

THE EASTERN CARIBBEAN SUPREME COURT

**IN THE HIGH COURT OF JUSTICE
DIVORCE**

SAINT LUCIA

Case Number: SLUHMT2019/0186

BETWEEN:

V.G.

Petitioner

-and-

N.G.

Respondent / Applicant

Before the Honourable Mr. Justice Alvin S. Pariagsingh

Appearances: Mrs. Veronica Barnard for the Petitioner
Mrs. Esther Greene – Ernest and Mr. Sahleem Charles for the
Respondent/ Applicant.

2024: July 30
August 12

JUDGMENT

**Respondent's Summons Seeking Leave to take the
Children of the family out of the Jurisdiction permanently**

THE APPLICATION:

[1] **PARIAGSINGH, J:** - Before the Court is the respondent's (father) summons filed on 11 July, 2024 for leave to remove the children of the family ZG born on 27 August, 2007 and AG born on 10 July 2009 from this jurisdiction to reside in the United Kingdom.

[2] Both children are British citizens by birth. From their birth until they were less than 3 years old, the children resided in the United Kingdom. Their parents then moved to Trinidad in 2010 for approximately two years and thereafter to Saint Lucia in 2012 where they have lived since. Shortly after the move to Saint Lucia, the parents' marriage broke

down irretrievably. The mother petitioned for divorce in 2019, and for the past five years, the parties have been unable to settle issues related to the children or their property.

- [3] The parents have joint custody of the children (by consent) at present. Since the grant of the decree nisi in this cause on 4 February 2021, the children have had a visiting arrangement with their mother every other weekend, with their father being their primary carer.
- [4] The petitioner opposes the application on, inter alia, the basis that the move is not in the best interest of the welfare of the children as the relocation should take place after AG completes CXC within the next year.

DISPOSITION:

- [5] The respondent has not demonstrated that he has a well-thought-out plan for the emigration of the children of the family. The timing of the application is not opportune, there is no real benefit to the children by them moving to the UK immediately. The financial benefit to the children only arises after they have been resident in the UK for three (3) years. By that time, both children would be over the age of 18 years. The expert evidence does not assist the respondent in his bid to remove the children from the jurisdiction at this stage.
- [6] The welfare of the children is best satisfied by their remaining in the jurisdiction until AG completes CXC, after which both children can relocate. When both options available to the children at this stage is weighed, the balance favours not separating the children but rather allowing them to remain in Saint Lucia until the father can present a better and well thought out and detailed plan for relocation after the children both obtain professional help to deal with the issues identified by the expert whilst AG completes her CXC exams in a few months.
- [7] Accordingly, the application is dismissed with costs, and I make the orders set out in paragraph [118] of this judgment.

HISTORY OF PROCEEDINGS AND ORDERS:

- [8] To properly contextualize the disposition of this application, it is necessary to recite the history of the proceedings and the orders made. Additionally, the orders made conflict with the position outlined by the respondent in his submissions regarding custody still being a live issue before the court.
- [9] Subsequent to the filing of the petition for divorce, the respondent filed a summons on 10 March 2020, before the decree nisi was granted, seeking, inter alia, an order for joint custody with care and control to him and reasonable access to the petitioner. By this summons, the respondent also sought an order that neither party is to remove the children from Saint Lucia without mutual consent or an order of the court.
- [10] On this summons, an interim order for joint custody of the children was made on 9 June 2020 in favour of the parties, with care and control to the petitioner and reasonable access to the respondent. The respondent was also required to return the children to the petitioner.
- [11] By another summons filed on 1 September 2020, the petitioner sought an order for civil contempt against the respondent on the basis that he had not complied with the order of 9 June 2020. The petitioner contended that the respondent had breached the order by refusing to return the children to her as ordered. She also contended that the respondent refused to disclose the whereabouts of the children. This summons was dismissed on 2 October 2020.
- [12] By the 2 October 2020 order, the parties were also granted joint custody of the children with care and control to the petitioner, with whom they were to reside. The respondent was granted reasonable access to the children. This order was consistent with a recommendation made in a Social Enquiry Report ordered by the court. By this order, the children were to receive counselling, and the parties were to attend co-parenting sessions. The judge also specified as part of her order that "Matters pertaining to the

divorce and adult lives of the petitioner and respondent should not be discussed with or in the presence of the children."

[13] On 10 March 2021, another summons for civil contempt was filed by the petitioner. On this summons, an order was made on 31 March 2021, making a finding of breach of the order of 2 October 2021 against the respondent. A suspended committal order was made against him, and he was ordered to pay the petitioner's costs of that summons.

[14] On 24 June 2021, the respondent applied for a variation of the existing custody orders to wit- varying care and control in his favour. An interim order was made on 25 June 2021 granting this variation, and provisions were made for reasonable access in favour of the petitioner. On 7 July 2021, by consent, the variation was made final. Access to the petitioner was agreed to be on weekends from Friday at 5:30 pm to Sunday at 8:00 pm.

[15] On 1 October 2021, the variation was continued, and certain access arrangements were made for the holiday period. The matter was then next heard on 1 February 2022, when it was adjourned to 18 February 2022.

[16] There is nothing in the court's record after the order of 1 February 2022, and this matter next engaged the Court's attention when the respondent filed the instant application on 11 July 2024.

[17] The above demonstrates how long this battle has been ongoing and the acrimony that accompanied these applications for custody and access to the children at the inception of these proceedings. It also shows that the respondent has had care and control of these children since before the decree nisi was granted with sparse access to the petitioner.

[18] Regrettably, neither party approached the court for over three (3) years to address these issues. There is also no evidence that there has been compliance with any of the orders

requiring counselling for these children or that the parents attended co-parenting sessions.

THE EVIDENCE:

In Support of the Application:

- [19] The respondent provides a detailed account of the current arrangements under the court order, which was established four years ago. This order grants the petitioner physical custody of their children during weekends, with specific arrangements for when the children should be returned. The two children involved are ZG, who is about to turn 17 and has recently completed secondary school, and AG, who is 15 and currently in Form 4.
- [20] Presently, the children live full-time with the respondent, except during the specified weekends when they stay with the petitioner. The respondent has taken on full financial responsibility for the children's needs, although he continues to receive some support from family due to financial difficulties. These difficulties stem from accumulated debts and the long-standing issue of trying to sell their property in Bonne Terre, which has been on the market for 5-6 years.
- [21] The respondent highlights an agreement between the parents to return to the UK to provide better educational opportunities for the children. According to UK policy, students must physically reside in the country for at least three years prior to attending university in order to qualify for domestic student rates. The respondent plans to return to the UK for work, which would allow him to support and oversee the children's education. He has arranged for the children to begin attending Bridgewater School in Manchester starting in September 2024.
- [22] However, the petitioner opposes this move, voicing concerns about her access to the children, their academic performance, and the absence of counseling. She argues that delaying the move will not harm the children's educational prospects. In contrast, the

respondent believes that relocating now is essential for the children's educational progress and future opportunities in the UK. He asserts that delaying the move could adversely affect ZG's A Levels and AG's O Levels. Moreover, the respondent notes that the petitioner has not offered any viable alternative plan for the children's education and future.

- [23] The respondent underscores that the primary purpose of this application is to prioritize the children's needs and well-being, not to alienate the petitioner.

In Opposition:

- [24] The petitioner, in her affidavit, expresses strong opposition to the respondent's plans. She first argues that the respondent intends to remove the children from the jurisdiction without valid reasons, which would effectively deprive her of her maternal rights. Although the respondent has mentioned paying for a one-way trip for the children to visit her, she notes that this arrangement seems to be conditional on his employment status, offering her no real guarantee.
- [25] She corrects the respondent's affidavit on a few points, such as the fact that ZG has completed CXC Examinations, not GCSEs. She also challenges the respondent's claim of being the sole breadwinner, pointing out that the financial support he receives comes from family members who do not live in Saint Lucia. Additionally, she expresses doubt about the respondent's claims regarding the property in Bonne Terre, noting that she was unaware it had been on the market for so long and had not seen any advertisements for its sale.
- [26] The petitioner also disputes the respondent's assertion that it was always assumed the children would return to the UK for their education. She explains that their decision to leave the UK was primarily motivated by a desire to be closer to their aging parents, a fact that the respondent has frequently reiterated, as evidenced in previous statements and social services reports.

[27] The petitioner is particularly concerned about the children's declining academic performance over the past few years. Despite extra lessons, ZG's grades have significantly decreased since attending St. Mary's College, and AG's performance has consistently been below expectations. She fears that relocating the children to the UK will leave them without adequate support, as they will only have one parent present. Furthermore, she questions the respondent's financial plans, stating that he has not been transparent about his current job status or the financial support he claims to receive.

[28] The petitioner also reveals that the respondent did not consult her regarding the application to Bridgewater School or the relocation plan in general. She was unaware of a trip to the UK in August 2023, which the respondent described as a vacation but was actually related to school matters. She points out that the acceptance letter from Bridgewater School indicates that ZG's enrolment is contingent on his CXC results, and not guaranteed by his past GCSE performance.

[29] She disputes the respondent's claims that she has not discussed the children's future with them, explaining that she has talked to them about their education and career aspirations. However, she acknowledges that her limited time with the children (four days per month) restricts her ability to more fully guide and influence these discussions. The petitioner argues that the respondent has made unilateral decisions regarding the children's future without proper consultation.

[30] ZG is currently enrolled in an airline course in Trinidad, which the petitioner believes he should complete before considering any move to the UK. She suggests that scholarships for university could be pursued based on his results. The children's interest in relocating to the UK only developed after their August 2023 visit, the true intent of said trip having been kept secret from her.

[31] The petitioner further asserts that the respondent has excluded her from important decisions regarding the children's education and has only recently become involved in

their secondary school education. She claims that he often cites financial constraints but fails to consider scholarship opportunities. Moreover, she is concerned that once the children leave Saint Lucia, her access to them will be even more significantly limited, with visits potentially always being at her expense. This she foresees will be a challenge given her financial resources.

[32] She also raises concerns about AG being fast-tracked through her secondary school education, which could have negative consequences if the move occurs prematurely. The petitioner believes that if AG remains in Saint Lucia, she will be better off staying with her mother rather than moving to a new environment. She is worried that switching education systems at this stage could be detrimental to the children's academic and emotional well-being.

[33] Finally, the petitioner accuses the respondent of undermining her relationship with the children by portraying her negatively and isolating them from her. She also claims to have received information that the respondent has undisclosed medical conditions and has been receiving treatment in Trinidad. She fears for the children's welfare if the respondent's health deteriorates while they are in the UK.

In Reply:

[34] In his reply, the respondent clarifies that he never instructed the petitioner to stay home with the children; rather, it was a mutual decision made after considering the cost of babysitters versus her salary. He emphasizes that the petitioner had the autonomy to decide whether to stay home, and she was never restricted by him.

[35] The respondent also shares that he secured a full-time remote job with Xzander Contractors in Trinidad earlier in the year, earning a monthly salary of USD 6,000/£4,800, with the potential for salary increases. He plans to continue working remotely while seeking employment in the UK, where he intends to use his savings and family support to fund the first year of the children's education.

[36] He provides details of his monthly budget, which includes his salary of £4,800, with additional funds expected from Child Tax Credits, though the amount is unknown. His estimated expenses cover rent, utilities, food, and savings. The respondent asserts that he does not intend for any family members to care for the children, as he is confident in his ability to secure UK employment and focus on their education.

[37] The respondent explains that the trip to the UK, initially planned by his brother, was intended to explore schools for the children. During the trip, they stayed with a friend who had to leave for a vacation, requiring alternative arrangements to be made. The respondent was solely responsible for the children during this time.

[38] He also notes that after the trip, he attempted to discuss future plans with the petitioner, but she declined to engage in the conversation. The respondent dismisses the petitioner's concerns over his health, stating that he has no debilitating health issues. He acknowledges a pinched nerve and a sleep study but asserts that these conditions do not affect his ability to care for the children.

[39] The respondent argues that the timing is ideal for the children's move to the UK, where ZG and AG wish to pursue their university education. He stresses that they need to reside in the UK for three years before university to benefit from British student status. ZG, nearing adulthood, should be allowed to follow his career aspirations, while AG could face difficulties if she were to switch schools mid-program.

[40] He emphasizes that supporting the children's educational goals is of paramount importance, and any alternative plan would be detrimental to their future. The respondent claims to have made significant efforts to improve the children's grades, despite resistance from the petitioner, whom he says has not been supportive of these efforts.

[41] Regarding the choice of Bridgewater School, the respondent highlights its reputation for strong support and potential scholarship opportunities. Despite the challenges, he

remains committed to improving the children's academic performance and securing opportunities for their future.

[42] Finally, the respondent rejects the petitioner's accusations of being kept in the dark, asserting that any lack of information is due to her own choice not to be involved in the decision-making process.

The Expert, Dr. A. Cooper:

[43] The psychological evaluation report centers on the family, particularly focusing on the children, ZG and AG, amidst their parents' ongoing legal battles following a divorce. The evaluation was initiated to assess the need for counselling and support for co-parenting, given the strained family dynamics.

[44] The assessment involved separate and joint interviews with the children and their parents. ZG and AG, were found to be significantly affected by the prolonged conflict between their parents. The report reveals that both children have developed coping mechanisms to deal with the emotional stress, though some of these mechanisms may not be entirely healthy. For instance, ZG has become more withdrawn, while AG shows signs of anxiety and frustration.

[45] A key issue highlighted in the report is the strained relationship between the children and their mother. The children expressed feelings of being misunderstood and unsupported by their mother, contrasting this with a stronger bond with their father. Both children expressed a strong desire to move to the UK with their father, citing reasons related to their academic futures and personal well-being. They believe that moving to the UK would provide a fresh start and relieve them from the ongoing tension at home.

[46] The report underscores the psychological impact of the legal proceedings on the children, emphasizing that the unresolved issues between the parents are causing significant emotional harm. Although the report stops short of making a specific

recommendation about whether the children should relocate to the UK, it stresses the need for a timely resolution to the legal matters to prevent further psychological damage.

[47] Ms. Cooper has recommended a parallel parenting arrangement, in which both parents would have equal access to and time with the children. Her report highlights several concerns, particularly regarding AG. She notes the detrimental effects on AG, including her poor academic performance, the reversal of traditional parent-child roles, and the overwhelming responsibilities that have been placed on her. Ms. Cooper also mentions that AG's perception of her mother has been negatively influenced by information provided by her father, leading to a lack of respect and an unfair characterization of her mother. Furthermore, Ms. Cooper asserts that merely transferring AG to another school will not be sufficient to address these issues, even with the introduction of new programs.

[48] The evaluation concludes with a call for continued psychological support for the children and suggests that a focus on their emotional and mental well-being is paramount in resolving the family's disputes. The report highlights the complexities involved in such cases, where the best interests of the children must be balanced against the legal rights and emotional needs of both parents.

ANALYSIS:

[49] **Section 42 (1) of the Divorce Act**¹ of the Laws of Saint Lucia (the Act) gives the Court the power to make such order as it thinks fit for the custody and education of any child of the family who is under the age of 18.

[50] In **F v L (Child Arrangements Order: Relocation)**² it is stated:

“48 In every case, whether in the private or public law jurisdiction, **the court's ultimate task is to identify the available options, and to select the one that best meets the child's welfare needs.** The fact that one option would involve the child

¹Cap. 4:02 of the Laws of Saint Lucia

²[2018] 4 WLR 141

moving overseas does not lead to any difference of approach. This is made clear in the recent authorities:

“Each realistic option for the welfare of a child should be validly considered on its own internal merits (ie an analysis of the welfare factors relating to each option should be undertaken). That prevents one option (often in a relocation case the proposals from the absent or ‘left behind’ parent) from being sidelined in a linear analysis. Not only is it necessary to consider both parents’ proposals on their own merits and by reference to what the child has to say but it is also necessary to consider the options side by side in a comparative evaluation. A proposal that may have some but no particular merit on its own may still be better than the only other alternative which is worse.” (In re F (A Child) (International Relocation Cases) [2015] EWCA Civ 882; [2017] I FIR 979, para 30, per Ryder U, endorsed at para 50 by McFarlane U.)

“...the only test that the court applies is the paramount principle as to the welfare of the child. The application of that test involves a holistic balancing exercise undertaken with the assistance, by analogy, of the welfare checklist, even where it is not statutorily applicable. The exercise is not a linear one. It involves balancing all the relevant factors, which may vary hugely from case to case, weighing one against the other, with the objective of determining which of the available options best meets the requirement to afford paramount consideration to the welfare of the child.” (In re C (A Child) (Centre for Family Law, Policy and Practice intervening) 12015] EWCA Civ 1305; [2016] Fam 253, para 82, per Vos LJ.)

[51] For more than half century ago, the then final appellate Court of this jurisdiction has said that when considering the issue of custody and removal of an infant from one country to another; “In questions of custody the welfare and happiness of the infant is the paramount consideration, to which all other yield,...”; **Mc Kee v Mc Kee**³.

[52] The principles in **Mc Kee** which was embodied in the **United Nations Convention on the Rights of the Child** which was ratified in Saint Lucia on 16 June, 1993 and 11 June, 2020 which Article 3.1 provides that: ‘In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative

³[1951] AC 352

authorities or legislative bodies, the best interests of the child shall be a primary consideration.’

[53] D’auvergne J in **Hodge v Hodge** ⁴in considering the factors relevant to the welfare of the child and drawing comparison to section 3 of the UK Children Act stated that: “much weight is now given to the child’s sex, age, his physical, emotional and educational needs, the likely effect on the child with regard to any change in his circumstances and any harm he or she may be at risk of suffering as a result of the change.”

[54] The above principles have, through various decisions evolved into the welfare checklist. A non-exhaustive list of principles to be considered in custody cases, which I adopt, was set out in the case of **Durity v Benjamin** ⁵ as:

- a. Behaviour and characteristics of the parties
- b. Child's education
- c. Whether the child is suffering from any serious illness
- d. Accommodation and material advantages
- e. Satisfaction of the child's basic needs
- f. Whether the custody application is bona fide or not
- g. Wishes of the parent and if possible, wishes of the child
- h. Sex and age of the child and ages of the parents
- i. Religion of the child
- j. Happiness of the child
- k. Future prospects of the child if custody granted to one parent
- l. Question of access to the unsuccessful party, co-operation between the parents to facilitate access
- m. Whether the new partners of the parents will be amenable to looking after the child

⁴ SLUHMT2002/0022 (unreported)

⁵ HCA 1596 of 1993 (unreported)

[55] Removal of a child out of the jurisdiction is a more difficult position than obtains in a custody order as it might in practice cut off contact with the other parent. For this reason, the Court is generally cautious in the making of such orders. While the move may be in the child's interests and is well worked out the court may consent, precedent has no role in the decision as each case must be approached on its own facts and merits; See **Chamberlain v de la Mare**⁶; and **Lonslow v Hennig**⁷.

[56] In relocation cases there is a presumption as set out in **Pole v Pole**⁸ requiring a well worked out plan for emigration by the carer/leaving parent.

[57] If the Court is satisfied that the plan for the emigration is in the best interest of the child the Court may still refuse leave if the move is plainly contrary to the child's welfare (**Re H** (Application to Remove from the Jurisdiction))⁹

[58] In considering any conflicts between the rights of the parents and the child, any right of the parent in conflict must give way (**P v P**)¹⁰.

[59] From the cases, it can be gleaned that the key to a successful application is that the applicant parent should have a well-thought-out plan for the children and where it is intended to take them, and the applying parent must have had a good relationship with the children and an established satisfactory lifestyle for them.

[60] The options available to the children at this point:

- 1) **Option 1** – ZG stays in Saint Lucia, continuing to live with his father, he attends community college in Saint Lucia or does an Air Traffic Course in Trinidad (where he has his extended family) and leaves for the UK when he turns 18.

⁶ [1983] 4 FLR 434

⁷ [1986] 2 FLR 378

⁸ [1970] 1 WLR 1469

⁹ [1998] 1 FLR 848

¹⁰ (2001) unreported, 9 March, CA

During this time, he accesses some psychological help and rebuilds a proper relationship with his mother. AG stays in Saint Lucia, continuing to live with her father, complete her CXC exams, accesses professional help, attempts to recoup her grades and prepares to emigrate in a year once their father by then has presented a solid plan.

- 2) **Option 2** – ZG goes to the UK, enrolls in a new school, adjusts to a new life, and hopes to pass the exams to attend pilot school in 3 years when he can access full funding at domestic student rates. AG transfers to a UK school before she finishes CXC, assuming she would be accepted into a UK school where she would receive individual attention, which would hopefully assist her in recovering from her declining grades.

[61] Although the test for permanently removing the children from one jurisdiction to another is a different test from custody, the both options are considered and compared using the welfare checklist.

Behaviour and Characteristics of the Parties:

[62] The respondent has portrayed himself as proactive, providing financial support, and seeking the best educational opportunities for his children. He claims to be diligent in trying to improve the children's academic performance and shows commitment to their future by planning their move to the UK. He appears determined to secure his children's future. However, he admits to having a pinched nerve and minor health issues but insists they do not incapacitate him.

[63] The petitioner expresses concerns about the respondent's intentions, questioning his financial stability and ability to provide for the children. She is worried about her access to the children and feels excluded from important decisions. She appears cautious and concerned about the potential negative impacts on the children's education and well-being. She also highlights issues related to academic performance and financial transparency.

[64] Neither party was cross-examined. The allegations on both sides are concerning. Having spoken with both children, it is clear that the children, and more so AG, are closer to their father. Quite concerning is that AG was quite familiar with everything described in her father's affidavit. AG was able to describe, in sequential order, the incidents her father alleges and concludes to have been her mother's doing. More concerning is that she did this in an unsolicited manner.

[65] This Court was left to draw the inescapable conclusion that AG was coached to say things to support her father's position or that AG felt the need to choose a side and support her father. Whether this unfortunate occurrence was done consciously or unconsciously, it can do her no good to be so involved in the business of her parents' marital and parental discord.

[66] As stated by Tom Stoppard, British playwright and screenwriter: "Because children grow up, we think a child's purpose is to grow up. But a child's purpose is to be a child." Children ought not to be so involved in their parents' fights as to be able to repeat verbatim the contents of any party's affidavit. This court felt it was conversing with the parent through the child.

[67] Through the conversations, the court formed a negative view of the respondent's behaviour and characteristics. The court got the impression that he is overly zealous and will spare no cost to have his way in getting what he alone thinks is best for the children. It seems to be all about him and his support system, his family. Even to the point that his brother seems to have had more input in the children visiting and considering schools in the UK than the petitioner, the mother of the children.

[68] Whilst a weak excuse of the petitioner being unwilling to communicate with him was put forward, surely there can be no merit to this as he well knows as does the petitioner how to communicate through their attorneys. They have been doing that for the past five years. I find absolutely no merit in the respondent's explanation for failure to include the petitioner in material aspects of the children's lives. Perhaps he needs to be reminded that

the parties share joint custody of the children and he does not have sole custody of these children. Still further the course of the proceedings and the orders made, as detailed above, show that the respondent was well aware of the need to secure the petitioner's consent for the children to be removed from the jurisdiction of Saint Lucia. That discussion with the petitioner ought to have been initiated by him and certainly before any expectation had been inculcated within the children as to a possible relocation to the UK in the very near future.

[69] I also note that both children of the family see and spend time with the petitioner for only four days a month. In addition to being wholly inadequate, it also serves to alienate her from the children's lives during their transition into being teenagers and now young adults, a time when they need the input of both parents.

[70] The issues now affecting the children and their relationship with their mother will not repair themselves or disappear if they move to a different place. In my view, that fractured relationship needs to be addressed now so that if the children do move to the UK in the future and need the additional support of their mother, they are able to access it.

[71] At present, I get the impression from speaking with the children, the evidence and the expert report that the father is idolized and the mother is demonized. This may be due to their own experiences or the overexposure to their father and underexposure to their mother, but this is not a good starting point for any new ventures, and certainly not for moving to the UK.

[72] Since the breakdown of the marriage, the children's main support has been their father. They have not bridged the gap in repairing the relationship with their mother, given that she is no longer with them physically as much as their father. This, in my view, is a major problem which has caused them to be very aligned with whatever their father wants and very opposed to their mother's views. This application is not their avenue to escape their mother.

Children's Education:

[73] Currently, ZG has just finished CXC exams and is expected to start A Level studies. He has not received his results and everything that is proposed is on an assumption that he will do well in his CXC's. There are concerns about his academic performance decline, with grades dropping from the 80s to the 60s. This is cause for concern for this Court. If anything, this child has regressed since the divorce in his education. After being with his father for five years, his performance has not improved; it has deteriorated.

[74] The respondent's proposal for the child to pursue education in the UK to qualify for domestic British student rates is commendable but lacks practicality. If the child is not doing well at his current school, moving him, in my view, to another country, another culture, and another educational system with the support of only one parent and no extended family in the UK cannot be in his best interest. More so as the Respondent will himself have to cope with his own relocation issues as he has not resided in the UK for many years. Whilst ZG is a British citizen, he was moved from the UK before he started school. He has no appreciation of the school system, the culture, or any support in the UK, whereas he has those benefits in Saint Lucia and also in Trinidad, where his extended family on both sides live.

[75] There is no proposal or plan to ensure that ZG can regain his average of 80s before the divorce. No specific reason for the drop-in performance has been given. Again, taking him to the UK cannot, in my view, fix this.

[76] AG is in a similar but worse position to ZG concerning her education. She too is barely maintaining the 50% range. Whilst the respondent argues that Bridgewater School will assist her in regaining her academic standing, he does not explain why, after being with him for five years as her primary carer and being subjected to a regimented lessons regime, her academic performance has regressed rather than progressed. He must take the bulk of the responsibility, if not all, for these children drastically regressing after the divorce and since being in his care as the primary carer.

[77] He has not satisfied this court that the option of moving the children to the UK is in their best interest regarding their education. He has not shown that taking them to a place with less of a support system in terms of family and familiarity will assist them or alternately, how that aim can be achieved.

[78] I am not convinced that a school in the UK with a proposal to work with AG on a one-on-one basis to regain her academic standing is the sole or best solution to her declining academic performance. He has not shown that this cannot be achieved in Saint Lucia or that it can be better done in the UK. This is notwithstanding that there is no evidence that the children have been accepted into the school. The only fact that has changed since her entry into secondary school is the relationship between her parents. The natural inference is that the breakdown of this relationship has something to do with her academic performance. The issues surrounding her performance do not, in my view, appear to be attributed to the school, the teachers, or her ability. They can only be attributed to the effect of the divorce on this child. That is an issue that does not require moving to the UK to fix.

Whether the Children are Suffering from Any Serious Illness:

[79] There is no evidence that either child is suffering from any serious illness. The focus is on their educational needs and financial implications rather than health issues.

[80] There is however an issue of the respondent's health. Though the respondent has played down the incident referred to by the petitioner in her affidavit, he has provided no medical evidence to convince the court that he does not have underlying medical conditions. The court makes no finding on this issue save that the absence of medical evidence leaves the court unconvinced that respondent is in good health as he alleges.

Accommodation and Material Advantages:

[81] The respondent's plan is to move back to the UK, where he intends to secure rented accommodation. There is no indication of what type of accommodation this will be. The

respondent plans to pay rent from his earnings from a consultancy contract he commenced on 8 January 2024, which is addressed further below.

[82] In my view, something more evidential must be placed before the court. The applicant seeking such an order must provide cogent evidence to the court on:

- 1) Where the children will be staying, in the short and long term?
- 2) How accommodation will be paid for?
- 3) What the layout of the house will be?
- 4) Whether the facilities and comforts will be comparable to that which the children have become accustomed?
- 5) The character of the community where the children are sought to be taken?
- 6) Whether the standard of accommodation the children are used to will be maintained, improved, or lowered, and if lowered why?
- 7) What is the proximity of possible home to school?
- 8) Transportation to and from school, and possible extracurricular activities how will that be managed?

[83] At present, the children live and have lived for most of their lives in a house with all modern facilities. The intended accommodation is not described, nor is there any indication of what type of rental accommodation is expected. Apart from saying that they will reside in Cheshire whilst schooling in Manchester, quite a distance away, the respondent has not given the Court information on the precise location of the residence of the children.

[84] The court has not been provided with any evidence from which it can determine whether the accommodation arrangements for the children are or will be satisfactory.

[85] The material advantage of the children moving to the UK is that they would be able to access student rates for UK citizens. The caveat is that they would have to wait three years to access these rates. This means, regardless of whether they move to the UK

now or not, by the time they qualify for the benefit their father seeks to secure, they would both be adults.

[86] No doubt they would also have access to more services and facilities than they have in this jurisdiction. There is no doubt that the children would enjoy material advantages by moving to the UK. However, do those possible material advantages outweigh the possible disadvantages?

[87] Where the material advantage in the near future falls short is that neither child has been accepted by any school in the UK as yet. The respondent's application seems to be premised on ZG obtaining certain grades in his CXC and being accepted. Similarly, there is no acceptance letter provided for AG. It is not indicated what the minimum grade point average or other standard required for admission to the intended school is. There is simply no evidence on this issue in relation to both children.

Satisfaction of the Children's basic needs

[88] At present, the respondent provides financial support and plans to cover educational expenses in the UK. He highlights support from family for additional needs. The court has some concerns regarding the secrecy with which the respondent has handled his financial position in his evidence and the authenticity of his alleged employment with Xander Contractors Limited.

[89] The court does not attach much weight to the job letter as proof of the respondent's earnings. The letter refers to the respondent being employed with Xander Contractors Limited as a full-time consultant earning a monthly consultancy fee of \$500 USD per hour, with a minimum of 12 hours per month. That amounts to \$6,000 USD per month, or approximately \$40,600.00 TT per month, yet the letter does not mention any deductions for taxes or National Insurance Contributions or Health Surcharge. This fact may suggest that he is engaged by his employer as an independent contractor but if that were the case, he ought not to be described as a 'full time' consultant.

[90] In relation to the financial position of the respondent, the court has been provided with no evidence of his salary and the actual receipt thereof his savings or available financial resources his expenses, the children's expenses, the children's anticipated expenses, or the extent of the financial support he claims to receive from his family. I find his evidence on his financial position to be too scant to be credible. It is apparent that he has finances available to meet the children's expenses. His secrecy surrounding his finances leads this court to be unable to determine that he can financially support the children in the UK.

[91] While he asserts that he can meet the children's expenses for one year, he has no plan or projected figures for their expenses, including tuition fees. All that is provided are figures for types of expenses without details of how these figures were calculated and not a single supporting document. The respondent himself has also not resided in the UK for many years and he will have adjustments of his own to navigate, inclusive of coming to grips with the general cost of living in the UK. Does he have the wherewithal at this point to say what it will cost? Not just accommodation but utilities, services, transportation, food, clothing etc.

[92] The petitioner has accepted that the respondent is financially responsible for the children. Her evidence is that there was an agreement between them that she would leave her job as a bank teller in the UK to look after the children. This she attributes to her current financial position not being as strong as she expected it to be. Additionally, these parties have been engaged in an antagonistic battle over the division of matrimonial property for years, which has only been interrupted by this application.

Whether the Custody Application is Bona Fide

[93] The respondent claims his application is to prioritize the children's educational and future needs, rather than to alienate the petitioner. His intent appears genuine. However, in my respectful view, he falls short because his evidence fails to disclose a detailed plan for their education and living arrangements. Additionally, the benefit the respondent seeks

to obtain only accrues to the children three years from their residency in the UK. By that time, both children would be over the age of 18.

[94] While the petitioner doubts the sincerity of the application, suggesting that the respondent might be trying to remove the children from the jurisdiction without valid reasons, and is concerned about how the move will affect her maternal rights, these concerns are valid but not determinative of this application. The law is clear that the rights of the parents must yield to the rights of the children where they are in conflict.

Wishes of the Parent and, if possible, wishes of the Child

[95] The respondent wishes to move the children to the UK for better educational opportunities. He argues that the children's desires align with this move, particularly ZG's ambition to pursue a career that benefits from being in the UK.

[96] The petitioner opposes the move, citing concerns about the children's academic performance and well-being, and feels the decision has been made unilaterally by the respondent without sufficient input from her, with the possibility of some parental alienation having been involved.

[97] The court is of the view that both parents have the best interests of the children in mind. However, the respondent seems to have gone ahead, discussed moving to the UK with the children, taken them to the UK, looked at schools, and created an expectation that this move is a done deal, all without consulting the petitioner.

[98] The wishes of the parents are secondary to the wishes of the children in this case. The wishes of the children just happen to align with the respondent's wishes.

Sex and Age of the Children and Ages of the Parents

[99] ZG is 16 years old, male, and very reserved. AG is 15 years old, female, and very outspoken. NG is approximately 47 years old. VG's is one year younger than NG.

Religion of the Children:

[100] No specific evidence has been provided regarding the religion of the children. The focus is primarily on their educational and living arrangements.

Happiness of the Children:

[101] NG suggests that moving to the UK aligns with the children's expressed wishes for their future and could lead to greater opportunities. VG raises concerns about the children's current happiness and their adjustment to a new environment, suggesting that the move might not be in their best interests.

Future prospects of the Children if custody granted to one parent:

[102] The respondent believes that moving to the UK will provide better educational and career prospects for the children, including access to scholarships and programs suited to their aspirations.

[103] The petitioner fears that the move could negatively impact the children's academic performance and overall stability, and questions whether the transition will be smooth given their current educational standing.

[104] I am inclined to agree with the petitioner. There is no evidential basis, including expert evidence, to suggest that the move could improve the children's academic performance and overall stability.

Question of access to the unsuccessful Party:

[105] The respondent proposes regular access arrangements, though the petitioner's concerns about the costs and practicality of maintaining access from the UK remain.

[106] The petitioner worries about the practicalities and costs of maintaining access to the children if they move to the UK, and expresses dissatisfaction with previous assurances from the respondent regarding access.

[107] The current access arrangements are wholly inadequate. While the respondent argues that the petitioner could have approached the court and sought a variation, I find that the same argument could be made against him regarding this application.

[108] An application such as this requires a solid plan. It is not an application that ought to be made two weeks before the close of term with the expectation that it would be heard and disposed of in time to move the children to the UK six weeks later.

[109] Access to the petitioner, if the children are moved, will definitely be more strenuous and less than it is now. This is certainly not in the best interests and welfare of the children, particularly AG. There is an urgent need to repair that relationship. The Court also has to consider the 2 prior filed applications by the petitioner alleging breaches of the court orders for delivery up of the children, upon one of those applications a finding of breach was made against the respondent.

Whether the New Partners of the Parents Will Be Amenable to Looking After the Children:

[110] No specific evidence has been provided about new partners and their willingness or ability to care for the children. The focus remains on the current arrangements and proposed changes.

CONCLUSION:

[111] The respondent's proposal to move the children to the UK is based on providing them with better educational opportunities and aligning with their expressed desires. The UK move offers potential benefits such as British student rates and access to specialized programs. However, his evidence of the viability of the move is insufficient to convince this court that the move is anything but rushed. Additionally, the benefit he seeks accrues three years from their residency in the UK, by which time they would both be adults.

[112] The petitioner's concerns about the children's current academic performance, mental health, and the impact of moving countries are valid. The transition could be challenging, and the children's adjustment needs to be considered. This does not favour moving them at this stage.

[113] The court must balance the educational advantages of the UK move with the potential disruptions to the children's current stability and academic performance. The best course of action would be to ensure thorough psychological intervention and assess the children's emotional and psychological readiness for the move when AG completes her CXC's next May, as proposed by the petitioner.

[114] In the interim, the parties must maintain robust access arrangements to ensure that the petitioner remains actively involved in the children's lives.

[115] Accordingly, the application is refused and stands dismissed.

[116] The Court is concerned that its prior directions regarding co-parenting and counselling has not been carried out. The Court is also of the view that the current access arrangements between the children and the petitioner is wholly inadequate to foster improved relations between the children and their mother. However, the parties need to make the effort to improve that situation, hopefully in a consensual manner to ensure the emotional wellbeing of the children. The Court intends under its inherent protective jurisdiction, as *parents patriae* to direct the parties to submit a full and proper parenting plan that takes into account psychological assistance for both children in conjunction with co-parenting counselling, with a view towards increasing access to the petitioner in the shortest possible time, once recommended by an appropriate expert.

[117] There is no good reason to depart from the general rule that costs follow the event. This is not an application governed under the Civil Procedure Rules costs regime. The respondent shall therefore pay the petitioner's costs of this summons to be taxed by the Registrar of the High Court in default of agreement.

ORDERS:

[118] It is hereby ordered that:

- 1) The respondent's summons filed on July 11, 2024, is dismissed;
- 2) The respondent shall therefore pay the petitioner's costs of this summons to be taxed by the Registrar of the High Court in default of agreement within 21 days of the date of this judgment;
- 3) The Registrar of the High Court is to notify the Chief Immigration Officer of Saint Lucia of this order;
- 4) Neither party is at liberty to take either child out of this jurisdiction without first obtaining permission from this court.
- 5) Pursuant to its inherent protective jurisdiction, as parents patriae the Court direct the parties submit a full and proper parenting plan that takes into account psychological assistance for both children in conjunction with co-parenting counselling, with a view towards increasing access to the petitioner in the shortest possible time, once recommended by Dr. A. Cooper or an appropriate expert within twenty – one days of the date of this order.
- 6) The Registrar of the High Court is directed to seal and issue the order following this judgment to the parties without it being anonymized.



**Alvin Shiva Pariagsingh
High Court Judge**

By the Court,

Registrar