

**COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT
2016/FAM/div/FP/00088
BETWEEN**

**AR
Petitioner**

AND

**JR
Respondent**

BEFORE: The Honourable Justice Petra M. Hanna-Adderley

APPEARANCES: Miss Constance McDonald KC along with Mrs. Tashana Wilson for the
Respondent
Petitioner appears Pro Se
Ms. Jodie Burrows for the Department of Social Services

HEARING DATES: July 27, August 2, August 17, August 30 and September 2, 2022

RULING

Hanna-Adderley, J

Introduction

1. The parties were married on October 11, 2008. The Decree Nisi was pronounced by this Court on November 30, 2016 in favour of the Petitioner on the ground of the Respondent's cruelty. The parties have one child, namely, JSR, born on November 4, 2006 ("**JSR**" and "**the minor child**") now 15 years old. She will be 16 on November 4, 2022. On November 27, 2019 this Court approved and entered as an order of the Court a Consent Order agreed by the parties which was filed

herein on November 27, 2019. The Certificate of Making Decree Nisi Absolute was filed herein on May 29, 2020. The Petitioner has since remarried.

2. The Respondent relies on his Summons for Variation and an Affidavit in Support filed July 26, 2022; an Ex Parte Summons for an Injunction filed July 27, 2022; the Supplemental Affidavit filed August 26, 2022 and the Second Supplemental Affidavit filed September 2, 2022. The Petitioner gave viva voce evidence and both parties were cross-examined. The Petitioner filed no pleadings.
3. It will be useful to set out the chronology of events thus far. This Court heard and determined an Ex Parte Summons for an Injunction on July 27, 2022, as a result of which the Petitioner was restrained from removing JSR from the jurisdiction. On August 2, 2022, the Court heard the parties inter partes. The Petitioner, her husband AM and their minor child AM were at that point with relatives in the State of Florida. At that hearing the Petitioner alleged that the Court had placed the child at a dangerous and unsafe place, that is, with the Respondent. The Court directed the Department of Social Services to conduct an investigation on an urgent basis into the Respondent's living environment and the matter was adjourned to August 17, 2022. The Petitioner returned to the jurisdiction on or about August 7, 2022 and within days she and the Respondent were interviewed and an investigation carried out by Ms. Jodie Burrows, Chief Welfare Officer with the Department of Social Services for the purpose of determining whether JSR was in a safe place.
4. On August 17, 2022, Ms. Burrows provided the Court with an Oral Report during which she stated that she had conducted a home visit at the Respondent's home situated at No. 6D Indiana Gardens and found it to be quite suitable. That it was initially a two bedroom, 2 bathroom condominium. That JSR has her own bedroom that is adequately furnished. That she has always had her own bedroom there. That the home was in good condition. That the Respondent's son "J" returned from Switzerland and he is now living in the home as well. The Respondent had a loft made for his son so it is now a 3 bedroom, 3 bath unit. The Respondent owns the condominium.

5. Ms. Burrows also had the opportunity to speak with JSR separately from her father, and she voiced some concerns. That initially she was interested in going to Canada with her mother, as was planned. But there were now concerns about whether she would be attending school when she got there. That the Respondent's concern is that JSR is not going to be placed in school, that there was no provision made for her to attend school. However, JSR wants to remain in Grand Bahama with her father.
6. That the Petitioner raised some concerns as it related to the Respondent's alleged substance use. The Respondent and JSR volunteered to do a drug test. The Petitioner also alluded to the Respondent allowing JSR to smoke marijuana. However, the test results revealed that there is no substance use by either the Respondent or by JSR. The Petitioner subsequently left the jurisdiction without notifying Ms. Burrows but the day before the hearing they did discuss perhaps that she should search for family members who would be able to assist her in housing JSR in the interim.
7. Ms. Burrows stated that the Respondent and the Petitioner informed her that the Respondent was aware of the plan to relocate. That it was the Respondent who informed her that he was the one who took JSR to do the biometrics for her to travel to Canada with her mother. That the Respondent said he became concerned because he did not know what the school situation was like, for example, whether or not JSR was going to be able to get into school once she arrived in Canada. That he was aware that the Petitioner did not have an apartment at that time and that was a concern. Ms. Burrows stated that the Petitioner had informed her that she and her family were staying in an Air B & B. That she was not prepared to pay monies for an apartment that she had not seen. That once she got into Canada, she would have secured suitable accommodations. That she has a realtor who was looking for suitable accommodations to accommodate her family.
8. Ms. Burrows concluded that the Department's findings at that particular point in time was that JSR was safe. That the home was conducive and that JSR had no challenges with staying with her father.

9. The Petitioner stated that she had already put in some paperwork for the accommodation that she preferred. That the application had to go through a process with the credit report and some "other stuff". That she had already dealt with the bank and had put the rental funds on an account. That once the paperwork is signed, they are going to get the payment for five months rent ahead of time. That all of that was in the works. That she was meeting with the realtor again that day so that they could go over some of the final paperwork. That this move was not just "up and move" and that the Respondent was aware of the move. That the only issue that came into play was when she went back at him about the arrears in child support and that he promised that he would have everything together for the move. That instead of paying the weekly child support, he would give it in one payment in June. That the parties had no issues prior to June. That the Respondent owed her \$30,000.00 in Child Support.
10. The Petitioner stated that there was no immigration status issue. That the only thing she was waiting for was for her husband to get a visitor's record for two years and that they would apply for his work permit in the country. That in about two weeks he should have a work permit. That he was a tugboat captain and that there were jobs lined off. That she was a college student. That she was given 20 hours to work per week. That JSR has approval and will get an actual Permit when she goes through to Canada. That AM had her actual permit. That the Petitioner has immigration status in the country for two years.
11. The Petitioner went on to say that the Respondent would have made that agreement (the Consent Order) because he would have just gotten out of rehab for the second time again; and because his parents had stated that they would pay the school fee and the insurance. That they came to that agreement because the Respondent has never been stable. That for the past 4 months he has been doing a whole lot better. That even though he was dealing with drugs, lock-ups and fights she still allowed him access to JSR. That the only time she had stopped him was when she found out he had her smoking weed in the home. That she told him he had to come by the house and see JSR. That JSR was not spending

the night with him. That the Respondent does not pay her school fees or insurance. That his parents do that because they know he is unfit.

12. The Petitioner also stated that in regards to the monies that he said he would give her for the move, he decided to build a loft. That the Respondent has not had any of his children. That Mrs. Wilson would have represented her and she would have known that information when they went into Court but now they want him to appear to be a super dad when she has been carrying the burden of everything. That her daughter is 15 now and he has just been active in her life for the past 4 years. That she buys everything for school, pays for her needs, for all activities. That he has just gotten involved in her soccer playing. He only knows her school grades when she forwards them to him. That every single thing that happens with her daughter she deals with. The Respondent would come and take her out to dinner or go to the beach, but that is it. That she is constantly asking the Respondent for maintenance and it is really unfair that she is before the Court now, as the person who was the parent for 15 years, being questioned.

13. The Petitioner stated that her daughter now has Instagram since she has been by her dad, which she has not been allowed to have when with her. She is on Instagram in a two-piece bathing suit and G-string on, dropping her location. That he dropped her to the beach with her boyfriend that she now has, to an unsupervised beach party, with an 18 year old. That this is the lifestyle he is allowing JSR to have and that is why his access to her has been limited. But for the past 4, maybe 5 years, he has been trying to go in the right direction so she has been giving him some more leeway. So, her concern is the constant day to day care. She asked the Court to ask JSR what is being posted on Instagram, to ask her if she is being dropped places unsupervised with an 18 year old boy. That he has also taken JSR over to this 18 year old boy's home.

14. The Petitioner stated that the Respondent is a fisherman who goes off for two, three, four weeks at a time. That he has never been active in her life. He pops up when he comes in and she still allows JSR to go with him. That she is trying to be a decent parent but now he is being projected as the parent he never was.

That the parties are only in Court because she told him he has to pay his maintenance. That he told her he had the funds for his maintenance and she told him to hold it for her until it was time for them to go and when that time came, this issue arose.

15. The Court indicated that the matter would be adjourned for a short period and that the Petitioner was directed to provide that Court with documentary evidence concerning the arrangements in Canada. The Court also indicated that it was likely to have an in-camera interview with JSR in the interim.
16. As a result of this investigation and Interim Report from the Department of Social Services the Court was satisfied that the minor child was not in a dangerous or unsafe place with her father and ordered that she was to remain there until the determination of his application. The matter was adjourned to August 30, 2022, at 2:30 p.m. for a final written Report from Ms. Burrows and the Respondent's response and then to September 2, 2022, at 10:00 a.m. for the conclusion of the substantive hearing of the Respondent's application.

Statement of Facts

17. The Respondent's Ex Parte Summons for an Injunction pursuant to Order 29 Rule 1 of the Rules of the Supreme Court seeks an Order that the Petitioner whether by herself, her servants and or agents or otherwise be restrained from removing the minor child, JSR from the jurisdiction thereby interfering with the Respondent's access to the said child until the application for variation has been heard and determined by this Court and such further or other relief as to this Court shall seem just.
18. The Respondent stated in his Affidavit filed July 26, 2022, in part, that he regretted having agreed for the Petitioner to have sole custody, care and control of JSR. That JSR had told him that the Petitioner intended to relocate to Canada and to take her with her. That on July 20, 2022 the Petitioner told JSR that she could not visit the Respondent and that she could not see him anymore. That the Petitioner tried to turn JSR against his parents by telling her lies such as they did not want her around them. That prior to July 15 JSR spent the majority of the time with

him. Despite the fact that he paid JSR's school fees and took care of her otherwise, the Petitioner threatened to take him to Court for child support. That he has paid for her education since she was a toddler. That she attends Lucayan International School ("LIS") and has been maintaining a G.P.A. of 3.60. That he did not want to disrupt her schooling by moving her to Canada as she would soon graduate and the remaining years were crucial. That the Petitioner has not provided him with proof of her enrollment in school or her living accommodations for his approval. That domestic violence has been going on in the Petitioner's home between the Petitioner and her husband and he did not want his daughter to be exposed to that environment. That at age 11 JSR was raped while in the Petitioner's care by her cousin. That he took JSR for counselling because the incident affected her so much but the Petitioner stopped her from going. On Father's Day 2022 the Petitioner posted on her Facebook page a picture of the Respondent, the Petitioner and her husband, JSR and AM at a dinner he had treated them to with the caption that the Respondent and her husband were great fathers. A copy of the Facebook page was attached. That knowing that the Respondent had paid for JSR to go on a family trip the Petitioner threatened that she would not let JSR go unless he signed a letter stating that she had his consent to travel with JSR to Canada.

19. The Respondent further stated that the Petitioner can be irrational and abusive at times. That JSR told him that when she was 12 years old the Petitioner punched her in her mouth and split her lip because she "backed talked" her. That JSR does not want to move to Canada. That the Petitioner has no concrete plans; that she has a student visa and that her family are going as her dependents; that her husband is unemployed. He believed that she is threatening to sue him because she believes that he came into an inheritance after the passing of his father in June of 2021 and that she could get a lump sum from him. That there is no inheritance because his mother is still alive. Attached to his Affidavit was a handwritten letter from JSR to the Court. That the Petitioner intended to leave JSR with her sister in Florida on July 28, 2022, while she emigrates to Canada in the

beginning of August. He asked for the Court to award him joint custody of JSR, with care and control of JSR to him.

20. On July 27, 2022 the Court made an Order that:

- (a) That the Petitioner be restrained from removing the minor child, namely JSR from the jurisdiction until further order of the Court;
- (b) That the minor child, JSR shall remain with the Respondent until the 2nd of August A.D., 2022;
- (c) That the further inter partes hearing of the matter herein and the Respondent's application for variation of the consent order herein shall be heard on Tuesday the 2nd August A.D. 2022 at 10:00 a.m. via zoom.

21. The Consent Order provides as follows:

- (a) That the Petitioner shall have sole custody of the minor child of the marriage, namely JSR born on the 4th day of November A.D. 2006 with reasonable access to the Respondent;
- (b). The Respondent shall pay \$100.00 per week towards the maintenance of the minor child of the marriage;
- (c) The Respondent shall pay \$250.00 in June and December of each year towards the purchasing of clothing for the minor child of the marriage.
- (d) The Respondent shall continue to pay the medical insurance for the minor child of the marriage and the Petitioner shall pay the co-payment.
- (e) The Respondent shall continue to pay the school fees for the minor child of the marriage.
- (f) That the Petitioner and the Respondent equally share the costs of dental, optical and other expenses not covered by the insurance.
- (g) Each party shall bear their own costs of these proceedings.

22. The Petitioner was represented in the divorce/Decree Nisi proceedings by James R. Thompson & Company in 2016. The Respondent was unrepresented. In 2019 when the parties appeared before the Court to settle the Ancillary Relief matters concerning JSR the Petitioner was represented by McDonald & Co. The Consent Order made no mention or provision for the relocation of the minor child outside

of the jurisdiction then or at some later date and the proceedings were not contested. The Petitioner has not stated otherwise. The issue of removing the child from the jurisdiction has arisen some 3 years later and now McDonald & Co represents the Respondent on an issue not previously before the Court involving the parties. No formal application for the removal of McDonald & Co. has been filed in these proceedings.

23. The Respondent asks the Court to vary the said Consent Order and to make the following Orders:

(a) By deleting paragraph 1 in its entirety and inserting instead the following: "The parties shall have joint custody of JSR the minor child of the marriage with care and control to the Respondent and reasonable access to the Petitioner.

(b) For an Order that until the application for variation has been heard and determined by this court the Petitioner shall not remove the child out of the jurisdiction.

24. The Petitioner asks the Court to leave the terms of the Consent Order in place, to allow the minor child to be removed from the jurisdiction and order the Respondent to pay the arrears of maintenance.

25. On September 2, 2022, Ms. Burrows read her written report into the Record. The following is the slightly redacted Report to protect the identity of the minor child:

"REFERRAL SOURCE, DATE AND REASON:

The matter concerning the above-mentioned clients was referred to the Department of Social Services on August 2, 2022. Justice Petra Hanna-Adderley made an Injunction Order restraining the respondent, AR from removing JSR from the jurisdiction and ordering her to remain with her father until August 2, 2022. The petitioner petitioned the court to grant him a variation of the Consent Order which was made between the parties on November 27, 2019, and seeks an order giving him joint custody, care and control of JSR, with reasonable access to the respondent. Subsequently, the Respondent, AR made allegations that JR's environment is unsafe and that the petitioner is in arrears of maintenance.

INTERVIEW WITH JR

The Undersigned conducted separate interviews with the petitioner and JSR at the Department of Social Services on August 4, 2022. Thereafter, a home visit was conducted on August 5, 2022. According to JR, he was aware that the respondent had been planning for her family to relocate to Dartmouth, Canada and was in agreement for their daughter, JSR to relocate with her mother, providing proof of suitable accommodations and JSR's school enrollment. He also informed the Undersigned that he took JSR to complete her biometrics. However, JR expressed that he became concerned after learning that the family would be living in Ontario, which he was not in agreement with, as it is in the city and he was never given proof of JSR's school enrollment.

The Undersigned informed JR of AR's allegations of his habitual substance use and that he allows JSR to smoke marijuana, also that his environment was unsafe for JSR and that he allows her to have a boyfriend despite her objection. JR denied using illicit drugs and stated that he seldom consumes alcoholic beverages, as he has had one kidney since age fifteen. He agreed for him and JSR to complete testing for drug use of which the results were negative (results attached). JR admitted to having had some challenges in the past and was voluntarily admitted to Hanley Medical Center in West Palm Beach, Florida, for two (2) months. He added that he suffered from post-traumatic stress disorder, after being attacked by a group of men. He was baffled at the fact that AR would make allegations that his environment is not safe for their daughter as her and her husband's four (4) year old daughter, AM, frequented his home, often spending several days at a time. He added that on numerous occasions, JSR and AM were left at home in the evenings without adult supervision, subsequently, he would collect them and take them to his home. Additionally, on several occasions, he was asked to collect AM from school. In fact, JR reported that AM left JSR in his care on numerous occasions, the last time was from March 2022 to June 2022, when she went to work in Pennsylvania, USA.

According to JR, he was ordered to pay the respondent one hundred dollars (\$100.00) weekly directly for maintenance of JSR, hence, he has never made a payment into the court. He was also ordered to pay JSR's school fees and her medical insurance which he did with occasional assistance from his parents. JR denies owing AR thirty thousand dollars (\$30,000.00) as she claims. However, he stated that he told her that he would give her six thousand dollars (\$6000.00) to assist with JSR's relocation to Canada. Additionally, JR further reported that after the passing of hurricane Dorian in September, 2019, his father chartered a plane and flew to Grand Bahama to collect JSR and took her to Nassau where she attended Windsor Academy from September, 2019 to June, 2020.

JR was questioned about AR's allegation that he allowed JSR to have a relationship with a young man by the name of G despite her objection. He stated that JSR and G have been friends from they were toddlers and that he saw

nothing wrong with their friendship and that they communicate mostly via telephone as G attends school in the United States where he plays baseball.

As AM stated that JR is a self-employed fisherman, she voiced her concern as to whom JSR would be cared for while he is out to sea overnight. As a result, JR gave the names of AJ (AR's sister) and TB both of whom were interviewed and expressed their willingness to assist JR with supervision of JSR in his absence.

INTERVIEW WITH JSR

JSR is a very intelligent, well-spoken young lady. The Undersigned explained to her the purpose for the interview and the importance of her being truthful to which she said that she understood. She was reserved during the interview, however, she made eye contact with the Undersigned and answered all questions. According to JSR, she loves her mother but stated that she never wanted to move to Canada with the family. She is doing well in her studies and would like to remain in Grand Bahama with her father and continue her program at The Lucayan International School where she is enrolled in the eleventh (11th) grade. She added that she is happy when she is with her father and that he makes her feel comfortable to converse with him as opposed to her mother. Despite this, JSR admitted that she has deceived her father in the past by having him take her to Banana Bay Restaurant with her friends, but failed to inform him that G would be present.

JSR stated that she was often made to clean the entire house in addition to being left at home to care for her younger sister, AM, which she feels is unfair and fears that this will continue if she relocates with her mother to Canada. Additionally, JSR reported that her mother and stepfather has had numerous arguments in her presence and that she witnessed a physical altercation between them where her mother was left with a swollen eye, and bruises to her face, as well as her shoulder, for which she sought medical attention.

INTERVIEW WITH AR

AR was interviewed at the Department of Social Services on August 5, 2022. She appeared distraught and voiced her concern about the turn of events which was threatening to delay her travel plans for her family to relocate to Canada. Additionally, her husband, AM had tendered his resignation after fifteen (15) years of employment and that she had already paid her tuition to attend college.

According to AR, JR was aware of her plans to migrate to Canada, as they had been in discussion concerning the move for the past two years and that he never voiced concerns about JSR relocating with her. She added that in March, 2022, JR took JSR to complete her biometrics for the relocation. Further, that on November 27, 2019, JR was ordered to pay maintenance in the amount of one hundred dollars (\$100.00) weekly in addition to paying JSR's school fees and medical insurance. She added that he paid her one hundred dollars (\$100.00) the first week and never made another payment and that he owes her thirty thousand dollars (\$30,000.00). Additionally, that he never gave her an insurance card for JSR hence, she had to pay for medical insurance for JSR. Further, that JR agreed to pay her six thousand dollars (\$6000.00) to assist with JSR's relocation and that she would forgive the balance of twenty four thousand dollars (\$24,000.00) owed for maintenance. AR stated that the issue of JSR's safety and living accommodations did not arise until she asked JR to make good on the payment.

According to AR, she has been the parent who has invested time in JSR to ensure that she excels in her studies and that JR has been the cool parent who takes JSR to soccer, to the beach and to hang out with her friends in addition to allowing her to have a boyfriend, despite her and the young man's mother opposing the relationship. The Undersigned contacted SR, mother of G, the alleged boyfriend, who confirmed that she was in agreement with AR that their children were too young to be in a relationship, as it would interfere with their studies and G's focus on baseball. SR reported that her son attends school in the United States, and that G did not deny that he sees JSR when he visits Grand Bahama on breaks from school.

The Undersigned requested that AR submit proof of approval for her family to enter Canada legally and for proof that she was enrolled in school in addition to confirmation that JSR would be attending school. She submitted documents which indicated that she had paid her tuition, as well as proof of legal entry into Canada, and a letter of introduction addressed to JSR stating that her application to study in Canada has been initially approved by immigration. (see attached letter). AR was also asked how her family would be supported while in Canada and she stated that they own a triplex and expects to collect twenty- eight hundred dollars (\$2800.00) monthly from the rent. However, this was not confirmed. AR stated that she preferred for JSR to stay with her aunt should the court decide that she could not take JSR to Canada until she was able to satisfy

the Court of suitable accommodations and that JSR would be enrolled in school. She stated that she would discuss the matter with her aunt and return to inform the Undersigned of the outcome. As AR did not return after a few days, the Undersigned contacted her via WhatsApp and was informed that she was in Canada and had made the decision to travel as the window of opportunity was closing, as she feared losing all the money they had invested in this venture. AR voiced her concern as to how the Court could place JSR with JR who she claims is an unfit parent and the fact that she was granted sole custody by the Court and he was granted access. She questioned the legality of the fact that Ms. Constance McDonald, who is representing JR, represented her during their divorce. Additionally, AR stated that she is not comfortable with the proceedings as she was informed that JSR has been telling people that her father knows the Justice in this matter.

HOME VISIT

*The Undersigned conducted a visit to JR's residence located at *** Indiana Gardens Townhouses, Indiana Lane, which is considered to be an upper middle class neighborhood. The unit consists of three (3) bedrooms, two (2) bathrooms, kitchen and open concept living and dining area and is outfitted with adequate furnishings, as well as modern amenities. The household occupants are JR, JSR and JR's nineteen (19) year old son who recently returned to Grand Bahama after residing in Switzerland with his mother for several years.*

JSR was proud to show the Undersigned her bedroom which was tidy and is adequately furnished with a white wooden bedroom set which include a desk and chair for homework. Again she expressed how happy she was living with her father.

PRESENT SITUATION

Prior to the court hearing on August 17, 2022, AR, her husband, AM and their daughter, AM, relocated to Canada and have settled in London, Ontario. A lease agreement (attached) was signed on August 26, 2022, which ends on June 30, 2023. According to AR, the unit which consists of four (4) bedrooms is located in a middle class neighborhood and is more than adequate for her family and hopes that JSR will be comfortable in her new environment, should she regain custody of her. AR has submitted proof of her school enrollment and correspondence from a prospective employer for her husband.

JSR is enrolled in the eleventh (11th) grade at The Lucayan International School which commenced today, August 29, 2022. She informed the Undersigned that

she is excited to return to school with her classmates and teachers and hopes that she will be allowed to complete high school at L.I.S.

ASSESSMENT

The Child Protection Unit of the Department of Social Services' goal is to ensure the safety and wellbeing of children. In this regard, when parents separate, it is hoped that they are able to co-parent effectively, which would enable their children to be well rounded, productive adults. However, this is not always the case. Both AR and JR have expressed that they are the best suited parent to have JSR in their care. JSR is excelling in her studies at the Lucayan International School where she commenced the eleventh (11th) grade today, August 29, 2022. She appears to be happy in her environment with her father and is reluctant to relocate to Canada with her mother.

AR appears to have JSR's best interest at heart and is longing to have her return to her care and to experience all the endless possibilities that awaits her in Canada.

A copy of the Consent Order made between AR and JR on November 27, 2019, could not be secured from storage for the court date of August 30, 2022. Therefore, the maintenance arrears could not be confirmed.

RECOMMENDATION

Furnished with this Social Inquiry Report, it is hoped that the court will make the best decision for the wellbeing of JSR.

*Jodie Burrows
Chief Welfare Officer
August 29, 2022"*

26. The parties were permitted to ask Ms. Burrows questions on her Report. AR questioned the information concerning JSR being left in the care of TKB when the Respondent was at sea. She was concerned that TKB was bringing her teenage sons with her when she sat with JSR at the home of JR. Ms. Burrows confirmed that she spoke with TKB who stated that she only brings her daughter D with her, who is the same age as JSR. There were no other questions.

27. Exhibited to the Report were the following documents which the Petitioner identified for the Court in her viva voce evidence as follows:

- (1) Visitor Record/Permit for AM;
- (2) Visitor Record/Permit for AM (Husband);
- (3) Visitor Record/Permit for AR (Study and Work Permit);
- (4) Full Time International Fee Estimate from Sheridan College Institute. The Petitioner stated that she had proof of her enrollment with the institute and that she would forward the same via email;
- (5) Copies of withdrawal slips in the name of AM from FirstCaribbean International Bank in the sum of \$10,000.00 and from Bank of Bahamas in the sum of \$10,050.00 as evidence of the fact that the Petitioner and her Husband had money for the relocation;
- (6) Lease between AR and her Landlords for an apartment. She stated that she had paid \$2,500.00 in rent and had provided her Landlords with proof that she had 5 months rent on deposit at a Canadian bank. She stated that she would forward proof of the E-wire transfer to her Landlords to the Court;
- (7) AM's Employment status: The Petitioner provided an exchange of emails of a job offer to AM. She stated that he had not accepted any offers as yet but that she would forward a copy of his Work Permit in due course;
- (8) Email from AM's former employer as proof that he paid for health insurance coverage for JSR;
- (9) Statement from former babysitters TB;
- (10) Statement from former babysitter HS;
- (11) Letter from Principal of LIS Kathryn Dilletta advising against the relocation as the same would adversely affect JSR's studies;
- (12) Results from Wellness Laboratory indicating that both JR and JSR tested negative for Amphetamine, Cocaine, Marijuana, Opiates, Phencyclidine and Methamphetamine.

28. Ms. Burrows was asked by the Court to give her recommendations and she advised the Court that she believed that it would be in the best interest of the minor child

if she were allowed to remain in Grand Bahama with the Respondent and to complete her studies at LIS (11th to 13th grades but that by the time JSR reached grade 13 she would be 18 years old) and for the Petitioner to have access to her.

29. AR failed to forward to the Court proof of the following: her enrolment as a part time student at Sheridan College Institute; proof of the E-transfer of her rent to her Landlords; proof of her husband's employment, her tenants' agreement.

The Evidence

30. On September 2, 2022 the Affidavit evidence was read into the record. The Respondent stated in his Supplemental Affidavit filed on July 26, 2022, in part, that he wanted to clarify certain statements that the Petitioner had made. That he went into rehab at Hanley Medical Centre in West Palm Beach Florida, 6 years ago voluntarily for post-traumatic stress disorder. That he had almost been fatally stabbed and that he was dealing with a lot of anger and resentment. That he was in rehab from January 12, 2016 to March 12, 2016 and that it was the best decision he ever made. That he got his physical, mental and spiritual life back on track. That he was surprised that the Petitioner had brought this matter up because she and his parents had been very supportive of his decision.
31. That AR discovered that JSR and her friend were smoking marijuana on JSR's cellphone. That she was stopped from communicating with that friend anymore. That he does not do drugs and hardly drinks because he has one kidney. He referred the Court to AR's Facebook page which shows her drinking and partying. That the Petitioner often left JSR and AM in his care. That he suggested that instead of leaving them alone while she worked or went partying that he would keep them and she was quite comfortable doing so. He also assisted with school pick up with both girls. That he has been active in the lives of both girls, including soccer.
32. That if he was in arrears of maintenance he would owe the Petitioner \$14,000.00. That he and the Petitioner agreed to the terms of the Consent Order because the Petitioner stated that to get the divorce finalized the judge would need to see

something on paper. That the Petitioner was planning to get married and wanted to get the divorce finalized.

33. That he and the Petitioner have always assisted each other. That he would give the Petitioner money for JSR's maintenance at various times. He purchased groceries for the Petitioner's home, paid for all doctor's visits and medication for JSR even though the order said these costs were to be shared. When JSR went away with the Petitioner he sometimes paid for plane tickets and would give the Petitioner money to buy clothes for JSR. He would on occasion reimburse the Petitioner money that she had spent on clothes for JSR.

34. That since the date of the Consent Order JSR had spent half of the time with him and his family. After Dorian in 2019 his father chartered a plane from Nassau and picked her up in Freeport and took her back to Nassau. She lived with his parents for 12 months and during this time she attended Windsor Academy from September 2019 to July 2020. The Petitioner did not assist him with JSR for this whole period. In November of 2019 the Petitioner took JSR to Canada. He paid for her ticket and gave her \$500.00 spending money. With the exception of 10 days she remained in his care from July 2020 to October 2020. In 2022 she spent 4 months with him when the Petitioner went to work in Pennsylvania. That he was always there for JSR and AM. That it was this reason that he agreed to give the Petitioner \$6,000.00 towards the move to Canada.

35. That he and the Petitioner agreed that the move would be to Nova Scotia not London, Ontario. That the Petitioner is in London, Ontario living with her friend Cindy Patrice Daxon in a 5 bedroom house with 5 children and her husband. That he did not want his daughter living in that environment. That he had reserved a place for JSR at LIS. That the Petitioner had her passport, vaccination card, 2 laptops and 2 cameras that she needs to give to her. That the Petitioner has blocked JSR on her phone and she did not let her know that she was leaving the island. JSR feels that because of these proceedings that the Petitioner will treat her worse than before. She is uncomfortable with her mother because of the fights between her and AM. That the Respondent's house is a safe zone whenever there

was an issue between her mother and AM. That his fresh crab operation allows him to be home in the evenings and when he does have to overnight he makes appropriate arrangement for JSR. That the Petitioner had recently advertised the 3 bedroom unit for \$1,000.00 per month and that it is mortgaged. That the funds from The Bahamas would not be sufficient to pay the expenses in Canada.

36. In his Second Supplemental Affidavit filed on August 26, 2022 the Respondent states, in part, that he had reviewed the Report from Social Services as well as the documents provided by the Petitioner and that in his view the information provided by the Petitioner was unsatisfactory and does not reflect the truth. That the Petitioner deliberately sent bits and pieces of information that are incomplete. He denied knowing Justice Adderley and stated that the first time he had seen her was in November of 2019 when Mrs. Wilson assisted the Petitioner and him with the Consent Order. That he had not seen or spoken to Justice Adderley since November of 2019. That since September 1, 2009, JSR has been enrolled in a million dollar medical coverage with Colina.

37. That he took JSR to do the biometrics because the Petitioner was on a cruise. That the Petitioner had wanted to leave JSR in Florida with a friend who would take her to do the biometrics. He did not want her to be left with someone he did not know so he took her himself.

38. That he never allowed JSR to see G except for one occasion when he was returning to school. He took her to G's grandparent's house and let her say goodbye for 5 minutes.

39. That the attachment from Sheridan College was a fee estimate and not proof of payment of the fees, that the withdrawal slips only show how much AM withdrew to take to Canada; the Petitioner has not provided evidence of income in Canada; that the lease produced by the Petitioner states that the apartment is unfurnished and that \$1,000,000.00 of insurance has to be obtained by the Petitioner before she gets the keys; that Sheridan College is 2 hours and 12 minutes' drive by car and 3 hours and 20 minutes by bus from the apartment. That if AM gets a job at Bruce Anchor Cruise, work is 3 hours and 31 minutes' drive from the apartment.

The Respondent exhibited a number of the Petitioner's Facebook posts which he states show her true character and behavior.

40. JR stated in his viva voce evidence that when he first got the medical policy JSR was 3 years old. That he got 2 cards, one he gave to his son's mother and one he gave to AR. That he has 3 children and that they are all covered. He never had a card because he goes to the same doctor, he goes to Chappie's Pharmacy and the hospital and once they have the card on record you do not need to produce the card. At the hospital a call would be made to Colina and JSR would be covered. That JSR never had an insurance issue and she was covered her entire life. It is not true that AR was not given a card. He applied for a second card because she lost hers. That he gave AR the card. He produced proof of the issuance of the policy in 2009 and a history of the payment of the premiums from 2009 to 2022. He also provided proof of her coverage under Bahama Health when he was employed by Kotug Seabulk Maritime LLC.
41. With respect to the Petitioner's evidence concerning the babysitters, TB was a family friend. She baby sat on 2 occasions when AR lived with her mother. He was only aware of 2 occasions when HS was a babysitter. Both he and AR were working when JSR was a baby and HS baby sat her until she started school. She sometimes provided afterschool care. HS runs a young child baby sitting service. JR would pick both AM and JSR from school. They would stay with him until AM or AR got off from work and picked them up or they would spend the night.
42. That he has owned his own business for the last 4 years. That he has a fresh seafood operation and that he gets more money from selling crabs. That the crab has to be at the processing plant between 6 and 8 p.m. at the latest. That this allows him to be home in the evenings. A couple of times he had to be out overnight. In that case TB or AW would be at his home with JSR. That TB's boys are 22 and 20. One does not live there and the other is in college. That TB has a daughter D who is the same age as JSR and that the Petitioner knows this. TB would bring D with her when she babysat JSR. That JSR was diagnosed as prediabetic when she lived with his parents in Nassau in 2019. That his parents

altered her diet. He also bought her an EpiPen for Christmas. That she has been tested recently and she is no longer pre-diabetic. She is on the advanced soccer team and she shows no sign of sickness.

43. Under cross-examination by the Petitioner, he stated that he did not have an alcohol and cocaine addiction. He denied that she had ever seen him use cocaine. He denied being stabbed multiple times and to being robbed while trying to buy cocaine and was gun butted. He stated that he was involved in a traffic accident and that a young man tried to stand up for a young lady involved and another young man pulled a gun and hit him in his face. That a Police report had been filed. He denied having been in 12 traffic accidents after substance abuse and he denied writing off his vehicle.
44. That when asked by the Petitioner why he gave full custody of JSR to her he stated that when they first discussed the custody issue she had agreed that it would be joint custody. That when he was served he noticed that she had changed that. That she had left him 11 months into the marriage for ER. That he knew that the marriage was not going to work. That his only concern was JSR. That even though she had full custody in the Order he knew that she would always bring JSR back to him. She would take her and then 2 weeks later bring her back. That it did not matter what the paper said. He would always have his daughter and for the majority of the time she stayed with him. He denied being out at sea for days and months and being out of contact during this time. That his GPS records would show that. He denied not giving her money for JSR. That he would give her monies on occasion. That he fixed up JSR's room. That he installed a door that could lock and gave her \$400.00 to buy items for the room. That he gave AR a list of the items and she returned only with sheets.
45. That he objected to her nephew coming over to the house and hanging around JSR and with AR's niece. JSR was 12 years old at the time and he raped her. AR still made JSR sleep in the same room she had been raped in even after she expressed concern about that. That JSR had been put in Counselling after the rape

and that AR removed her counselling. The Petitioner denied this but this was later confirmed by JSR.

46. That JR denied that he was not active with assisting JSR with school projects and homework. He stated that he followed up with homework. That JSR spent the majority of the time with him. That her GPA went from a 2.7 at Mary Star to a 3.63 at LIS. That he had proof from her Facebook post that when JSR was with her she was out partying.

47. That he denied giving JSR and her friend A money to buy "weed". He denied that he took JSR and A with him to buy the weed. He stated that when they found out that A and JSR had smoked weed together, once at AR's house and once at his house, AR did not stop JSR from coming to him, they stopped JSR from keeping company with A.

48. The Petitioner put to JR that wasn't true that he was in compliance with JSR moving to Canada and that they had been in discussions for 2 years, and that he had no issue with it until she asked for child support, and that he was going after JSR because he gets to keep his inheritance if he has her. JR stated that they first discussed the move to Canada in November of 2021 not 2 years ago. This was confirmed by JSR. That he had certain stipulations which she has not met yet, (1) he had to approve the home, which he needed to come and visit, (2) it had to be a school equal or better than LIS, (3) it was supposed to be in Dartmouth, Nova Scotia, that he made it clear that he did not want his daughter in London, Ontario; and (4) he helped to save her marriage. He insisted that she and her husband get counseling. That they never did. That on August 7, 2022 he agreed that he would give her \$6,000.00 once he got evidence of where they were going to be. That AR applied for schools in Ontario and not Dartmouth. That he does not want JSR in a city. She lied to him because she registered her in London, Ontario. That his father passed away but that the money he left goes to his mother and no one gets any inheritance until his mother dies. He denied removing the children from her aunt's care when AR went to work in Philadelphia. That AM had dropped the children to her Aunt. That he had gone out to sea but the weather was bad. He came back

in. He picked JSR and AM up from the aunt and they stayed with him for 3 months until AR came back. He stated that he paid JSR's school fee at Tabernacle Academy, \$700.00, which the Petitioner denied. The Petitioner accused him of being homeless. He stated that he lost his home in Matthew and that he rented an apartment built onto AM's mother's house. That he bought a condo but that it took 2 years to close the deal. That he lives there now. He maintained that he takes care of JSR financially and that when she is with him he takes care of all of her needs.

49. The Petitioner filed no Affidavit but stated in her viva voce evidence, in part, that when JR is healthy he is active in the lives of JSR and AM. That every couple of months he relapses. His sponsor is Adam. He is constantly relapsing. That she allowed JSR to go to him from Friday to Sunday so that she could keep an eye on the situation. That he is allowing JSR to be on social media. That she does not allow that. That JSR posted pictures in a 2 piece bathing suit and dropped her location. That he has dropped her off unsupervised to a beach party with an 18 year old. That he is trying to be the "cool parent". That this is the only child who he has been active with. The other mothers have never allowed him to be active. He has never spent one day with his oldest daughter because of the drug use. That she has been lenient with him because they have had an awesome friendship for the past 20 years. That she was not expecting this to happen. That since she had full custody she did not think she had to keep a record of all of these things.

50. Mrs. Wilson had no questions to ask the Petitioner but she asked for proof of the rental payment be provided. She stated that only JSR could clarify certain matters now.

51. The Court asked the Petitioner to clarify the evidence of her rental income from her Bahamian property. The Petitioner stated that 2 units are rented for \$650.00 each and that they were rented. AR undertook to forward copies of the Tenancy Agreements but she failed to do so. That she has not rented the 3 bedroom but that she has prospects. That it was mortgaged for \$863.00. That the rent covers the mortgage with a bit extra. That with respect to enrolling JSR in school, she can

only be enrolled if she comes over the border. That she had put in an application for AM at a Catholic School. That she let them know about this situation. That because she is not baptized she has to have an interview with a priest before the enrolment can be approved. That she prefers the Catholic School over the public school even though the process was longer.

Submissions

Respondent

52. Mrs. Tashana Wilson submitted that JR has put all of his evidence in his Affidavits. That the Court has heard what the Department of Social Services has said and received a report. That it is in the best interest of the child to continue to continue at LIS and that joint custody be granted to both parents and care and control to JR and reasonable access to AR.

Petitioner

53. The Petitioner asked that the terms of the Consent Order remain in place with the addition to the order that the child can be relocated to Canada.

54. On the afternoon of September 2, 2022 the Court met with JSR at a local restaurant where they shared a meal and spoke about the issues that had arisen between her parents concerning the move to Canada and the issues raised in the Report. JSR presented as an intelligent, mature and well-spoken young person. She appeared to be honest and tried to be fair to both parents. She recognized their shortcomings and admitted her own. She believes that both parents love her and are trying to be parents and she loves both of them too. She does not want to move to Canada and wants to complete her studies at LIS.

Issues

55. The Court must determine the following issues herein:

- (1) Whether it is in the best interest of the minor child to vary the Consent Order filed herein;
- (2) Whether the Petitioner has satisfied the Court that the arrangements made in Canada thus far are for the welfare of the minor child and that the temporary injunction ought to set aside;

- (3) Whether the Respondent is in arrears of maintenance payments;
- (4) Whether in all the circumstances of the case it is for the welfare and in the best interest of the minor child to permit her removal from the jurisdictions.

Analysis and Conclusions

The Law

56. Section 35 of the Matrimonial Causes Act ("**the Act**") empowers the Court to vary its orders and Sections 27 (1) and 29 (2) of the Act empowers the Court to make financial provision orders and property adjustment orders in relation to the parties and to the children of the marriage. Section 30 (1) of the Act permits a party to pursue arrears of maintenance.
57. The Court is usually slow to vary Consent Orders. The parties would have come to an agreement on the matters contained therein. But where circumstances change or some new issue not addressed by the parties in the order arises the Court may revisit the order and when it comes to children, apply the usual principle, do what is in the interest and welfare of the child.
58. Section 3 Child Protection Act provides as follows:

"PART I - RIGHTS OF THE CHILD

3. (1) Whenever a determination has to be made with respect to — (a) the upbringing of a child; or (b) the administration of a child's property or the application of any income arising from it, the child's welfare shall be the paramount consideration. (2) In all matters relating to a child, whether before a court of law or before any other person, regard shall be had to the guiding principle mentioned in subsection (1) and that any delay in determining the question is likely to be prejudicial to the welfare of the child. (3) In determining any question relating to circumstances set out in paragraphs (a) and (b) of subsection (1), the court or any other person shall have regard in particular to — (a) the ascertainable wishes and feelings of the child concerned considered in the light of his or her age and understanding; (b) the child's physical, emotional and educational needs; (c) the likely effects of any changes in the child's circumstances; (d) the child's age, sex,

background and any other circumstances relevant in the matter; (e) any harm that the child has suffered or is at the risk of suffering; (f) where relevant, the capacity of the child's parents, guardians or other persons involved in the care of the child in meeting his or her needs."

59. In the case of **Anishka A. Missick A.K.A. Anishka Hanchell v The Attorney General Of The Commonwealth of The Bahamas** No. 2021/PUB/con/FP/00001 Klein, J stated as follows:

"Welfare of the child

[25] The determination of what is in the best interest of a child in any given case "is inherently imprecise", to use the language of Lord Nicholls of Birkenhead in the UK House of Lords case of *Re B (a minor)* [2021] UKHL 70 (mentioned in the Court of Appeal case of *"MGO" v. "FCO"* [SCCivApp. No. 10 of 2015]). In making any decision involving children, a judge is required to exercise his or her discretion based on many competing (and often conflicting) interests. As put by Lord Nicholls in the referenced case:

"16. In cases such as the present the first instance judge decides which order, if any, he considers is in the best interest of the child. When doing so the judge is said to be exercising his 'discretion'. In this context, this expression is descriptive of the judicial evaluation and balancing of a number of factors from which an overall conclusion is reached on a concept whose application in any given case is inherently imprecise. There is no objectively certain answer on which of two or more possible courses is in the best interest of a child. In all save the most straightforward of cases, there are competing factors, some pointing one way and some another."

Findings of Fact

60. It is patently clear that the Petitioner and the Respondent both love and care about the minor child. Though her parents have "polar opposite" personalities and parenting styles she loves them both. Having considered carefully the evidence of

the Petitioner and the Respondent and having observed their demeanor while giving evidence, having taken into consideration the views of the Minor Child I have made an assessment of the credibility of the parties. Unfortunately, I found the Petitioner to be stating half-truths, untruths and embellishments of the truth and to be generally a less than credible witness. I found the Respondent to be more forthright, forthcoming and truthful and therefore a more credible witness. I found the minor child to be matured for her age and very well spoken. I concluded that in responses to my questions she tried her best to be fair to both parents. I found her to be a credible participant in these proceedings. It is my hope that the Petitioner will be more forthright in the future in these proceedings.

61. Let me state for the record that I do not know the Respondent personally, professionally or in any manner whatsoever. It has been my experience that whenever allegations such as these arise they are usually made by the party who thinks that they are going to lose their case. The minor child denied spreading such rumors. Anyone else found to be spreading such rumors could find themselves to be called upon to explain to the Court why he or she should not be held in contempt of this Court.

62. I am satisfied on the evidence of the parties that approximately 9 months ago the Petitioner and the Respondent were in agreement with the relocation of the minor child but that the agreed location was the Dartmouth, Nova Scotia, Canada and that the Respondent attached reasonable conditions to the relocation. I accept that he agreed to help finance the relocation for the minor child in the sum of \$6,000.00. While I accept that the Respondent did not adhere to the order to pay maintenance of the weekly sum of \$400.00 that he did maintain the minor child. I am satisfied that in recent years, for at least 50% of the time, the minor child has resided with the Respondent and that in fact he has provided considerable child care services for the Petitioner's younger child AM. The Petitioner has not provided any proof that he is indebted to her in the sum of \$30,000.00 for arrears of maintenance. The Respondent has established that he has insurance coverage for the minor child. When attending a physician it often unnecessary to present the

insurance card once the policy number is in the system and the Petitioner was ordered to pay the co-pay in any event pursuant to the Consent Order.

63. As relates to arrangements in place in Canada I am satisfied that contrary to the agreement for the relocation the Petitioner has taken up residence in London, Ontario, Canada and not Dartmouth. I am satisfied that she and her husband and their daughter have the requisite Visas from the Canadian Government and are not in the country illegally. That she had not satisfied me however that she has deposited in an account 5 months' rent on the residence that she states she has rented or that the residence is suitable for occupation by the minor child. She has not registered the minor child in school as yet nor has she even registered her youngest daughter in school. She has not forwarded proof that she has paid her tuition at Sheridan College. She has not forwarded proof of her husband's employment and proof that they can sustain themselves financial for any appreciable period of time in Canada. Although I appreciate that she has only been in Canada a few short weeks these conditions must be fully met before the Court can consider allowing her to remove the minor child, JSR from this jurisdiction. The Petitioner does not have all of her "ducks in a row" at this juncture.

Disposition

64. Having, therefore reviewed and considered the aforementioned affidavits, having heard Counsel on behalf of the Respondent, having read and considered the submissions of Counsel for the Respondent and the Petitioner Pro Se and the minor child, the authorities referred to, and for the reasons advanced by Counsel for the Respondent I make the following **Interim Orders** that:

- (1) Ms. Jodie Burrows is appointed the Guardian Ad Litem of JSR until the final determination of the Respondent's application;
- (2) The Petitioner and the Respondent shall have joint custody of JSR with temporary care and control to the Respondent and reasonable access to the Petitioner. No major decisions are to be made in relation to the minor child without consultation and agreement by the Respondent.

- (3) The Petitioner shall exercise access to JSR during the half term school break 2022 in Canada or as soon as possible thereafter. JSR shall be accompanied to Canada by Ms. Jodie Burrows and shall return with Ms. Burrows to this jurisdiction on or before the end of the half term break or such later time such as the case may be, at the discretion of Ms. Burrows. Ms. Burrows shall verify the following while in Canada: (1) the Petitioner's and her husband's immigration status; (2) that the Petitioner has secured suitable living accommodation and that suitable living quarters exist therein for JSR (3) that a suitable school has been identified for JSR to attend as early as January, 2023; (4) that the Petitioner is enrolled at a College/University and (5) that the Petitioner and her husband are gainfully employed (or that her husband's salary can sustain them). This visit for JSR and Ms. Burrows shall be at the expense of the Respondent;
 - (4) The Petitioner shall surrender the Passport of JSR to the Respondent forthwith if she has not already done so; should she fail to do so the Respondent may apply for the issuance of a new passport and United States Visa;
 - (5) That the Respondent shall keep the minor child covered under his health insurance policy and shall bear the cost of all medical, dental, optical expenses of the minor child of the marriage not covered by the insurance until further order;
 - (6) That the Respondent shall pay all tuition and fees, educational and extracurricular expenses for JSR until further Order of the Court;
 - (7) That JSR is to resume counseling at counselling services at the Rand Memorial Hospital or privately;
 - (8) This matter is adjourned to November 30, 2022 at 2:30 p.m. via Zoom;
 - (9) The Petitioner has been advised of her right to appeal this decision and has been given 14 days from the date hereof to appeal this decision.
65. I apologize profusely for the delay in the release of the written Ruling herein. So as not to prejudice the Petitioner's exercise of her right to appeal this Ruling,

pursuant to the Court's powers under Order 42, Rule 3(2) of the RSC, this Ruling shall be dated today's date.

Postscript

66. Regrettably, because of the conduct and remarks of the applicant during the close of the hearing on September 5, 2022, the Court has felt it necessary to institute proceedings for contempt and in due course will issue a summons to the Petitioner to show cause why she should not be committed for contempt of Court for her behavior during the hearing of September 5, 2022. The court is greatly sympathetic to the emotional turmoil that may have been caused to the Petitioner when JSR was temporarily removed from the care and control of the Petitioner. No one doubts the genuine love of the Petitioner for her daughter and her desire to be reunited with her. But whatever emotions might be evoked by the Court's previous Order and this Ruling, it cannot excuse the behavior of the Petitioner. She has an obligation like every other litigant to show appropriate respect to the Court. The Court cannot and must not forgive without more such behaviour and lack of respect for the Court.

Dated this 18th day of October A. D. 2022

Petra M. Hanna-Adderley
Justice