[2016] JMSC Civ. 22

IN THE SUPREME COURT OF JUCICATURE OF JAMAICA

IN THE CIVIL DIVISION

CLAIM No. 2010 HCV 02702

BETWEEN	**N.F.**	**CLAIMANT**
AND	**C.B.**	**DEFENDANT**

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

Mr. Gordon Steer and Mrs. Kaye-Anne Parke instructed by Chambers, Bunny and Steer for Defendant.

Application to vary order for joint custody of relevant child – Whether to vary order for maintenance, travel, extra-curricular activities and medical expenses - Whether school fees for L is "reasonable" pursuant to judge's order - Whether parties can relitigate findings of fact of trial judge without there being an appeal of the orders of the trial judge – Whether there is a change in the individual circumstance of each litigant to warrant a variation of the Judge's orders – whether businesses operated by Defendant a "sham" – Consequences of failure by Defendant to obey order of Court to disclose details of companies/his assets.

Heard on: 12th March, 30th April, 1st May, 19th June, 6th July, and 10th July, 2015 and 28th January, 2016

Coram: Morrison, J.

[1] By way of preface I shall here continue to refer to the parties by their initials in order to protect their privacy. It will suffice for present purposes were I to set forth a brief history of the events leading up to the present applications.

[2] On the 4th day of June 2010, the Claimant filed a Fixed Date Claim Form against the Defendant in which she asked the Court to pronounce –

1) That N.F. and C.B. have joint custody of the relevant child (of their marriage) L, born on the 28th of December 2005.

2) That N.F. be granted care and control of the relevant child L who shall reside with N.F.

3) That permission be given to N.F. to take the child outside of the jurisdiction to Nassau in the Bahamas at the end of her residency programme in Internal Medicine at the University of the West Indies on or about July 2010.

4) That C.B. be granted access to the relevant child as follows:

    a) On every alternative weekend beginning at 8pm on Fridays and ending on 6pm on Sundays while the child resides in Jamaica. The child is to be collected by C.B. at N.F's residence at 8pm on Friday evenings and collected by N.F. at C.B.'s residence at 6pm on 'Sunday evenings; and

    b) On such weekends as are mutually agreed between the parties when the child resides in the Bahamas.

    c) Residential access for half of all major holidays namely Christmas, Easter and Summer regardless of where the child resides otherwise agreed in writing between the parties.

    d) Residential access for half of all mid-term holidays regardless of where the child resided unless otherwise agreed in writing between the parties.

5) That the Defendant, C.B., pays the sum of $60,000.00 per month towards the day to day maintenance of L in addition to the educational expenses and extracurricular activities of swimming and ballet for the said child.

6) Liberty to Apply

3] On the 22nd day of July 2010 the Claimant filed a Notice of Application For Court Orders in identical terms to that of the Fixed Date Claim Form. Her application was supported by affidavits as well as exhibits.

[4] Subsequently, Mangatal, J, on the 16th September 2011 made certain pertinent orders which I now reproduce:

> "1) F and B are granted joint custody of the relevant child, L, born on the 28th of December 2005.
>
> 2) F is to have care and control of L, who shall reside with F.
>
> 3) Permission is hereby granted to F to take L outside the jurisdiction to Nassau in the Bahamas to reside with her there.
>
> 4) B is forthwith to hand over to F, L's passport and Certificate of Foreign Birth.
>
> 5) B is to have access to the relevant child L as follows:
>
> a) One half of all major school holidays namely of Summer holidays, Easter holidays, Christmas holidays. The parties are to alternate yearly residential access to L on Christmas days, New Year's days and L's Birthday unless otherwise agreed. The travel expenses for the relevant child on these holidays are to be borne by the parties equally.
>
> b) B is to have residential weekend access to L on one weekend each month save for the holiday periods described above. Such access is to commence on Friday afternoons at 7 p.m. and end on Sunday at 1 p.m. or at such reasonable times so as to facilitate travel arrangements. The cost of this air travel of L to and from the Bahamas to Jamaica is to be by F.
>
> c) B may in addition have access to L in the Bahamas upon giving F two (2) weeks' notice and subject to L's activities and schedules. The cost of his air travel is to be borne by him.
>
> d) B is at liberty to visit the school attended by L from time to time for events, activities or functions routinely attended by parents.
>
> e) B is to have access to L by telephone at all reasonable times and via any other mode of communication such as the internet.

6) Until L attains the age of 18 years, F will provide B with the telephone numbers, addresses and email addresses (if any) of L's:

a. Residence
b. Cellular phone
c. Schools
d. Church
e. Medical Practitioners
f. School Reports
g. Extra-curricular activities

7) That any changes in the details provided above will be notified to B by F.

8) B and F are to notify each other of any changes in their respective work addresses and of telephone numbers, including cellular numbers. B is also to provide F with any changes in respect of his current residential address.

9) B is to pay the sum of US$500.00 per month towards the day to day maintenance of L until she attains the age of eighteen (18) years or completes her tertiary education. B is also to pay the reasonable school fees and cost of extra-curricular activities of swimming and ballet for L and F is to present documents in support of these items. The parties are to share all major medical dental and optical expenses equally.

10) B's Notice of Application for Court Orders filed on the 15th of September, 2010 is hereby dismissed.

11) No order as to costs on either application.

12) Liberty to apply."

[5] By way of a Re-Listed Notice of Application filed on January 31, 2013, N.F. has asked for a variation of the said orders of Mangatal, J, in terms as follows:

1. That paragraph 1 of the order of Justice Mangatal be varied and the Applicant have sole custody of L.

2. That paragraph 5 of the Order of the Honourable Mrs. Justice Mangatal be varied by deleting paragraph (b) so that the Defendant be allowed access to L

as specified in paragraphs 5 (a), (c), (d) and (e) **only** of the order dated the 16th September 2011.

3. That paragraph 5(a) of the order of the Honourable Mrs. Justice Mangatal be varied to include that C.B. travels to the Bahamas to collect for his half of all major holidays and N.F. travels to Jamaica to collect L and return with her to the Bahamas.

4. That paragraph 9 of the order of the Honourable Mrs. Justice Managatal be varied to specify that all payments of maintenance, school fees, extra-curricular activities, travel expenses and medical expenses be deposited to N.F's Bank Account in the Bahamas by wire transfer on or before the 20th of each month.

5. That the Defendant signs L's United States Passport renewal form forthwith and provides photocopies of both sides of his government issued identification to facilitate application for L's US passport.

6. That the order be varied in that if the defendant is in contempt of court in the future and court proceedings become necessary that he pays the costs of same.

7. That the costs of this Application be paid by the Defendant.

8. Such further order as this Honourable Court may deem just.

[6] According to the applicant, the grounds on which the orders are being sought are:

i. The Application is made pursuant to Rule 53.1 and Rule 26.1(8) of the Civil Procedures Rule.

ii. The relationship between the parties has become acrimonious and they cannot agree on issues concerning L's welfare.

iii. The Respondent C.B. has failed to comply with paragraph 9 of the Order dated the 16th September 2011 in that:

    i. He has failed to pay all of L's school fees for the Fall term (beginning September 2011) of the academic year 2011 – 2012 in the Bahamas.

    ii. He has failed to pay all of L's school fees for the Winter Term (beginning January 2012) of the academic year 2011-2012.

iii. He has failed to pay any of L's school fees for the Spring Term (beginning March 2012) of the academic year 2011-2012.

iv. He has failed to pay all or any of the cost of L's extra-curricular activities of swimming and ballet.

v. He has failed to pay the maintenance of US$500.00 on or before the 16th of each month.

iv. The failure of C.B. to comply with paragraph 9 of the order of the Honourable Mrs. Justice Mangatal has caused a financial strain on the Applicant.

v. That L misses one and a half days from school every month (half day on Thursday and all of Friday) in order to travel to Jamaica to comply with the order of Mangatal J at 5(d) and this is not in the best interest of her educational development.

vi. That the Applicant also misses one and a half days from work every month in order to comply with the order of Managatal J at paragraph 5(d).

vii. The Applicant is unable to afford to pay all the expenses of L travelling to Jamaica from the Bahamas once every month and accordingly seeks that the order be varied to delete this paragraph.

viii. That L was born in December 2005 and is only 6 years old. It is not in the best interest of a minor of tender years to travel unaccompanied by a familiar adult.

ix. The Applicant as well as L presently reside in the Bahamas and accordingly all payments pursuant to paragraph of the order ought to be made to L's Bank Account c/o of the applicant in the Bahamas so that the money can be readily accessed for L's care. The Applicant provided the Respondent's with the said bank account information in October 2011.

[7] The Applicant in support of her application relied on five affidavits filed on April 13, 2012, May 15, 2013, January 17, 2014, March 4, 2014 and March 6, 2015.

[8] The Defendant C.B., is also aggrieved by certain of the orders of Mangatal, J. He too filed a Notice of Application for Court Orders on July 15, 2013. In support of his application reliance was placed on affidavits filed on July 15, 2013, January 10, 2014, February 6, 2015 and March 2, 2015.

[9] The Defendant's application is in these terms.

1. That the order made on the 16th day of September 2011 by Honourable Mrs. Justice Mangatal, paragraph (9) be varied to varied to read:-

> ***"That the Applicant/Defendant do pay to the Claimant/mother the sum of Sixty Thousand Dollars ($60,000.00) per month inclusive of all medical, dental, optical and educational expenses in respect of the relevant child, Lauren Bird born on the 28th day of December".***

[10] The stated grounds are:

a) That since the order has been made the Jamaican currency has been devalued and is now over $100.00 to USD$1.

b) The Claimant/mother has enrolled the child in the most expensive school and activities in the Bahamas where she resides.

c) The Applicant/Defendant does not earn United States Dollars and by reason of the devaluation of the Jamaican currency, the cost to the Applicant/Defendant keeps increasing on a daily/monthly basis.

THE SUBMISSIONS

[11] The Claimant's main submission regarding L's maintenance is as to a change in her circumstances which has prevented her from discharging her financial obligations to L without, not only, the concommitant discharge of the court-ordered obligation of the Defendant towards the said L, but also, that the Defendant's financial obligation be varied upwards to meet L's maintenance on the basis of the Defendant's ability so to do.

[12] Allied to the above, is the submission that the findings of fact by Mangatal, J as to the Defendant's ability to pay the prescribed maintenance sum, it being final there being no appeal from that decision, the Defendant is forbidden to re-litigate that issue.

[13] In any event, on the score of the Defendant's credibility, the Claimant has asked this Court to reject the Defendant's evidence where he seeks to re-litigate that finding of fact or where the Defendant's evidence now asserts a change in his circumstances.

[14] Also, that paragraph 5(b) of the said order of Mangatal, J be deleted as it is not in the best interest of the child.

[15] Further, that the payment of maintenance support for L by the Defendant to the Claimant, be denominated in United States dollars as both the Claimant and L, pursuant to paragraph 9 of said order, now reside in the Bahamas whose currency unit is the United States of America dollars.

[16] Furthermore, that the Claimant be given sole custody of the relevant child on the basis that the parties connubial interaction has become acrimonious.

[17] Finally, that the Defendant's application for paragraph (9) of the Her Ladyship's order be varied to enable him to pay the Jamaican dollar sum of $60,000.00 per month, be rejected as the reasons for so doing are disingenuous.

[18] As for the Defendant, it will suffice to sum up his submissions, by saying that, the Claimant's submissions received his global rebuke while he maintained that a change in his circumstances warrants his application to seek a variation of the offending order.

[19] As to the Claimant she relied on the following authorities in support of her submissions –

1. **Tibbles v SiG (trading as Asphaltic Roofing Supplies), EWCA Civ 518, [2012], WLR 2591**.
2. **Mitchell v News Group Newspaper Ltd. [2003] EWCA Civ 1537 – (authority not supplied).**
3. **Caffell v Caffell [1984] F.L.R., 69 (not supplied**).

[20] For the Defendant the authorities pressed in aid of his submissions are –

1. **Dipper v Dipper, [1980] 2 ALLER 731**.
2. **Mee v Ferguson, [1986] 10 FAM. L. R. 971**.
3. **Burton v Burton, Claim No. 2004 HCV 2313 judgement delivered on 18/4/2008**.
4. **F v B, Claim No. 2010 HCV 2702 judgment delivered on 16/9.2011**.
5. **Campbell v Campbell, Claim No. 2000/E528, judgment delivered on 4/4/2008**.
6. **A v A, [2007] EWHC 99 (FAM)**.
7. **Prest v Petrodel Resources Ltd. and Others, [2013] UKSC 34**.
8. **S v Z, [2007] HKFAMC 34**.

THE ISSUES

[21] The issues can be distilled by asking and answering the following:

1) Whether the order of Mangatal, J made on the 16th day of September 2011 including paragraph 5(b) thereof, should be varied by its deletion in consort with the Claimant's Notice of Application.

2) Whether paragraph 5(a) of the said order should be varied to allow the defendant to travel to the Bahamas to collect L for his half of all major holidays and for the Claimant to travel to Jamaica to collect L and return with her to the Bahamas.

3) Whether paragraph 9 of the said order should be varied to specify that payments of maintenance, school fees, extra-curricular activities, travel expenses and medical expenses be deposited into the Claimant's bank account on the 20th day of each month.

4) Whether paragraph 9 of the said order should be varied to allow for the Defendant to pay to the Claimant the sum of $60,000.00 (Jamaican dollars) per month inclusive of all medical, dental, optical and educational expenses in respect of L onto the Claimant's bank account in the Bahamas by wire transfer.

5) Whether there has been a change in the individual circumstances of the Claimant and the Defendant, subsequent to the said orders, as to warrant a variation of the said orders.
6) Whether the Claimant or Defendant can relitigate issues of fact upon which findings of fact were made by Mangatal, J there being no appeal from such orders.

7) Whether there was consultation by the Claimant with the Defendant in respect of the choice of school for L in the Bahamas.

8) Whether the school fees currently being paid for L at Tamberly can be considered to be "reasonable" pursuant to the order of the court.

THE EVIDENCE

[22] Here I shall be extracting the salient points from the several affidavits given by both affiants in an attempt to avoid even the very appearance of giving legitimacy to facts on which Her Ladyship's order of 16th September 2011, was based and made while, at the same time, allowing for evidence which supports a change in circumstances of either party subsequent to the said orders.

[23] Beginning with C.B. he depones N.F. has always wanted to exclude him from L's life, "and will stop at nothing to achieve that end". He complains that N.F. chose the most expensive school in the Bahamas to send L to. He offers the view that N.F. and her family are very wealthy and that they can afford all the things they desire for themselves and L. In fact, says he, N.F. does not have any living expenses as she and L reside with her parents.

[24] According to this deponent, N.F. had sworn before in her affidavit of 11th August 2010 that she intended to enrol L in Kindergarten at the Queens College school where the fee is US$1,460.00 per term, or expressed in Jamaican currency $120,480.00 or whereas the school fees was $85,500.00. He deponed that "My income could not be reasonable in the context of what i used to pay". To illustrate the point of N.F's unreasonableness, he depones that, "instead of sending L to the Queen's College the Claimant sent her to Tamberly School at a cost of US$3,402.00 per term which is US$10,206.00 per year or JA$898,128.00 per year".

[25] He bemoans that on his current salary and income he cannot afford the school fees for any of the private schools in the Bahamas given that his salary form A Little

Pastry Place is JA$1,537,000.00. As such, “based on his living expenses he can only afford to pay US$650.00 per month”.

[26] He complains in the said affidavit that the order as to his monthly access to L has been breached by N.F. and that he wants the access provision to be varied in keeping with changes with scheduled flights from the Bahamas to Jamaica.

[27] From his affidavit of February 6, 2015 depones that he is the Manager of O.M.G. Restaurant and Cafe Limited; that he oversees the operations of George Bird Limited and that he was previously a shareholder in George Bird Services Limited which latter business is no longer operational; that he earns a weekly salary of JA$12,600.00 or $54,600.00 per month from George Bird Limited and from O.M.G. Restaurant and Cafe Limited $123,500.00 per month.

[28] Further, that he was a shareholder in A Little Pastry Place Limited which operated O.M.G. Restaurant and Coffee and O.M.G. Cafe and Ice Cream. However, he depones, the said company and its subsidiaries ceased operation on 6th day of October 2013 and is now insolvent; that he is a 10% shareholder in Josylean Investment and Real Estate Company Limited but that the Company is “heavily indebted”.

[29] He depones that from his monthly expenses which total JA$264,481.00, he has to pay US$480.00 for the maintenance of his son C as also JA$103,000.00 and JA$19,800.00 for school fees and swimming and ballet for L.

[30] Lastly, he depones that he checked and discovered that L can attend Xavier’s Lower School in Nassau, Bahamas at US$1,280.00 per term and that this school is only ten (10) minutes away from that of the Claimant’s and her parents’ places of work.

[31] From N.F. this affiant states that C.B. operates and manages O.M.G. Restaurant and Cafe Limited that she is not aware that George Bird Services Limited has ceased operating; that C.B. assists in the management and operation of George Bird Limited where he receives a salary; she believes that his relationship with the latter is “more than just an employee as it is a part of his many business interests in Mandeville which is owned jointly with other family members”.

[32] She is aware that “George Bird Limited operated two gas stations”, one of which is still in operation; that the Defendant projected himself as a owner of the business, “A Little Pastry Place” even though she was a Director and shareholder of same; that the latter named business was rebranded O.M.G. Restaurant and Coffee Bar and again was rebranded O.M.G. Cafe and Ice-Cream and that, “These branches continue to offer the same services and carry out the same business; that the business continues to be operated and managed by Christopher Bird.

[33] Further, that she verily believes that, “in an effort to conceal his assets from this Court, the Defendant has registered O.M.G. Restaurant and Cafe Limited as a company ... “ of which his parents are the only subscribers and who are merely ‘fronting’ as owners. She believes that the Defendant, “is the directing mind and will behind O.M.G. Restaurant ... and has taken over the business of A Little Pastry Place under the guise of ‘rebranding’ ...”; that as the directing mind and will of the company and its operations C.B. earns more than a mere salary; that the Defendant actively tries to hide his assets by registering same in his parents name.

[34] In response to the Defendant’s assertions, she depones that, L’s choice of school was not based solely on the tuition but the school curriculum and the low student teacher ratio; that, whereas the defendant and herself chose Creative Kids in Jamaica because of its low student to teacher ratio, all of the schools in the Bahamas identified by the Defendant have a much higher student to teacher ratio than at the Tamberly School, accordingly, “it was chosen as the school environment was closest to that which she was accustomed to in Jamaica and the cost was lower compared to other schools which offered the same student teacher ratio in the Bahamas.”

[35] From paragraph (9) of her affidavit, it shows conclusively that the decision to enroll L at Tamberly was entirely hers: “I therefore chose the best option for L”. She continues, “I verily believe that the Defendant can afford to pay L’s full tuition and extra-curricular activity fee”.

[36] She further depones, that she has to fund the majority of L's school expenses and that this expenditure affects the amount she has to allow L to travel monthly to Jamaica to fulfil the order for monthly access; that, this is so is further compounded by the Defendant's failure to comply with the maintenance provisions of the order and the distrust with which she regards the Defendant who had in the past withheld L from her on four (4) occasions and that she has had to call the police on those occasions to retrieve L, hence, "I am not comfortable with him taking L to the United States of America", where the Jamaican Court Orders are not enforceable without more.

[37] Further, she depones to the point that, the Defendant has failed to make full and frank disclosure of the assets he owns and his relationship with all companies and business in which he has an interest as ordered by the Court.

[38] Also, that the Defendant is a director of Cobblestone Professional Centre Limited and that Josyleen Investments and Real Estate Company Limited along with Damion Bird are shareholders of Cobblestone Professional Centre Limited and that the Defendant is a shareholder of Josyleen Investment and Real Estate Company Limited.

[39] It emerges from the cross-examination of N.F .that the requirement that L travels every month is disruptive of her attendance at school during September to March. L could only travel on a direct flight to Jamaica which resulted in her missing school for half day on Thursdays and all day on Fridays.

[40] That direct flights on Caribbean Airlines from the Bahamas to Jamaica have changed and are now only available on Mondays, Tuesdays and Thursdays at approximately 4:00 p.m. As such, L would have to miss half day at school on a Thursday, all days on Fridays and all days on Mondays. This is too disruptive of her educational development and is not in her best interest.

[41] That because she had to accompany L for C.B's weekend access on the available flight times, she N.F., has had to miss two and half days from work.

[42] That C.B. has agreed that the flights from the Bahamas to Jamaica has changed since the making of the order. Also, that for a child to miss a day from school can be

disruptive of the child's education; that there are usually delays when travelling through the United States.

[43] That her financial circumstances have changed since the order of Mangatal, J in relation to her post graduate studies; that the Infectious Disease Fellowship has lost funding and that this cost will now have to borne by her; that her expenses have changed in that they have gone up considerably owing to the loss of her fellowship funding.

[44] As for the Defendant I will only say that, in cross-examination, he maintains what his affidavit evidence says about his earnings from several businesses about which he is adamant that he does not own. Further, he does not resile from his affidavit evidence as to his saying that he was not consulted as to the eventual school at which L was enrolled; that the school fees for the said school does not fall within the 'reasonable school fees' as was ordered by the court; and, that he cannot afford to pay the school fees for L to attend Tamberly.

I shall here now go on to delineate the found facts of Mangatal, J

FINDINGS OF FACT BY MANGATAL, J

[45] It is against the background of the findings of fact by Mangatal, J that, I now look to the alleged change in circumstance of both parties subsequent to the order. If I may say, without any further preface, B has sought to re-litigate the very issue in his application for a variation of this very order. While I am mindful of the fact that Her Ladyship's order was far-sighted and sagacious in the breadth of its provision of its 'liberty to apply' aspect, yet this cannot be construed to mean that any of the parties were at liberty to re-canvas the very issues of fact on which Her Ladyship's order was based. Clearly, 'a change in circumstance, properly understood, has to be factually determined. In other words, the change in circumstance is limited to events post the order of the Mangatal, J. It must mean that such a party must point to those specific

circumstances which affect and impair their ability to give effect to the order of the court due to a material change of circumstance.

[46] In light of the above it needs to be said, here and now, that the findings of the facts by Mangatal, J being unchallenged by way of an appeal, shall serve as my guide in helping to determine whether there has been a change in the individual circumstances of each party subsequent to the order.

[47] After Mangatal, J's assessment of their respective pecuniary capabilities, the determination of the issue of relocation and who is to be regarded as the primary care giver, Her Ladyship concluded: "In my judgment both parents are well capable of taking care of L's needs…In addition, the accommodation proposed by F in the Bahamas as her parents' home and the accommodation proposed by B in Mandeville here in Jamaica both seem to be comfortable and adequate to provide for L's needs".

[48] It is more than apparent that Her Ladyship, after an exhaustive and comprehensive examination of all relevant factors, concluded that L's welfare be under F's care and control, as in her judgment, F is better able to fill L's emotional and educational needs: "To take L away from F's day-to-day care would cause great upheaval and could prove upsetting to the stable and promising path that L is presently on".

[49] In granting F's application for relocation Her Ladyship determined that "F's application is genuine, realistic and understandable. It has been well-researched and investigated…L will be best placed living with her mother F in the Bahamas rather continuing to live in Jamaica with F, whether remaining in Kingston or relocating to Montego Bay. Whilst L's relocation to the Bahamas will affect B and his future relationship with L, I think that these effects can be mitigated somewhat by the fact that B and his family has the financial means to travel and F will also pay for L to visit B in Jamaica".

[50] Farther along in her written judgment, Her Ladyship found as a fact that "B does receive a much higher income than he has disclosed, and that, he occupies the

economic strata of a proprietor, or at the very least a high managerial position in relation to his families' business, particularly L Little Pastry Place Limited. He is not simply a salaried employee as his Affidavit suggests…I accept her [B's] evidence that the cost of living in the Bahamas is higher". Having found that "B has consistently and repeatedly borne sole financial responsibility for L's school fees and the cost of the extra-curricular activities of swimming and ballet in Jamaica", Her Ladyship found that F "has the means and potential, as a Medical Doctor specializing in Internal Medicine,... based upon her projected potential income in the Bahamas". Accordingly, Her Ladyship was satisfied that B was in a position to pay not only US$500.00 per month for maintenance of L but also the cost of L's school fees and extracurricular activities of swimming and ballet and to share equally with F in reasonable medical, dental and optical expenses.

EVALUATION OF THE EVIDENCE AND FINDINGS OF FACT

[51] I am to say here that the evidence of both parties was not given with the highest degree of disinterestedness. In that I am not surprised as they both pleaded the exigencies of their strategic interest.

[52] There were times when N.F., who was under cross-examination, in answer to the very questions which were put to her, extorted from her responses of anxious denials which were a shade discomfiting. Equally, when questions in cross-examination were put to the artfully self-satisfied C.B. they seemed to have drawn out from him answers in ingenuities, evasions, and injured guilt. Of the two witnesses though, I am inclined to accept the evidence of N.F. over C.B. if only because, her being discomfited notwithstanding, she appeared to have been far more forthcoming and forthright.

[53] Having said so, it should be translated into my saying that where there are conflicts on the evidence between them I have opted for the evidence of N.F over that of C.B.

[54] I find that it is not in the best interest of the welfare of the child L for her to miss days from school in order to fulfil the court-mandated order providing access to C.B. in its practical operational terms.

[55] I find that since the making of the order that the financial circumstances of N.F. have changed for the worse, but that her potential earning power has not been tapped into. As such I find that were the monthly travel itinerary of L to continue at the current rate N.F's expenses would overtake her income. However, she cannot afford to be content by folding her arms in the hope that her diminished circumstances will be taken up by C.B. No financial manna is going to fall into her lap. She too is obliged to maintain her child.

Like Mangatal, J I find that N.F's potential for earning more should be translated into the actual realization of that prospect.

[56] I find that it is not in the best interest of the welfare of L, a minor, to travel unaccompanied in this day and age of the hustle and bustle at important travel hubs and with the increasing threat of international security concerns.

[57] I find that the issue of the affordability of C.B. collecting L in the Bahamas three times per year for access on the major holidays should be encouraged in order to allow for the bonding of father and child despite the negative concerns and resistance of N.F. The healthy physical presence and interaction of father and child should be encouraged as this will translate into the best interest of the welfare of L.

[58] I find that it is in the best interest of the welfare of L that the order for joint custody remain in place without it being substituted by an order for sole custody to N.F. as it has not been demonstrated by N.F. that the current arrangement is difficult or impossible for the parties to co-operate with each other effectively so as to decide important matters affecting the upbringing of L.

[59] I find that the attempt by C.B to say he has suffered a material change in his circumstances have not been borne out on the evidence.

[60] I also find that there was consultation by N.F. with C.B. as to the choice of schools to which to send L to from as early as 2010 to 2011 by N.F's sending to him extensive and intensive information concerning the chosen school and that no effort was prosecuted by him to scope out the schools of his choice until he was activated by the order of Her Ladyship Dunbar-Green in respect of facilities for L to do her extra-curricular activities at. In my view it was entirely imprudential and impractical and against the best interest of the welfare of the child for C.B. to have sat there, as it were, "like patience on a monument smiling at grief" even as N.F. was busy contemplating to keep sacrosanct the very principle of the paramountcy of the best interest of the welfare of L by sending her, without any delay, to Tamberly school.

[61] By way of reminder and at the risk of being repetitious I again set out for emphais the relevant portions of the orders of Mangatal, J made on the 10th day of September 2011 in respect of B's access to L –

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

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

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

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

THE LAW

[62] It is Section 7 of the Children (Guardianship & Custody) Act to which recourse must be had concerning the power of the Court to vary orders in respect of the custody, access and maintenance of children.

[63] According to Section 7(1), “The Court may, upon the application of the father or mother of a child, make such order as it may think fit regarding the custody of such child and the right of access thereto of either parent, having regard to the welfare of the child, and to the conduct of the parents, and to the wishes as well of the mother as of the father, and may alter, vary, or discharge such order on the application of either parent…”.

[64] Continuing, but eliding Section 7(2), Section 7(3) says that, where the Court under subsection (1) makes an order giving the custody of the child to the mother, then, whether or not the mother is then residing with the father the Court may further order that the father shall pay to the mother towards the maintenance of the child such weekly or other periodical sum as the Court, having regard to the means of the father, may think reasonable”.

[65] According to subsection (5), any order so made may, on the application either of the father or mother of the child, be varied or discharged by a subsequent order.

[66] In deciding whether to vary such an order a court has to be mindful of S18 of the said Act which reads: “Where in any proceeding before any Court the custody or upbringing of a child or the administration of any property belonging or held on trust for a child, or the application of the income thereof, is in question, the Court in deciding that question, shall regard the welfare of the child as the first and paramount consideration, and shall not take into consideration whether from any other point of view the claim of the father, or any right at common law possessed by the father, in respect of such custody, upbringing, administration or application is superior to that of the mother, or the claim of the mother is superior to that of the father”.

Issues #1

[67] N.F. has submitted that when the relationship between parents become acrimonious, then the issue of custody should not result in an order for joint custody but the grant of sole custody. In that regard N.F. has relied on the case law authority of (**CAFFELL v CAFFELL) [1984] FLR 169**.

[68] On the other hand C.B. has relied on the proposition that the principles underlying joint custody is that children are best looked after by both parents taking part in that child's upbringing. Accordingly, it is in the best interest and welfare of the child that parents have joint custody. C.B. relied on the case law authority of **S v Z**, supra. In the last mentioned case an application was made by the mother concerning a dispute over the arrangements for the two (2) children of the union, that either the Court make no order at all or that the parties be awarded joint custody and joint care and control, whereas the father asked the Court to grant him sole custody with defined access to the mother. However, during the hearing the parties agreed to share care and control. After reviewing the relevant statutory provisions and case law on the matter, the Hong Kong Family Court distilled the distinction between joint custody versus sole custody –

> "(1) In considering whether to grant joint custody to both parents or sole custody to one of them, the first and paramount consideration is the welfare of the child.
>
> (2) Whether or not joint custody is workable depends very much on whether the parents can co-operate with each other. A court may refuse to grant joint custody if there is no reasonable prospect that the parties will co-operate. Whether or not there is such reasonable prospect is a question of fact. If there is not reasonable prospect of co-operation between the parties, an order for joint custody can be a recipe for disaster and contrary to the best interest of the child.
>
> (3) A joint custody order may in appropriate cases be made for the purpose of encouraging parents to overcome their differences and co-operate for the benefit of their children. Joint custody in such circumstances can serve the purpose of recognising the role of both parents in the children's upbringing. However, it is clear that a joint custody order is not workable, it seems unlikely that the Court will nevertheless make such a joint custody order solely for the purpose of encouraging the parties to

overcome their differences or to recognize the continuing role of the parties. As stated above, a joint custody order which is unlikely to be workable cannot be in the best interests of the children as the adverse consequences will far outweigh the benefits that it may bring.

(4) A custody parent does not have the right to make all the decisions about the children in spite of disagreements of the other parent. Should there be any disagreements over major matters affecting the children; the party who does not have custody can bring the matter to the Court for determination".

[69] It is significant so as to be observed how Mangatal, J approached the matter of custody vis-a-vis the conduct of the parties. It appears to me that from then the portraiture given by N.F. of C.B. to the Court, and as to their relationship, which she describes as acrimonious, could very well be that what she meant was that C.B. was uncooperative. It is to be noted that the use of that adjective did not even militate against C.B. in the judgment of the Court despite its suggestion of bitterness and ill-temper for, as Her Ladyship noted, "I do not in the circumstances consider that this conduct weighs against B in relation to the matters which I have to consider in deciding on a suitable custody order".

[70] The conduct to which Her Ladyship referred was of an allegation by N.F that C.B. had removed both N.F's and L's passports without N.F's knowledge and consent from their home in Long Mountain and that C.B. did not join N.F. and L in living in Kingston.

[71] In the instant Application by N.F. for sole custody, the acrimonious claim is based on an observation by N.F. that, subsequent to the orders, the parties did not agree on the school to which L is to attend or the extra-curricular activities which the child is to be enrolled in. Even as I accept that C.B. was tardy in his response to N.F. as to the choice of school being contemplated by N.F., I fail to see how that action, or, for that matter, his inaction can attract and translate into the descriptive word of 'acrimonious'. If anything, such a description is at best, hyperbolic and at worst, a mis-characterisation.

[72] In refusing the application for sole custody I am confident that the principles enunciated in the **S v Z** case, supra, clearly fosters and enhances conjugal harmony by "encouraging parents to overcome their differences and co-operate for the benefit of

their children. Joint custody in such circumstances can serve the purpose of recognizing the roles of both parents in a child's upbringing".

Issues #2 & 3

[73] It is doubtless the case that a court, in considering an application for variation of an order for custody and maintenance of a child, must have regard to "the best interest of the welfare" of such a child. Lindley, LJ in Re McGrath, supra, said that the word, "welfare", must be taken in its widest sense and as such includes the educational as well as the physical well-being of the child: See also the speech of Lord McDermott in **J v. C [1969] ALL E.R. 788 at p. 826**

[74] In a word then, the welfare of a child encompasses considerations which are above and beyond and before all other factors and concerns of the parties themselves. From the unreported case of **Stockhausen v Willis, JM 2008 SC 83 R**. Anderson, J the principle emerges that the power of the court to vary a court order is necessary so as to reflect changes in the circumstances of either party, subsequent to the date of the court order. The rationale being that the court must of necessity through its inherent jurisdiction over children, be able to vary orders. However, in doing so the Court should be vigilant to restrain the inclination of parties to re-litigate issues by successive application's by restricting such applications to vary to cases where there has been a change in the circumstances of either or both parties, since the grant of the order, which it is now being sought to alter. All of this however, must yield to the principle that a judge of concurrent jurisdiction cannot disturb the findings of fact of a judge after trial. The matter has to be dealt with on appeal.

[75] **Tibbles v Sig (trading as ASPHALTIC ROOFING SUPPLIES**), supra, was concerned with the issue of the powers of the court to vary or revoke an order which it has itself made pursuant to rule 3.1(7) of the Civil Procedure Rules, England and Wales. Lord Justice Rix, with whom his brethren agreed, in unravelling the Jurisdiction concept versus the discretion concept of rule 3.1(7) at paragraph 39 of his judgement summarised what "this jurisprudence permits...". He laid down the law on the point by

saying that the rule is broad and unfettered but that considerations of finality, the undesirability of allowing litigants to have two bites of the cherry, and the need to avoid undermining the concept of appeal, all push towards a principled curtailment of an otherwise apparently open discretion. "The jurisdiction", he continues, "gave guidance as to the circumstances in which the discretion may be exercised: where there has been a material of circumstances since the order was made, or where the facts on which the original decision was made were innocently or otherwise misstated."

[76] It will also suffice, for present purposes, to adopt the factors which were identified by Mangatal, J, in her written judgment, as conducing to the welfare of a child –

a) the child's physical, emotional and educations needs;
b) the child's age, sex and background;
c) the likely effect on the child of any change in her circumstances; and
d) how capable each of the child's parents, and any other person in relation to whom the court considers the question to be relevant, in meeting the child's needs.

[77] The fact is that cannot be denied that L, pursuant to Her Ladyship's order of 16th September 2011, began residing in the Bahamas and that the requirement for L is to travel every month is disruptive of her attendance at school in that during September to March according to N.F. L could only travel on a direct flight to Jamaica which resulted in her missing school for half days on Thursdays and all days on Fridays.
Applying the principles to the current case it is clear that the best interest of the child would be served by a variation of the order in the terms as prayed for by N.F. in her application.

[78] Further, according to N.F., direct flights on Caribbean Airlines from the Bahamas to Jamaica have resulted in schedule changes which would cause L to miss more days at school per month were adherence to the access order be carried out. It is worthwhile observing that C.B. agreed that since the making of the order that the flight schedules from the Bahamas to Jamaica has changed, so much so, that he has had to apply to the court for a variation of the week-end access order.

[79] In fact, a further complication in the imperfect world of on-time travel is, the often experienced reality of delay when travelling through the United States of America in order to get to the Bahamas. Mainly, these realities are of a disruptive nature and cannot, or else will militate against, the best interest of the welfare of a child such as L.

[80] Since the principles which control whether an order made by a judge of concurrent jurisdiction are clear, and without giving short shrift to the submissions made on behalf of C.B., it is only left for me to say, that issues # 2 and 3 should be varied in the terms as prayed for by N.F.

ISSUE # 4

[81] It is clear from the evidence of C.B. that he cannot win the approval of honesty in that what he gave in evidence concerning his earnings from A Little Pastry Place Limited and George Bird Limited and what he gave as his expenditure would excite one's curiosity for the latter outstrips the former. Is it any wonder, therefore, that Her Ladyship laid no store by his evidence thereon? I too find that his evidence cannot be trusted.

[82] The fact of the matter though is that there has been no appeal form that significant finding of fact. In fact, the evidence before this court shows that his income has now seen an increase from the very businesses which he oversees or has some measure of management over.

[83] In passing, I shall her make the observation that, C.B. despite the orders for disclosure by the Court made on the 10th day of December 2014 by. Her Ladyship Dunbar-Green, has not disclosed the full pages of the financial statements of Josyleen Investment and Real Estate Company and O.M.G. Restaurant and Cafe Limited.

[84] Here, I need only say that a Court is entitled to draw inferences as to assets and income adverse to a party who fails to make full and frank disclosure of them: See **Hughes v Hughes (1993) 45 W.R. 149**.

Here, I am confirmed in the view I hold, as to C.B's credibility, that he is not to be trusted.

[85] Accordingly, this issue is answered in the negative.

Issue #5

[86] N.F's evidence is that since the making of the order her financial circumstances have changed. According to her affidavit and oral evidence she is required by her employer in the Bahamas to do further training in the area of Infectious Disease and that the programme she was enrolled in was funded by the United States government which covered her tuition, travel, workshop, residence and her daily expenses. However, the funding was discontinued in December 2014 resulting in the fact that all her expenses associated with their fellowship now have to be borne by her with the fellowship itself costing US$10,000.00 per year. She depones that this turn of events has affected her finances "and it is therefore imperative that the Defendant pays" the tuition and extracurricular expenses of L in accordance with the order.

[87] N.F. depones and her oral evidence suggests that the loss of the fellowship funding has resulted in L's monthly travelling expenses to Jamaica in obedience to the access order, would have to be compromised as the expenses associated therewith would exceed her income. In the result, she argues, L's seven (7) days per year travel to Jamaica would not imperil C.B's expectation if the provision granting monthly access were deleted and the seven (7) days' access per year be re-structured over the summer holidays and two (2) additional days at Easter and Christmas.

[88] Even as I accept her evidence as to her reduced circumstances, I am very mindful that, as Mangatal, J found, she has the potential to earn more and to contribute to the maintenance of L, being an equal contributor.

[89] On the other hand, the evidence here, stated in the negative, is that C.B. has not pointed to any evidence which shows any change in his financial circumstances. By his

pointing out that there have been changes in the exchange rate of the Jamaica dollar vis-a-vis the United States of America dollar, C.B. has offered this reality as a change in his circumstances.

[90] One would be hard pressed to find such a argument as being tenable, for as noted by counsel Ms. Ayana Thomas, such an argument would betray the sage contemplations of Mangatal, J who must have been mindful of it in framing her orders. In any event, the commercial realities of economies such as Jamaica's must anticipate that there will be fluctuations in the exchange rates between competitive currencies in a global setting.

[91] Lest it be forgotten, it will serve to remind that the codification into statute of the principle of the welfare of the child as being the first and paramount consideration highlights its very sanctity. By no stretch of plausibility could it ever be suggested that to pay maintenance in Jamaica dollars that N.F. would not suffer a serious diminution in value when the receipt of the Jamaica dollar amount is translated into the Bahamas/United States dollar equivalency and thereby defeat the solemn consideration of the welfare of the child.

[92] Also, it seems incongruous for C.B. to try to maintain that he pays his other child's maintenance of US$480.00 per month yet he finds it inconvenient to pay L's maintenance in the self-same currency.

[93] Again, I am constrained to say that I find his submission as to a change in his circumstance has not been made out.

[94] I now turn to the suggestion made by N.F. that C.B. has been less than forthcoming about his involvement in the several businesses. In other words, that others have put themselves at the forefront of the businesses so as to help him to conceal their true ownership.

[95] The case of **A v A and St George Trustees Limited and others**, supra, concerned a claim for ancillary relief by the wife against her husband. The matrimonial assets included two (2) motor cars, the contents of the former matrimonial home, some

money in a bank account and some quoted shares, held in trusts, in an assortment of assets, and lastly a holiday property.

[96] The issues thrown up by the assertions and contentions were the wife's allegations that the trusts are shams in which the husband is to be treated as owning more than he has stated and that the shares held in one of the trusts was to be treated as being available to the husband.

[97] In the process of his judgment Mr. Justice Mumby identified the principles relating to sham transactions that was expressed by Arden, LJ and his brethren in **Hitch and others v Stone (Inspector of Taxes) [2001] EWCA Civ. 63, [2001] STC 214**. The distillate of the principles which emerge from examining sham transactions are, first, that the parties intend to create one set of rights and obligations but do acts or enter into documents which they intend should give third parties or the court the appearance of creating different rights and obligations. Second, the court is not restricted to examining the four corners of the document. Such a court may also examine relevant external documents. This will include the parties' explanations and circumstantial evidence, such as evidence of the subsequent conduct of the parties.

[98] Third, the fact that the document or act is uncommercial or even artificial does not mean that it is a sham. A distinction is to be drawn between the situation where parties make an agreement which is unfavourable to one of them or artificial and a situation where they intend some other arrangement to bind them. In the former, the intention is for the agreement to take effect according to its tenor, while as to the latter the agreement is not to bind their relationship.

[99] Fourth, the fact that the parties subsequently depart from an agreement does not necessarily mean that they never intended the agreement to be effective and binding as the proper conclusion to be drawn may very well be that they agreed to do so and that they have become bound by such an agreement as varied.

[100] Fifth, the intention must be a common intention, but reckless indifference will suffice.

[101] In **Prest v Petrodel Resources Limited and others**, supra, the appeal from the Court of Appeal (U.K.) concerned the position of a number of companies, the Respondents, which the judge of first instance found to be wholly owned and controlled by the husband. In the Court of Appeal three of the Respondent companies challenged the orders made against them on the basis that there was no jurisdiction to order their property to be conveyed to the wife, the Appellant, in satisfaction of the husband's judgment debt. The issue which arose was in what circumstances is a court permitted to disregard the corporate veil in order to give effective relief, that is to say, to satisfy the lump sum order against the husband.

[102] Here, I now quote from the judgment of Lord Sumpton, with whom his brethren agreed: "I conclude that there is a limited principle of English Law which applies when a person is under legal obligation or liability or subject to an existing legal restriction which he deliberately evades or whose enforcement he deliberately frustrates by interposing a company under his control. The court may then pierce the corporate veil for the purpose, and only for the purpose, of depriving the company or its controller of the advantage that they would otherwise have obtained by the company's separate legal personality. The principle is properly described as a limited one, because in almost every case where the test is satisfied, the facts will in practice disclose a legal relationship between the company and its controller which will make it unnecessary to pierce the corporate veil.

[103] Here, the evidence that C.B. is running sham operations do not come up to the touchstone standard as is set out by the cases under reference. While one understands the anxious view as have been expressed on the matter, the balance of probabability, would dictate that C.B's inauthenticity has not been made out.
Accordingly, this strand of the submission which was offered as a stand-alone submission in refuting the suggestion as to a change in C.B's circumstance does not avail N.F.

Issue #6

[104] Plainly, as adverted to before, no party can seek to relitigate any issue of fact upon which judgment has been pronounced by a court of coordinate jurisdiction.

Issue #7

[105] As also hinted at before this is a case of fact which has been determined by the overwhelming evidence which evinces an assortment of communication between N.F. and C.B. on this very score. The plethora of correspondences generated by N.F. to C.B is sufficient to give to any argument to the contrary its quietus.

Issue #8

[106] The issue of whether N.F. in deciding to send L to Tamberly was a reasonable one has attracted sharp divisions. C.B. has argued that it was not reasonable. In arguing thus Mr Steer has pointed to case law authorities on the matter. This is a matter about which it is pertinent to ask, where on the scale of priorities does child maintenance fit? The answer is that the father's liability to contribute to the support of his child is in the nature of a pre-eminent obligation which is calculated from his earnings.

[107] In **Dipper v Dipper**, supra, a mother and father had obtained cross-decrees of divorce though they continued to remain in the same house with their children. Both parents applied in ancillary proceedings for the custody, care and control of the children to the mother and sole custody to the father so that he could exercise control over their education and upbringing. In doing so the judge purported to follow a previous decision concerning that issue. The mother appealed against the award of custody to the father and the father in turn appealed against the award of care and the control to the mother.

[108] However, on the hearing of the appeal the parties agreed to an order for joint custody of the children. It should be observed that though the case primarily dealt with the question of the wife's claim for periodical payments, Ormrod, LJ, in referring to the dichotomized order of the custody and care and control said," … the judge seems to me

to have repeated one of the myths that the court has been trying to explode for some years." In debunking the myth he expressed himself in this fashion: "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. To suggest that a parent with custody dominates the situation so far as education or any other serious matter is concerned is quite wrong…". For his part, Cumming-Bruce, LJ considered the split order of custody to one parent and care and control to the other, to be a fallacy where it suggests that the custodial parent has a right over and above the other parent, to take all the decisions about the education of the children in spite of the disagreements of the other parent. "The parent is always entitled, whatever his custodial status, to know and be consulted about the future education of the children and any other major issue", he emphatically declared.

[109] From the Australian jurisdiction emerges the case of **Mee v Ferguson**, supra. One of the points in issue concerned an application by Mrs. Ferguson, the wife, for an increase in maintenance to be paid by Mr. Mee, the husband, in respect of two children of a former marriage.

[110] The judge of first instance made orders effectively decreasing the amount of maintenance that the husband should pay. The wife appealed. According to the Full Court of the Family Court of Australia, the appeal raised a number of important issues about the determination of child maintenance. Particularly, issues relating to the correct approach under the Family Law Act, to include, inter alia, the question of private school fees.

[111] At paragraph 75 of the judgment, which is of persuasive value, this is how the mined principle was expressed: "Where the non-custodian has agreed to the child attending such a school that person is liable to contribute to the fees involved so long as and to the extent that he or she has a reasonable financial capacity to do so. Where the

non-custodian has not agreed to the child attending such a school he or she is not liable to contribute to those expenses unless there are reasons relating to the child's welfare which dictate attendance at that school rather than at a non-private school. Then the non-custodian, as an aspect of the welfare and maintenance of the child, is required to contribute to the extent that he or she has a reasonable financial capacity to do so. However, the mere fact that the non-custodian can afford to pay the fees, or indeed if he or she is a wealthy person, is not in itself a reason for imposing that liability".

[112] In **Daphne Burton v Errol Burton**, supra, a first instance judgment delivered by Mangatal, J on April 18, 2008, Her Ladyship was concerned with the issue of maintenance for the parties' son, that is to say, whether the husband should be made to pay fifty percent (50%) or such other percentage as the Court deems fit of the relevant child's educational expenses and for the father to make reimbursement of sums already paid by the mother on the said child's education.

[113] Her Ladyship in the course of her judgment reduced the issues to the single concern of whether a parent should be required to contribute to educational expenses relating to private, as opposed to, public schools. The Australian jurisdiction developed its jurisprudence on the points from several sources including, but not limited to, the textbook, Family Law in Australia, 6th Edition, by Geoff Monahan and Lisa Young and the **Mee v Ferguson** case, already referenced. I now quote the relevant portion of the text: "Where the non-custodian has agreed to the child attending such a school that person is liable to contribute to the fees involved so long as and to the extent that, he or she has a reasonable financial capacity to continue to do so. Where the non-custodian has not agreed to the child attending such a school he or she is not liable to contribute to those expenses unless there are reasons relating to the child's welfare which dictate attendance at that school rather than at a non-private school. That the non-custodian, as an aspect of the welfare and the maintenance of the child, is required to contribute to the extent that he or she has a reasonable financial capacity to do so. However, the mere fact that the non-custodian can afford to pay the fees, or indeed if he or she is a wealthy person, is not in itself a reason for imposing that liability".

[114] There seems to be a number of factors which impinge on the question of a child's relevant educational expenses. In **Evans v Evans [1978] F.L.C. 90-435**, it was held that the relevant expectation of the parties having regard to the child's education are those which are held by both parents during cohabitation.

[115] Allied to this, another factor is, a question of fact as to the benefits to be derived by the child's attending a private school: In **Paradine v Paradine (1981) FLC 91-056**, the child had experienced problems at a state school. In **T&T [1984] FLC 91-588**, a father was ordered by the court to make his contribution towards the payments of private school fees as long as he could afford it. The court was mindful of the fact that the father had earlier insisted on that form of education and upon which the children had commenced their secondary school education. The court had little difficulty, on the facts, in ordering the father to contribute even though there was "no overwhelming reason" why children needed to attend private school. Also, in **Coan v Cox (1993) 17 FAM. L.R. 682**, the court ordered the payment by the father of modest fees for a private school at which the child was doing well.

[116] In the instant case N.F. not having had the earliest input of C.B. the question which begs to be answered is, what ought she to have done? Since putting aside the interests of the father and mother as being secondary to that of L, I find that the need of immediacy dictated that N.F. had to make a choice in keeping with the best interest of the welfare of the child. Speaking comparatively as to the school fees at Creative Kids and to the fees at Tamberly, and in keeping with Her Ladyship's 'reasonable school fees' order, I am to say that the criteria that was used by N.F. in selecting Tamberly was for someone earning US/Bahamas dollars or else someone earning the Jamaica dollars equivalence and bearing in mind the principles from the cited cases.

[117] Thus, I answer that the questioned school fees were not too far from that of Creative Kid removed in keeping with the order of Mangatal, J. The word "reasonable" is a relative word. What is reasonable to one party might not be so reasonable to the other. However, the "reasonable" as used in this context must be in relation to the school fees which were paid at Creative Kids for L when she attended that learning

establishment. However, the parties are not my primary concern here. L is. The fact is, that CB was dilatory or, else, uncooperative when consultations were being advanced to him by N.F. about this very issue. In any event, I do not have any evidence as to the parties expectation at cohabitation, for L to be educated or trained.

[118] Accordingly, I would leave the current arrangement in place and for C.B. to continue to pay L's school fees it being in the best interest of L at this time. To do otherwise would only serve to disrupt the continuity of L's education in the middle of this school year, in these her formative years. That I will not do. It may well be that at the close of the academic year 2015 – 2016 that other school plans could be looked at, jointly by the parties, with a view to continuing the efficacious development of L's education.

[119] In the upshot C.B's application For Court Orders is refused.

The Application For Court Orders by N.F. is determined as follows:

1) Paragraph 1 is refused and all others are granted.

Both Counsel are to give effect to this Judgment by crafting the appropriate orders as to the details of its efficacy.

IT IS HEREBY ORDERED as follows:

1. That paragraph 5 of the Order of the Honourable Mrs. Justice Mangatal is varied by deleting paragraph (b) so that the Defendant be allowed access to Lauren Bird as specified in paragraphs 5 (a), (c), (d) and (e) **only** of the order dated the 16th of September, 2011.

2. That paragraph 5(a) of the order of the Honourable Mrs. Justice Mangatal is varied to include that Mr. Bird travels to the Bahamas to collect Lauren Bird for his half of all major holidays and Dr. Nikkiah Forbes travels to Jamaica to collect Lauren and return with her to the Bahamas.

3. That paragraph 9 of the order of the Honourable Mrs. Justice Mangatal is varied to specify that all payments of maintenance, school fees, extra-curricular activities, travel expenses and medical expenses be deposited to Nikkiah Forbes' Bank Account in the Bahamas by wire transfer on or before the 20th of each month.

4. That the defendant signs Lauren's United States Passport renewal form forthwith and provide photocopies of both sides of his government issued identification to facilitate application for Lauren's US passport.

5. That the order is varied in that if the defendant is in contempt of court in the future and court proceedings become necessary that he pays the cost of same.

6. Costs to the Claimant to be agreed or taxed.

7. The Defendant's Notice of Application for Court Orders filed on the 15th of July, 2013 is refused.