



In The Supreme Court of Bermuda

DIVORCE JURISDICTION

2009 No: 213

LJS

Petitioner

-and-

DJS

Respondent

JUDGMENT

(In Chambers)

Mr. Cameron Hill, Counsel for the Petitioner

Petitioner Mother via video link

Respondent Father, appearing in person

Hearing date: 21st June 2017

Judgment date: 29 June 2017

1. In this judgment I shall refer to the Petitioner as “the Mother” and the Respondent as “the Father”.

2. These proceedings concern two children; a boy aged 13 years and a girl 10 years (collectively 'the Children'). They reside with their mother in France and enjoy regular access with their father in Bermuda.
3. By an application dated 23 March 2017 the Father seeks permission to remove the children from Bermuda for the purpose of a family vacation in Europe, during their scheduled 2017 Summer Holiday access with him.

Brief Background

4. By an Order dated 16th December 2011, the Supreme Court of Bermuda granted the Mother permission to permanently remove the Children from Bermuda and granted the Mother sole care and control of the Children, and accorded the Father rights of access to the children, to be agreed by the parties.
5. By Consent Order dated 10th May 2013 ('the Consent Order'), the parties agreed a regime of access for the benefit of the Children and the Father, which allowed the Father to exercise his rights of access in Bermuda.
6. On 30th March 2017 the matter came before me, at which time the parties voluntarily agreed to submit this issue of travel to the confidential mediation process.
7. On the 4th May, 2017 the parties requested a further two weeks to continue the mediation process.
8. Sadly, when the matter returned to Court on 24th May 2017, the Court was advised that the parties were unable to reach an agreement.

The Issue:

9. The welfare of children must always be the paramount consideration of the Court.
10. In this case, the Court essentially must determine whether the Father's proposed family vacation to Europe is in the best interests of the Children.

The Parties Positions:

11. The Father position is that he would like to travel with the Children via motor home, thorough various European countries. He is willing to provide the Mother with a detailed itinerary of the proposed travel.
12. Mr. Hill, Counsel for the Mother contends that the Consent Order expressly provides that the Father is to exercise access only in Bermuda.
13. Mr. Hill asserts that there is benefit to the Children in having access only in Bermuda, including strengthening of their cultural identity and opportunity to have an affective relationship with paternal family members.
14. Further and or in the alternative, Mr. Hill argued that the Father does not have any confirmed bookings to present to the Mother for consideration. Moreover, he contends that the Father's plan is ill-conceived pointing to , *amongst other things*, :-
 - the Father's lack of driving experience in Europe;
 - the high crime rate at camp grounds in Europe;
 - the poor health and safety standards at such camp grounds;
 - the risks of heat waves and terrorist attacks in Europe;
 - the inevitability of things going wrong during the packing and unpacking of the Children's belongings; and
 - The significant carsickness that the Children might experience.
15. In addition the Mother contends that the quality of the proposed vacation will not meet the educational and therapeutic needs of the Children at this time.
16. The Mother asserts that the Father ought to instead travel to the USA with the Children, and that a European Summer Holiday vacation would be best in 2018.

Findings:

17. I have considered the affidavit and oral evidence of the parties, and the submissions of the Father and Mr. Hill, Counsel for the Mother.
18. I have no doubt that the Mother and Father love the Children, but it is obvious that the breakdown in their relationship has been difficult, as neither the Mother nor the Father was completely able to detach their feelings and see the issue objectively.
19. Nonetheless, the Mother and Father seemed to be genuine.
20. I am satisfied that the Father has a history of regular compliance with the regime of access contained in the Consent Order save for an occasional lapse in accurate time keeping. In my judgment, such lapses demonstrate human frailty and do not place the Children at risk of significant harm.
21. The Mother presented via video link as an extremely organized parent and highly focused on the Children's educational development in France.
22. However, in my judgment the Mother retains anger toward the Father and this is evidenced by her desire to diminish the Father's ability to care for the Children without the support of his family in Bermuda.
23. In respect of the Mother's concerns, in my judgment they demonstrate the Mother's need to control the manner in which the Children enjoy access with the Father, including summer camps that the Children should attend whilst in Bermuda and the jurisdiction in which such access should be enjoyed. In this regard, the Mother is encouraged to trust the Father.

Conclusion:

24. I am satisfied that the welfare advantages to the Children being able to travel with the Father, his new Wife, and her children, far outweigh the Mother's perceived risks. In my judgment, such travel would afford the Children further opportunity to build upon their relationship with their father, his wife and step siblings.

25. Accordingly, the Father is granted leave to remove the Children from Bermuda during the scheduled 2017 Summer Holiday access period, as defined in the Consent Order.
26. On or before 28th June 2017 the Father shall prepare and file into Court a written itinerary setting out the daily travel plan, contact telephone numbers, email addresses and camp site locations. This shall be immediately disclosed to the Mother's attorney.
27. Upon the Father collecting the Children from their residence in Paris, France on or about 8th July 2017 at 8:00 a.m. per the Consent Order, the Mother shall immediately handover to the Father the Children's clothing appropriately packed and their passports, including any other travel documents.
28. During the said Summer Holiday access the Mother and children shall continue to enjoy electronic access with one another via Skype, email, telephone or such other means of communication.
29. I shall hear from the parties as to any further directions which may be required for the implementation of this judgment.
30. Lastly, the Supreme Court of Bermuda shall retain jurisdiction in all matters relating to the Children's welfare.

Dated this 29th day of June, 2016

Stoneham J