

**EASTERN CARIBBEAN SUPREME COURT
TERRITORY OF THE VIRGIN ISLANDS**

**IN THE HIGH COURT OF JUSTICE
(CIVIL)**

Claim No. BVIHMT 2023/0006

BETWEEN

CHARLOTTE BRODIE

PETITIONER

AND

HENRY BRODIE

RESPONDENT

Appearances: Marie Lou Creque for the Petitioner
Mrs. Asha Johnson-Willins for the Respondent

2024: January 17th

ORAL DECISION

[1] **YOUNG J:** Before us is a family of four. A mother, a father and two minor children - one girl and one boy. While there are other matters for consideration, the primary issue before this court is whether the father should be allowed to remove the two minor children now aged 6 and 2 from this jurisdiction for relocation to the United Kingdom. This application was not only made for the purpose of education as submitted by the Petitioner. That is rejected wholesale. Having looked at the “application” and the affidavit in support, I cannot find this to be so. The statement relating to education was simply a timeframe set for when he hoped the application would be heard.

[2] When the circumstances are all considered it will be realised that this case was not the easiest to decide. In most material ways the field is almost level but the wishes of the parents diverge so that

the court is called upon to craft a solution. Cumming Bruce LJ in **Clarke-Hunt v Newcombe**¹ stated that “there was not really a right solution; there are two alternative wrong solutions. The problem for the judge was to appreciate the factors in each direction and to decide which of the two bad solutions was the least dangerous, having regard to the long term interest of the children.”

- [3] This Court must meticulously weigh and balance the relevant factors including the rights and wishes of the parents, while making no presumptions about the applicant in its effort to determine which solution is in the best interest of these two children. Two children whose own views are unknown to this court. What is accepted is that they are entitled to a stable home with the love and support of both parents.

The circumstances as the Court finds them:

- [4] The members of this family are all British citizens, born in the UK. They all lived solely in the UK before the move to the BVI. They ventured to the British Virgin Islands (BVI) in pursuit of a job transfer offered to the Respondent by the company with which he worked. The Petitioner was at first reluctant to come but eventually acceded. Both parties were well aware that the posting was temporary and the family would return to the UK after 1 to perhaps 5 years.
- [5] The marriage seemed to crack a mere 8 months after the family moved to the BVI. The parties began a trial separation by living physically apart in August 2022 and they both signed a Parenting Agreement that same month. The children shared time with both parents alternating each week except when the Respondent traveled for work. Then, the children, particularly the older of the two, were allowed to video chat with him. This arrangement appears to have worked for both parents.
- [6] A decree nisi was granted in April 2023.
- [7] The Petitioner has grown to love being in the BVI. She wishes to remain here with the children who are well adjusted and thriving. The Respondent has intentions of relocating to the UK and seems to have started the process. He says his place of employment has recalled him to the UK as had been expected. The Court found this to be true.

¹ (1982) WWGA Civ J1019 - 1

- [8] When the application for ancillaries was made in June 2023 the family would have been in the BVI for less than two years. This meant that the majority of the younger child's life has been spent in the BVI while the older child moved from being a toddler to her early mid childhood here.
- [9] Both parents agree that the other loves the children. There is no doubt in my mind that they do. The Petitioner is the primary caregiver but the Respondent also spends significant time with the children. He places it at 45%, the mother says that is an inflated figure. She often has to assist the father even when the children are in his care. She, however, relies on external assistance with care. There is a nanny employed for two days for the younger child who attends nursery three days a week. The older child attends primary school but infrequently stays at an overnight nursery facility when she wishes to and there are other children there whose company she enjoys. The Respondent has some difficulty with the quality of the nanny's care and would prefer the better and cheaper option of daycare.
- [10] There is nothing presented which makes the daycare in the BVI better than a daycare facility in the UK. The younger child has also learnt to be without the nanny on the days he attends nursery. In any event it is expected that the nanny would have been phased out as he agreed. There is nothing before me which indicates that primary or any schooling in the BVI is better or superior to that provided in the UK. While there were witnesses who preferred the BVI system, that seemed more to be a personal preference than any finding based on a thorough analysis of both systems and institutions under consideration.
- [11] What the court also considers is that the older child in particular would have forged friendships at and become accustomed to that particular primary school. But even so, at the tender age of six, it may not be terribly traumatic to change schools if there are other constants in her life. Children are more resilient than we sometimes think and technology has made communicating and maintaining friendships far easier than it used to be.
- [12] Both children are healthy. The younger seems to have some speech difficulties and requires therapy. It matters not who sought out the referral or whether the referral was simply given by the pediatrician. What is important is that there is nothing before me which indicates that the required therapy is not

available in the BVI or that the therapy available in the UK is more readily available or superior in some way. The child will have access to any help he needs in both places.

[13] Both parents are well educated and contributed financially to the maintenance of the family. The father was the primary breadwinner. The family enjoyed a good standard of living before the breakdown of the marriage. Since the breakdown the Court accepts that the Respondent has not provided as well as he should have.

[14] The Petitioner's job in marketing is flexible and could be done from any part of the world where she resides. In fact, when she arrived in the BVI such was her work at that time that she was able to continue working when her maternity leave ended. She was eventually made redundant but has now secured a job in the BVI with a digital marketing business where she hopes to be made a shareholder. She has her own work permit but admits that even that job could be done from outside the BVI. Her relocation will not be a sacrifice of her career.

[15] The Respondent's job with a fund management company demands that he travel frequently and keeps him very busy. It becomes quickly apparent that the Petitioner spends more time with the children while the Respondent can not. He presented evidence from a number of his family members (including grandparents) of their willingness to assist him with child care if the children were to be relocated to the UK. These persons may very well love these children but they could not have forged the close bond which the children share with both parents. The Court also considers that this wide family network does not exist for the children in the BVI and there are advantages to having this supportive framework in place. In the BVI there is instead a small close group of friends with whom the Petitioner socializes with the children.

[16] **The Parenting Agreement:**

The Parenting Agreement is a comprehensive, reasonable and seemingly well thought out document. It is signed by both parties and although the Petitioner says she did not have the benefit of legal counsel she has never said that she did not sign voluntarily. This court accepts that the Parenting agreement did reflect the parties' joint wishes at the time. This included the acceptance that they would all relocate when the father's contract was completed and the family could return to

England together. It was stated therein that this was to facilitate continuity for the children and to ensure they were in a place with the largest support network, love and happiness.

[17] The Court also accepts that the mother should have been given three months notice before the anticipated move but the father failed to do this when he sprang his intention on her in December of 2022. He also attempted to withhold the children's passport on what began as only a vacation trip to the UK. This failure to give the requisite notice, however, is of very little moment at this time. Far more than three months have passed since this intention was made known. This court sees no reason in these proceedings to determine whether the agreement is legally binding since it must always act in the best interest of the child. What is certain, however, is that the agreement states quite clearly the joint intention of the parties and this must necessarily form an integral part of the court's consideration.

[18] **The motivation:**

The Petitioner is adamant that the father is controlling and his actions are most times intended to cause her to submit to his will. She points to his accepting a job which required relocation to another country while she was pregnant, his demand to move to the BVI while their first child was still young and their second only a newborn, his emptying their joint account once she filed for divorce, his refusal to contribute to paying his part of the mortgage, his subjecting her in the UK to a lie detector test against her will and his insistence to take the children back to the UK at this time.

[19] The Respondent on the other hand maintains that it was never the parties' intention to remain in the BVI. Their sojourn there was temporary and this Court agrees with him. His motivation is plainly to have the children return to the UK where they were born and would have been living but for his job in the BVI. I do not believe there to be any selfish motivation, he simply wants what they had both agreed to and had originally mutually expected. Even if the Petitioner did not return, the Respondent has proposed a workable and reasonable plan for the future. This plan includes the Petitioner's liberal access to the children and an offer to split the cost of her visits to the UK. He also offers scheduled video calls and shared access on important dates and school holidays.

[20] **The Solution:**

The impact of taking a child away from a parent even to live with another parent in the same country is great, far less a different country. The children are accustomed to living away from each parent for short periods of time but this move would be for extended periods and it will have verifying but serious reflects on both of them. It will also impact each parent either way. This court believes that in ordering one or other of a wrong solution the impact will be great for all.

[21] This court having considered all this is compelled to find, especially where the Petitioner admitted that she would more than likely eventually return to the UK and if an order was made for the children to be relocated she certainly would, that the children ought to be relocated to the UK. The children's welfare would be best met in the country where they were born and where both parents expected them to grow up, a country where they do not need a permit to remain or have to rely on friends only for support. In the UK they have a wide circle of family on both sides, they will have the equivalent education, medical attention and exposure to extracurricular activities. Different activities but same exposure. While they may miss friends, they will form new friendships and hopefully the shift will not be of a lasting or traumatic effect. This Court is also sure that the Petitioner will return with the children and she will arrange her affairs so that she can do this with as little disruption as possible.

[22] The Court will make orders which hopefully will support all the family members, especially the children, in an attempt to make this move easier.

The other issues

The vessel

[23] The Petitioner and the Respondent have both accepted that the Petitioner is to have the value of a 25% interest in the vessel and an order would accordingly be made. In my oral judgment I stated that the valuation in evidence before the Court would be used for the purpose of calculating the 25% interest. Subsequently, the Respondent raised in a letter to the Registrar that such a calculation may not be fair in the circumstances and it was certainly not what had been sought in the reliefs claimed by the Petitioner. The Court met with Counsel on both sides and requested written submissions on the matter as there was no consent between the Parties to a variation of any kind.

[24] Having considered these submissions the Court relies on **Re L and B (Children)**² and varies the initial order to the extent that a valuation is to be done of the vessel in order to calculate the value of the Petitioner's 25% interest. The Parties will share the cost of that valuation equally. The Petitioner also submitted that she should only be made to pay 25% of the valuation since the vessel is not to be sold. I am unable to understand or accept this position since there are only two parties before the Court. There is no fairness or reason to demanding that the Respondent, who does not own a 75% interest, should be made to shoulder such an expense.

The Vehicles

[25] Since the Court has decided that the children should be relocated the vehicles must be sold and the proceeds divided equally. However, until the children are relocated the jeep must remain available for their use as it is accepted to be the safer vehicle.

The UK Property

[26] Following admissions made by the Petitioner during trial, the UK property is to be sold and the proceeds shared equally between the parties less any outstanding loans. Such loans include the sum advanced to the parties by the Respondent's parents for the renovation of the UK property.

[27] It is therefore Ordered:

1. Joint custody is awarded to the Parties.
2. The Respondent is allowed to remove the two minor children from this jurisdiction and return them to the United Kingdom.
3. The relocation is to be done during the first two weeks of the summer vacation so that the female minor can be properly prepared for and enrolled in primary school. This also gives both parents an adjustment period which they would both require.
4. Pending relocation:
 - A. The Petitioner will have the primary care and control of the children with liberal access to the Respondent; the particulars of which are to be determined by the Parties.

² [2013] 2 ALL ER 294

- B. Maintenance is awarded to the Petitioner in the sum of \$400 per child per month.
 - C. Payment of this maintenance sum is to be made on or before the last working day of each month.
- 5. If the Petitioner moves to the UK with the children or within three months thereafter:
 - A. The Petitioner is awarded primary care and control of the children with liberal access and visitation by the Respondent; the particulars of which are to be determined by the Parties.
- 6. If the Petitioner does not move to the UK with the children or within three months after
 - A. The Respondent is awarded primary care and control of the children with liberal access and visitation by the Petitioner; the particulars of which are to be determined by the parties.
 - B. The Respondent is to bear 50% of her travel expense to visit with the children in the UK or 50% of the children's travel expense to visit with the Petitioner in BVI.
- 7. For the avoidance of doubt, if the Petitioner does not move when the children relocate the Respondent will have the primary care and control of the children from the date of the relocation until the three months have expired or the Petitioner arrives which ever is earliest. Thereafter, the provisions of paragraphs 5 or 6 of this order become operative.
- 8. Upon relocation each party shall be responsible for maintaining the minor children when they are in their care.
- 9. At all times the education and health expenses for the children are to be borne equally by the parties until they attain the age of 18 or complete the first stage of tertiary education.
- 10. Both vehicles are to be sold and the proceeds divided equally between the parties. Any Party may purchase a vehicle from the other upon an appraisal being done by an agreed appraiser if a figure can not otherwise be agreed between them.
- 11. The jeep must remain available for the use of the children until they have been relocated.

12. The UK property is to be sold and the proceeds shared equally between the parties less any outstanding loans. Such loans include the sum advanced to the Parties by the Respondent's parents for the renovation of the UK property.
13. The vessel is to be appraised by an appraiser agreed to by the Parties and the expenses associated with the appraisal is to be shared equally between the Parties.
14. The Petitioner is to be paid by the Respondent 25% of the value of the vessel Magic Moments 2. This sum is to be deducted directly from the Respondent's proceeds of the sale of the UK property. Any expenses incurred for the maintenance and repair of the vessel is to be borne by the Respondent.
15. The Parties have liberty to apply if they are unable to agree a schedule for visitation and access.
16. Each party shall bear their own costs.

**Sonya Young
High Court Judge**

By the Court

Registrar