in January and February 2009."

18. Mr. DeSilva submits that the husband will concede that he earns \$250,000 per annum. I agree with Mrs. Marshall's criticism he is either truthful or not and he earns \$275,000 per annum.

19. I reject the husband's evidence that he is being paid at the level of \$200,000 per annum. It is clear on the evidence that this was an "interim adjustment" and an accounting exercise carried out for the fiscal year 2009 to level earlier over payment.

20. Having scrutinized the evidence I accept Mrs. Marshall's analysis that the husband's total remuneration package is in excess of \$31,416 per month inclusive of \$8,500 per month for his accommodation expenses.

21. After the breakdown of the marriage the wife and son returned to reside in the United States. I believe the wife when she said that when she returned to the United States she was unable to secure employment in the culinary arts field with the flexible hours that would enable her to carry out her obligations to care for the child. However, in November 2009 she managed to secure employment with a company where she is able to

work daily – 8.30am to 4.30pm or 9.00am to 5.00pm – which she says provides the flexibility in hours that she needs in order to provide care for the child of the family. From this employment she earns \$29,000 per annum. She has no other resources.

Family Assets

22. As far as the family assets are concerned, neither party brought any pre-matrimonial wealth into the marriage. The main family asset is the husband's substantial earning power. During the marriage the matrimonial assets were acquired and grew significantly.

23. There is a house on a 1/3 acre of land in Philadelphia, United States of America. In August 2009, as a result of the husband's request the Registrar made an order that the house be professionally valued for the purpose of these proceedings. Notwithstanding prodding from Counsel for the Wife the instructions to the realtors was made four months after the Registrar's order. At the date of this hearing the valuation was not done and no contact had been made with the wife by the realtor who was eventually instructed to carry out the valuation. There is no evidence which negates that provided by the wife, therefore I accept \$230,000 as the value of this property.

The Boat

24. After the husband filed his divorce petition, he said that he was advised by "an attorney" that his interest would be well served if he disposed of his assets. He transferred £94,000 from his U.K. premier savings account and various other sums from other accounts – which he says he is unable to recall – to his girlfriend, which she used to purchase a boat for \$380,000 with the title in her name. The title has now been transferred back into the husband's name. I do not accept Counsel for the husband's submission that since the boat has depreciated the Court should take a "pragmatic approach" and accept the insured value of \$300,000. I agree with Counsel for the wife's submission that the boat should be included in the calculation of the matrimonial assets at its full purchase price. I find the value of the boat to be \$380,000; to find otherwise would be to turn a blind eye to the husband's under handed attempt to dissipate matrimonial assets in order to defeat the wife's claim.

U.K. Trust

25. In May 2008, one month after the filing of the petition and two weeks after the filing of the wife's cross-petition, the husband established an irrevocable discretionary trust for the benefit of the children from his former marriage "*to ensure sufficient funds were available to pay for their education*", he said. He paid £300,000 into the trust fund. Since he established the trust he has spent £140,000 on purchasing a "partial share" of a house for his former spouse and the children from that marriage to live in. The balance of £160,000 is to be used for their schooling, fees and expenses. While it is commendable that the husband sought to assist his former spouse to purchase a house for herself and their children because she ran into difficulty and had to move out of the accommodation when she broke up with her boyfriend with whom she had purchased the house. The wife does not accept the husband's chronology of events. When the Petitioner and his former spouse settled their assets after their divorce, his first wife received a 50% interest of their former matrimonial home and the other 50% was conveyed to the two children born of that union.

26. Mrs. Marshall submitted that the husband can do as he wishes with his share of their matrimonial assets after the wife's interest has been determined. I agree. The husband has failed to make full disclosure leaving the court to draw reasonable inferences from the evidence before it.

27. The value of this asset was £300,000 or \$600,000 when he settled the trust. Mr. DeSilva's argument that I should take the value of the trust as £300,000 as being equivalent to \$490,000 (at the current prevailing rate) does not commend itself to me. When the husband removed this asset from the matrimonial pool and placed it out of the wife's reach and that of the court the exchange rate was approximately 1:2. He should not be allowed to pray in aid the decreased value of the assets – against the wife who has managed her affairs and lived on a shoestring budget. Consequently, I take the sum as \$600,000 into account for these purposes.

SHARES

28. While the Husband was employed with his first employer he used a portion of his bonus to purchase 3,294 shares which was mandated by the company. The current share price is \$85.13 per share; converted at the present exchange rate the present value is \$457,000. In 2008 about the same time he was disposing of assets to place them out of reach of the wife, the husband attempted to sell the shares but this request was rejected by the company.

29. Mr. DeSilva submitted that a zero GBP value should be applied to the shares as there is no realistic prospect of the husband selling them in the near future; alternatively, over the next 2 years the husband could be ordered to request sale of the shares in June of each year and if there is a sale the husband pays the wife 50% of the sale proceeds. Mrs. Marshall disagrees with this proposal on the basis that the husband wants to rely on the rejection of this attempted sale, which occurred during the time frame when he was siphoning off matrimonial assets to reduce or defeat the wife's entitlement, as evidence of his inability to sell the shares in the future. The company has a mechanism for the sale of the shares and the wife accepts that the husband may experience some delay in disposing of them. She submits that a discount of between 20-30% should be allowed.

I accept that there should be some discount as the asset is not readily disposable. I am equally satisfied that they can be sold at some point although it is impossible to say what their real worth will be in a few years. Given these factors, I apply a discount of 50% to the value of these shares.

Pensions

30. I have considered the pension prospects of the parties. The wife does not participate in a pension scheme. I do not intend to include the husband's pension of \$45,906.24 in the family assets for the purposes of determining a distribution figure as the pension is not readily realizable and available for distribution at this time.

31. Except for the shares which I have adjusted by 50% and the husband's pension which I have excluded I agree with Mrs. Marshall's calculation at paragraph 24 page 7 of her written submission which sets out in a schedule the asset that is supported by the exhibit evidence. It reads:

Securities	\$263,406.00
Savings account	60,000.00
Current account	773.00
Savings account	9,935.00
Blue Chip Units	110,908.00
MMF EUR €323,364	468,135.00
Select Units	83,050.00
Select Units	71,781.00
US Bonds Units	9,644.00
Premier Bank £6,095	9,955.00
Online Saver £11,348	18,535.00
Premier Savings £18,265	29,833.00
Money Market £115,403	188,494.00
Royal Bank of Canada £34,405.00	56,195.00
Sovereign Bank	2,173.00
T&T Business c/a	<u>1,658.00</u>
Subtotal:	1,384,475.00
US House	230,000.00
Boat	380,000.00
Trust £300,000.00	600,000.00
Shares £279,990.00 [now discounted at 50%]	<u>228,500.00</u>
Subtotal:	<u>1,438,500.00</u>
TOTAL	<u>\$2,822,975.00</u>

The total matrimonial assets available for distribution is therefore \$2,937,225.00

Liquid assets	\$1,384,475.00
US House	230,000.00
Boat	380,000.00
Trust Fund	600,000.00
Shares (50% of the value)	<u>228,500.00</u>
TOTAL	<u>\$2,937,225.00</u>

Distribution

32. How should these assets be distributed?

In the exercise of its discretion, the Court has considered and is guided by both the principles which have been set out in S29 of the Matrimonial Causes Act, 1974 and by precedent.

33. As regards the lump sum payment, Counsel were unable to agree the exact value of the matrimonial assets but I am grateful to them as they have made my task considerably easier by deciding that there should be equal division of the matrimonial assets once that figure is ascertained. Even though, Mr. DeSilva who acts for the husband, argues that the “clean break principle” should be applied and maintains that a lump sum of 50% of the assets without any periodical payment to the wife would be a fair outcome.

34. On the other hand, Mrs. Marshall submits, that not only is this a case of 50/50 distribution of the assets, but one for ongoing periodical payments. When one looks at the wife’s expenses, her income clearly is insufficient to meet anything other than her personal expenses. Bearing in mind her obligations in relation to the 10 year old son of the marriage, it is highly improbable that the wife will ever be in a position to earn as much as the husband to create a pension for herself. The relationship has created an inequality and a disadvantage to the wife which ought to be compensated by the husband. Therefore, she needs to have ongoing income from the husband sufficient to enable her to meet the direct expenses for the running of the household, as well as direct expenses for the child of the family.

35. A number of items claimed by the wife are disputed by the husband and vice versa. I do not propose to make a detailed analysis of the parties' budget but I have looked critically at what has been placed before me as expenditure and take into account what I consider appropriate in the overall assessment.

36. The wife criticizes some of the husband's expenses for example, Belco, Telco, groceries and laundry as appearing to be on the high side and cannot be justified. The monthly expenses claimed for food \$1,000 for groceries, \$325, for lunch and \$1,300 for entertainment and take away food which adds up to \$2,625 on food each month for a single person. I take account of the fact that the company reimburses him for his business entertainment expenses.

37. Prior to the breakdown of the marriage the parties' expenses were paid for out of the husband's salary. They did not live on a budget and enjoyed a very high standard of living. Each had unrestricted access to all of the family income and credit cards to meet their needs.

38. In support of her application for periodical payments for herself and the child the wife states that her income of \$29,000 per annum is just enough to meet her personal expenses only. However, she states that she will need sufficient ongoing income from the husband to enable her to meet the expenses (\$2,661.00) for the running of the household and the direct expenses (\$2,118.00) for the child which totals \$4,779 per month. She says that in order to meet the household and the direct expenses for the child she requires periodical payments at that level. She argues that while the husband receives his income virtually tax free, any maintenance payments she receives is fully taxed as income and, her marginal tax rate will increase to 25% upon receipt of the maintenance. Consequently, the maintenance payment of \$4,779 that is being sought requires a 25% gross up which will amount to \$5,973 per month.

39. Mr. DeSilva scrutinized the wife's budget and submitted that the indirect expenses of \$2311 should be divided by three and \$770 attributable to the child as there are three members of the household. He does not accept that her eldest son has left nor will he do so anytime soon. He reduced the direct expenses to \$1,000. This totals \$1,770 which should be allocated in proportion to the respective incomes of the parties that is a 9 to 1 ratio. He submits the rate of the Petitioner's maintenance ought to be \$1,593 for the child's benefit with the wife paying a small percentage. He submits that the husband will maintain the son's educational expenses plus his membership with White Marsh Valley Country Club.

40. When the husband left the matrimonial home the wife withdrew \$38,776.88 in funds from the joint account after receiving legal advice from her previous attorneys and based on her real fear, which was subsequently confirmed, that the husband would withdraw his financial support. He closed all the accounts, cancelled her credit cards and refused to pay certain ongoing expenses. In the meantime, he has full and unrestricted access to all of the family's income and credit cards to meet his ongoing expenses.

41. The wife has indicated that since the break-up of the marriage, her standard of living and that of the child has decreased while that of the husband has not. Presently, in accordance with an interim maintenance agreement she receives a sum of \$5,000 per month out of which \$2,000 should go towards her legal fees and \$3,000 living expense for the child. Prior to that she did not have to live on a budget and enjoyed a high standard of living.

42. Next to be considered is the level of continued periodical payments for the child of the family and the wife, if any.

43. At the outset of the marriage, at the husband's behest the wife agreed to stay at home and devote herself to caring for the home and the family while he devoted himself to his work and to developing his career. She did so and consequently placed herself at a disadvantage, not the least of which is her failure to earn sufficient to take care of her

own needs and to have made adequate preparation including pension arrangements. Mrs. Marshall maintains that the wife's income position is vastly inferior to that of the husband and seeks \$1,000 per month in her favour as periodical payment.

44. In this case 50% of the net assets are not a fair resolution of this matter. The husband's earning capacity, which is an asset, outstrips his need, leaving a surplus. In my judgment, the wife is entitled to continuing compensation for at least five years while she cares for the young son, who will be 15 years old in five years time and should be needing less and less of her time and energy. Having regard to these factors, I order the husband to pay \$1,000 per month commencing on April 1, 2010 for a period of 5 years.

45. Mrs Marshall said given the level of maintenance that will be required to enable the wife to meet the needs of the child properly for the next eight (8) years, it will be necessary for the husband to provide some security in relation to the ongoing payments in the event of his predeceasing the child before he attains the age of 18 years. She suggests that the husband has two Mass Mutual life policies in the sum of 1 million dollars each. The husband should maintain one of these policies of which the child should be the sole beneficiary.

46. Counsel for the husband counters that he ought not to be compelled to continue this policy. He should be given the opportunity initially to make provision by will out of the capital he will likely have at the time of an untimely demise. Alternatively, he should be given the opportunity to look at reducing cover from 1 million on one of the Mass Mutual policy to \$500,000 with the child being the sole beneficiary.

47. Counsel for the husband has argued that the 'clean break principle' should be applied and maintains that a lump sum payment of 50% of the matrimonial assets would be a fair outcome without any periodical payments to the wife.

48. I have considered all the facts and circumstances of this case. It is common ground that on modern authority the wife is entitled to equal division of the matrimonial assets.

49. In *Miller v Miller* 2005-06 2006 UKHL 24 on appeal from [2005] EWCA Civ 984 and [2004] EWCA CIV 872 The court considered the case of a wife who remained in the home, looked after the family and gave up her own career.

50. In these matters, the courts "primary consideration" must be given to the welfare of any children of the family. The court must consider the feasibility of a 'clean break' and have regard to all the circumstances of the case (paragraph 2, 5)

The Court said at Paragraph 92 to 93

"92. A fourth feature is that the career foregone by the wife was a professional career as successful and highly-paid as the husband's. This is not a case where the wife's future success was a matter for speculation. Speculation of this character is seldom helpful. Here the wife had a proven track record when the parties agreed she should give up her job. A fifth feature is that, as primary carer of the three children, the wife continued to be at an economic disadvantage and continued to make a contribution from which the children and, indirectly, the husband benefited. He was relieved of the day to day responsibility for their children.

93. Clearly in this situation the wife is entitled to a periodical payments order in respect of her financial needs. She needed money to live in the former matrimonial home which was to be the continuing home for her and the children. But it would be manifestly unfair if her income award were confined to her needs. This is a paradigm case for an award of compensation in respect of the significant future economic disparity, sustained by the wife, arising from the way the parties conducted their marriage." (emphasis added)

At paragraph 98 to 99 the Court said

“98. One final point should be mentioned. The amount of £250,000 substantially exceeds the wife's financial needs. The district judge said it was for the wife to decide whether to make pension provision for herself, and whether to insure herself and the children against the risk of the husband's premature death. The Court of Appeal disagreed. The wife, the court said, must invest the surplus sensibly, or take the risk that her failure to do so might count against her on an application for discharge of the order.

99. On this point I largely agree with the Court of Appeal, but not wholly. When a review takes place the court will consider, in the light of the prevailing circumstances, what further amounts should be paid to the wife by way of periodical payments, or capitalised and paid as a lump sum if that is practicable, in respect both of needs and compensation. As to needs, the claimant's resources are always a matter to be taken into account. And claimants for financial ancillary relief are expected to manage their financial affairs sensibly and responsibly. Thus far I agree with the Court of Appeal. But the wife's claim for compensation stands differently. Her compensation claim is not needs-related; it is loss-related. So the compensation element of her claim is not directly affected by the use she makes of her resources.” (emphasis added)

At paragraph 124 the Court stressed

“124. When the marriage comes to an end, the court's powers are also flexible. They are no longer based upon the assumption that there is one male breadwinner to whom all or most of the resources belong and one female home-maker in need of his support (and entitled to it only as long as she remains deserving). The court is directed to take into account all of their resources from every source. It is then given a wide range of powers

to reallocate all those resources, be they property, capital or income. It is directed to take account of all the circumstances, and in particular the checklist of factors listed in section 25(2). But what, at the end of the day, is it supposed to do? What is it trying to achieve?"

And finally at paragraph 134 the court emphasized

"134.a clean break is not to be achieved at the expense of a fair result. But the Act still leaves us without much help towards what the court should be trying to achieve by its reallocation of their resources and why it should be doing so. The great leap forward was achieved by this House in White v White [2001] 1 AC 596."

51. In this case now under consideration I find that ½ the net assets will not be a fair resolution. The husband's earning capacity outstrips his needs leaving a huge surplus. The wife and the child are completely dependent on the husband for financial support; a clean break must not be achieved at the expense of a fair result.

52. The husband and wife are joint owners of the Philadelphia property which is valued at \$230,000.

Having regard to all the factors the orders I make are as follows:

- The husband shall transfer his half share of the equity in Philadelphia property to the wife. The transfer to take place on or before May 1, 2010. All fees associated with the said transfer shall be paid by the husband.
- The husband shall pay the wife a lump sum of \$1,181,487.50
- The husband shall pay the wife the sum of \$3,500 per month grossed up by 25% for the maintenance of the child. These payments are to be secured for a period of 8 years by one of the Mass Mutual Life insurance with a face value of 1 Million. The sole beneficiary is to be the child. The

husband is to finance the annual premium for the eight years and provide the wife with written proof of premium payments annually.

- The husband shall pay the wife \$1,000 per month periodical maintenance payments grossed up by 25% commencing on April 1, 2010 for 5 years.
- The husband shall pay the child's school fees at Chestnut High School as and when it falls due
- The husband shall maintain membership at the White Marsh Valley Country Club until the child's 18th birthday.

Costs

53. The long duration and complexity of this matter was due almost entirely to the husband's failure to disclose his financial circumstances. The husband had total control of the financial situation and it was during the hearing some matters were disclosed and others a couple of days before the hearing after issuance of a contempt of court summons for the husband's failure to comply with the Registrar's various orders for disclosure. The length of the proceedings was disproportionate to the issues. The wife should, as a result, have her costs of these proceedings as the duration of the matter and the consequential increased costs was due to the husband's actions and inaction.

Counsels are invited to settle a suitable order for my approval. The parties have liberty to apply if they experience any difficulties.

54. I now turn to consider the issue regarding the terms of defined access.

After the parties separated, the husband made an ex parte application, for an order prohibiting the wife from removing the child from the jurisdiction. On June 26, 2008 by a consent order the wife was granted permission to repatriate with the child of the marriage to Philadelphia, United States where they have been residing.

55. The wife was granted sole care and control of the child with access to the husband. The issue of defined access was deferred to a subsequent hearing. This application is for defined access. This hearing deals with the issues raised by the husband's application for defined access.

56. The Court is being asked to consider three areas of dispute namely:

- Given the child's age whether he should be allowed to travel as an unaccompanied minor at this stage or if it is in his best interest for the husband to accompany him from Philadelphia to Bermuda and vice versa until his 12th birthday.
- Whether it is in the child's best interest and welfare for him to travel to Bermuda to spend long weekends which he has off from school with his father.
- Whether the wife should be allowed to include in the holiday access arrangements that she and the husband make mutually agreed arrangements for the child's summer holiday camps or make arrangements to take time off work to spend with the child.

57. I have heard the arguments of both parties which is a matter of record. The mother has day to day contact with the child and has formed the view that it is not entirely safe for him to travel unaccompanied and the supervision provided by the airlines is not adequate. I have no independent professional report to depart from this view and in the circumstance I find that the husband or wife or an agreed adult should accompany the child until his 11th birthday when this requirement ceases. A period of 1 year should allow the child sufficient time to become familiar with the routine of travel from Philadelphia to Bermuda and vice versa.

58. In so far as the long weekend holiday access is concerned in my judgment it is not in the child's best interest to travel to Bermuda for *a 4- or 3-day weekend* when 2 days of that period will be spent in air travel. This is a young 10 year old school boy and given the difficulty and unpredictability of air travel his interest is better served if he is at home during these long weekend breaks. Of course the husband is allowed *to examine* access in Philadelphia on any such weekend. He should of course give the wife reasonable notice if he intends to exercise such access.

59. As regards summer access it appears to this court that the parties are quite capable of cooperating for the benefit of the child. In the face of the court they were able to readily change the access agreement so that the child could accompany the husband to India. I do not propose to make an order that the father consult with mother to decide on ‘suitable camps’ et cetera to make mutually agreed arrangements for the child’s summer holiday camp or that the husband should take time off from work to spend with the child.

60. I have noted *the* mother’s concern and the child should not be placed with third party care givers. It would appear that there are other options, for example, he could be cared for by parents of his school friends.

61. In the circumstances I gave the parties the opportunity to continue to agree with access arrangements for the summer holiday but there be liberty to apply on this one issue if they are unable to agree. The husband should pay 50% of the wife’s costs of these proceedings.

62. I invite the parties to draw the appropriate order incorporating this decision.

63. Orders accordingly,

Dated the 3rd of March 2010.

Justice Norma Wade-Miller
Puisne Judge