IN THE COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

Family Division

2022/FAM/div/00507

B E T W E E N:

L.M.

Petitioner

v

N.G.

Respondent

Before:	The Honourable Madam Justice C.V. Hope Strachan, Justice of The Supreme Court of the Commonwealth of the Bahamas
Appearances:	Krystal Rolle K.C. and Darron Cash for the Petitioner Robert Adams K.C. and Edward Marshall II for the Respondent
Hearing Dates:	5th May 2025; 8th July 2025

Matrimonial Proceedings - Application for Interim Custody and Access – Existing Interim Child Protection Order under Child Protection Act – Need for Expert Assessment of Parent – Wishes and Feelings of the Child – S. 3 Child Protection Act Considerations – Risk of Harm or Capacity to Meet Child's Needs – Failure to Cross-Examine Witness

RULING

INTRODUCTION AND BACKGROUND

[1.] Throughout this Ruling, for the purposes of clarity, the Petitioner is referred to as "the wife" or "L.M." and the Respondent as "the husband" or "N.G."

[2.] L.M. ("the wife") filed a Summons on 4th December 2023 seeking a discharge order and an interim custody and access order for G.G., one of the minor children of the family. The wife also sought an order staying all proceedings in the Child Protection Proceedings and an Emergency Access Order. The Child Protection proceedings had been commenced by the husband in 2022/FAM/div/00629 before *Justice Klein*. Final determination of the matter resulted inter alia in an Order suspending the wife's access to one of the children in the family, G.G., until further ordered in the matrimonial proceedings under the MCA or until further Orders.

[3.] The relief sought by the wife is provided below:

> *"1. An Order ("The Discharge Order") pursuant to Section 22 (5) of the Child Protection Act, 2009 and under the Court's Jurisdiction discharging the Order of the Honourable Mr. Justice Loren Klein ("The Restricted Access Order") filed on 12th December 2022 in CLE/gen/00978 ("The Child Protection Proceedings").*
>
> *"2. An Order ("The Interim Custody Order") pursuant to Sections 55 (1) and 74 (1) (a) of the Matrimonial Causes Act, 1973, Rule 51(1) of the Matrimonial Causes Rules and pursuant to Section 22 (1) (a) of the Child Protection Act, 2009 granting Joint Custody of G.W.G. ("G.G.") to the Petitioner and the Respondent with care and control to the Respondent until the final determination of the application for Ancillary Relief in these proceedings and/or until the Court makes a final Custody order in these proceedings relative to G.G.*
>
> *"3. An Order ("The Interim Access Order"), upon such terms and conditions as the Court deems fit, appropriate and just in the circumstances, pursuant to Sections 55(1) and 74 (1)(a) of the Matrimonial Causes Act, 1973, Rule 51(2) of the Matrimonial Causes Rules and under Section 22 (1)(b) & (c) of the Child Protection Act, 2009 making provision for the Petitioner's access to G.G. consequent upon and taking into account the Interim Custody and Discharge Order until the final determination of the application for Ancillary Relief in these proceedings and/or until the Court makes a final access order in these proceedings and relative to G.G.*
>
> *"4. An Order made on an urgent basis, ("The Stay") under the Court's inherent jurisdiction staying all proceedings in the Child Protection Proceedings including but not limited to the Respondent's application filed on the 22nd day of November, A.D., 2023 as*

well as a "Stay of Execution of the Restricted Access Order pending the hearing and the determination of the Petitioner's application for the Discharge Order as prayed for by Paragraph 1 hereof.

"5. An Order made on an urgent basis ("The Emergency Access Order") pursuant to Section 22 (1)(b)(c) of the Child Protection Act, 2009 making provision for the Petitioner's access to G.G. over the next Ninety (90) days pending the hearing and the determination of the Petitioner's applications for the Interim Custody Order, the Discharge Order and the Interim Access Order.

"6. An Order that the Respondent pay to the Petitioner the costs of and occasioned by this application."

[4.] In support of L.M. ("the wife's") application, two Affidavits by Wallace Rolle were filed. The First Affidavit was filed on 6th December 2023, and the Second Affidavit on 2nd May 2025.

[5.] N.G. ("the husband") filed two Summonses on 25th April 2025. The first Summons sought an adjournment of the matter to allow for an independent assessment of the wife prior to the hearing of her application. In the second Summons, the husband sought interim custody and access of A.D., the wife's daughter from a previous relationship, and the other minor child of the family.

[6.] Both Summonses are supported by the Second Affidavit of the husband. The First Summons sought the following:

"1. An Order that the wife do, within fourteen (14) days of the date of the Order, appoint an independent expert duly qualified in discipline of child psychology, parental alienation and family reunification therapy to develop, in conjunction with Dr. Denise McCartan, a list of the steps the parties and children of the family ought to take, including but not limited to, the parties and children of the family undergoing an assessment (to the extent such assessment has yet to be performed), to prepare for the possible reunification and restoration of access –

(i) between A.D and G.G.; and
(ii) between A.D and the husband
(iii) between G.G and the wife; and
(iv) that the said independent expert appointed by the husband and Dr. Denise McCartan do together produce to the Honourable Court, within sixty (60) days of the date of the order, a joint expert report of such steps.

2. And further an order that the hearing of the wife's Summons filed herein on 4 December 2023, and the husband's further Summons filed herein on 25 April 2025, be adjourned to

a date following this Honourable Court's receipt of the joint expert report specified in paragraph 1 hereof;

3. And for an order that the wife do pay the husband the costs of and occasioned by this application such costs to be taxed if not agreed."

[7.] The Second Summons filed by the Respondent detailed the following:

"1. Following the assessment and joint expert report produced in connection with the wife's Summons filed herein on 4th December 2023, for interim custody and access in relation to G.G., an order (the Interim Custody Order") pursuant to section 74(1) of the Matrimonial Causes Act Ch. 125, Rule 51 (1) of the Matrimonial Causes Rules Ch. 125 and section 22(1) of the Child Protection Act Ch. 132, granting joint custody of A.D. to the wife and the husband, with care and control of A.D. to the wife, until final determination of the application for ancillary relief in these proceedings and/or until this Honourable Court makes a final custody order in these proceedings relative to A.D.

2. An Order ("the Interim Access Order"), upon such terms and conditions as this Honourable Court deems fit, appropriate and just in the circumstances, pursuant to section 74(1)(a) of the Matrimonial Causes Act Ch. 125, Rule 51(2) of the Matrimonial Causes Rules Ch. 125, and under section 22 (1)(b) & (c) of the Child Protection Act Ch. 132 making provision for the husband's access to A.D. consequent upon and taking into account the Interim Custody Order until the final determination of the application for ancillary relief in these proceedings and/ or until this Honourable Court makes a final access order in these proceedings relative to A.D.

3. And for an order that the wife do pay the husband the costs of and occasioned by this application, such costs to be taxed if not agreed."

[8.] Additionally, the following Affidavits were filed in support of the husband's applications:

- Affidavit of Samuel Brown filed on 29th April 2025,
- Affidavit of Sherika Sands filed on 30th April 2025,
- Second Affidavit of Sherika Sands filed on 5th May 2025,
- Affidavit of Dr. Michael Neville filed on 30th April 2025
- Affidavit of Dr. Denise McCartan filed on 9th May 2025

SUBMISSIONS OF THE WIFE

[9.] In her client's bid to achieve an Interim Access Order in the divorce proceedings, Counsel Rolle for the wife submitted that there were irregularities in the CPA Proceedings. Those irregularities were explained by the wife in her Supplemental Affidavit filed on 3rd June 2025. In her Supplemental Affidavit at paragraphs 9 to 15, the wife stated that:

"9. I retained Mrs. Krystal Rolle KC to represent me in these Divorce proceedings in June, 2023. Mrs. Rolle KC accordingly filed a Notice of Appointment of Attorney in these divorce proceedings on 7th June, 2023. There is now produced and shown to me marked Exhibit "LMM-1 at Pages 1 and 2" a copy of that Notice."

"10. Between June, and November, 2023 Mrs. Rolle K.C. was on record in these proceedings only and appeared in Court on my behalf in these proceedings. Mrs. Rolle KC was not however on record in the Child Protection Proceedings which N.G. had commenced by Originating Summons in June, 2022.".

"11. As demonstrated by the correspondence exhibited to my first Affidavit, while Mrs. Rolle KC spent most of the summer and fall of 2023 trying to assist me in getting access to G.G which ultimately occurred on 23rd September, 2023 (albeit for less than 5 minutes) she had no involvement at all in the Children Protection proceedings and had not at that point been given much of the documents which had been filed in 2022 relative to those proceedings."

"12. On 22nd November, 2022 N.G. made an application in the Child Protection proceedings seeking an order that my visitation with G.G be suspended. The hearing of the application was set for 6th December, 2023 but we received notification of the hearing date too late to allow me to fly to Nassau for the hearing."

"13. Mrs. Rolle KC filed a Notice of Appointment in the Child Protection proceedings on 4th December, 2023 and then she appeared on my behalf at the hearing on 6th December, 2023. This was Mrs. Rolle KC's first appearance in these proceedings. There is now produced and shown to me marked Exhibit "LMM-1 at Pages 3 and 4" a copy of that Notice."

"14. Mrs. Rolle KC requested on my behalf, among other things, that the proceedings be adjourned to allow me to file an Affidavit in response to the evidence N.G. had filed for the purpose of suspending my visitation. I recall that the 6th of December was a Wednesday, Mrs. Rolle asked that the matter be stood down until that Friday to allow me to file an Affidavit in response and that request was denied by the Court."

"15. Without any evidence or submissions from me, the Interim Stay of Access Order was made against me preventing me from seeing or having any manner of communication with G.G and that Order remains in place up to this date."

[10.] The wife also relied on paragraphs 31 to 40 of her Supplemental Affidavit of the purported irregularities concerning the Order made on 7th December 2022 by Justice Klein.

> *"31. N.G. by his Committal application also sought to have me committed for my alleged breach of the 12th December, 2022 Order."*
>
> *"32. During my cross examination in the Committal application, it became apparent that when the 12th December, 2022 Order was made my previous Counsel appeared before the Court on my behalf when they no longer represented me."*
>
> *"33. On 29th July, 2022, during the course of Mr. Adam's cross examination of me, he asked me whether my previous attorneys appeared in Court on my behalf in December, 2022 and my response was that they no longer represented me in December, 2022. This was my response because this is what I believed to be the case."*
>
> *"34. I had received an email from my previous Counsel on 30th September, 2022 stating, "...In the circumstances, I am constrained to now advise, and Sharon, Lady Wilson concurs, that we cannot continue to represent you. We would therefore request that you settle your outstanding invoices and advise as to where you would like your files to be transferred to. We are prepared to remain on record for a maximum of a further 14 days to allow for an orderly transition of these files to another attorney." [Emphasis Mine]*
>
> *"35. On 21st November, 2022, I sent an email to my previous Counsel stating, "Gail and Sharon, Please note that you do not represent me and have not since you gave me 14 days notice in writing on September 30, 2022. Please refer to your email which states you would no longer be on the record more than 14 days of sending the notice." There is now produced and shown to me marked exhibit "LMM -1 at Pages 19 to 31" copies of withdrawal application with these emails attached."*
>
> *"36. Additionally, on 25th October, 2022, I had sent an email to the Court where I stated among other things that I did "not have legal representation in the Bahamas". There is now produced and shown to me marked exhibit "LMM -1 at Pages 32 and 33" a copy of my email."*
>
> *"37. On 7th December, 2022 I was not aware that a Court hearing was taking place and I was not aware that my prior Counsel appeared at that hearing on my behalf. It was and remains my belief that they no longer represented me after September, 2022. This is why I told the Court on 25th October, 2022 that I had no legal representation in the Bahamas."*

"38. It has been explained to me by Mrs. Rolle KC that the 12th December, 2022 Order was entered at the hearing on 7th December, 2022. Mrs. Rolle KC has also explained to me that the Order has provisions, specifically Paragraphs 4 to 8 which involve the appointment of the Single Joint Expert (SJE), which purport to be consent orders."

"39. Between September 2022 and June 2023 when I retained Mrs. Rolle K.C. I did not have legal representation in the Bahamas. I had no legal representation in the Bahamas on 7th December, 2022 when this hearing took place and when this Order was entered."

"40. I wish to also confirm that I had no awareness of the 12th December, 2022 Order or its terms until in or about June, 2023 when I discussed it with Mrs. Rolle KC after she had been retained and with my Canadian Counsel. As the Transcripts from the Committal proceedings demonstrate, I've been cross examined extensively on this point already."

[11.] Counsel for the wife relied on the authority of **Re C (Direct Contact: Suspension) [2011] EWCA Civ 521** which sets out the principles applicable to access as between parents and children and how the Court should approach instances where there has been a cessation of contact. The Court then set out the following propositions namely that: -

1. Contact between parent and child is a fundamental element of family life and is almost always in the interests of the child.
2. Contact between parent and child is to be terminated only in exceptional circumstances, where there are cogent reasons for doing so and when there is no alternative. Contact is to be terminated only if it will be detrimental to the child's welfare.
3. There is a positive obligation on the State, and therefore on the judge, to take measures to maintain and to reconstitute the relationship between parent and child, in short, to maintain or restore contact. The judge has a positive duty to attempt to promote contact. The judge must grapple with all the available alternatives before abandoning hope of achieving some contact.
4. He must be careful not to come to a premature decision, for contact to be stopped only as a last resort and only once it has become clear that the child will not benefit from continuing the attempt.
5. The court takes both a medium-term and long-term view and does not accord excessive weight to what appears likely to be short-term or transient problems.

6. The key question, which requires 'stricter scrutiny', is whether the judge has taken all necessary steps to facilitate contact as can reasonably be demanded in the circumstances of the particular case.
7. All that said, at the end of the day, the welfare of the child is paramount; the child's interest must have precedence over any other consideration.

[12.] Equating or comparing **Re C** to her client's present circumstances, Counsel Rolle K.C. posited that, the Wife has been unjustly denied contact with her son for over 16 months, despite having no serious allegations against her, unlike in **Re C**, where the mother who physically abused her child was not similarly deprived. The Court has a duty to promptly restore contact, especially since the Petitioner has proposed a supervised and supported plan for reunification. Any further delay would contradict the Court's legal obligation, given that the cessation of contact was not justified.

THE CHILD'S WISHES

[13.] The husband's Counsel alluded to the fact that G.G. expressed not wanting to see his mother in an interview from March 2024. Counsel Rolle submitted that the Court should be highly skeptical of G.G.'s reported statements for several reasons. The interview took place after a hearing in December 2023, where it was clearly established that G.G. was willing to see his mother. After that hearing, the Respondent requested to ascertain G.G.'s "feelings and wishes," and shortly afterward, G.G. allegedly changed his stance and no longer wanted to see his mother.

[14.] Continuing, she submitted that the Court should be cautious of possible manipulation or parental alienation, especially by the custodial parent, which could be influencing G.G.'s statements. The Court is not required to follow a child's wishes, as established in prior legal rulings (see. **R.L.H v T.O.H [2022]** 1 *BHS J.* No. 120 at paragraph 31.) The focus should be on what is in G.G.'s best interest, and it is argued that G.G.'s best interest would clearly involve resuming a relationship with his mother, the only one he has ever known.

EXPERT EVIDENCE

[15.] Counsel said the expert evidence relied on by the husband as rationale for refusing access to G.G. by her client, fails to provide any justification for the current lack of contact between the wife and G.G. There is nothing in their testimony that meets the legal threshold required to continue preventing access.

[16.] Expert witnesses are supposed to provide unbiased, independent evidence based on facts, in line with established principles in **National Justice Compania Navierasa S.A v**

Prudential Insurance Company [1993] 2 Lloyd's Rep 68. Counsel further submitted that the experts' evidence does not meet these standards of objectivity and independence. Given that the expert evidence is neither objective nor meets the necessary threshold to justify continued lack of contact, she urged the Court to disregard it entirely.

PREVENTING FURTHER DELAYS IN THE RESUMPTION OF ACCESS

[17.] The wife's Summons was filed on December 4, 2023, but the hearing is taking place on 5 & 6 May 2025. This is the first time the wife's Summons is being heard. Two days after filing her Summons, the wife's access to G.G. was stayed, which has remained in effect for 16 months. The husband filed two Summonses on April 25, 2025, which the wife argued should not be considered on the same date as the wife's Summons. Only the wife's Summons was listed for hearing in May 2025. The wife has proposed a visitation arrangement between the husband and A.D., which is not in dispute. This should be addressed immediately alongside G.G.'s access, without further delay.

[18.] The wife argues further that the second Summons filed by the husband, which seeks to establish a protocol, could unnecessarily delay reunification, possibly pushing it beyond the summer months, with continued zero contact in the meantime. Even if this Summons were before the Court (which it is not), it would conflict with the Court's responsibility to quickly reinstate contact. Given the delay and the importance of resolving the issue quickly, the wife urges the Court not to allow the husband's Summonses to delay the immediate reinstatement of contact between the wife and G.G.

INTERIM JOINT CUSTODY

[19.] The wife believes that her full involvement in all aspects of G.G.'s life, as it has been since his birth, should continue without interruption.

SUBMISSIONS BY THE HUSBAND

[20.] Counsel for the husband acknowledged that this Court has the discretion to rehear a matter that has already been decided in another court. However, it is Counsel's submission that the Court ought to exercise its discretion and decline a full rehearing of the matter, as a decision was made in the CPA Proceedings by *Justice Klein* on the issue of interim access. Counsel relied on the English decision of **Re B (Minors) (Care Proceedings: Issue Estoppel) [1997] FAM 117** in support of his position. At pages 128 and 129 of the judgment, *Hale J* opined that:

> *"(1) The court will wish to balance the underlying considerations of public policy, (a) that there is a public interest in an end to litigation - the resources of the courts and everyone*

involved in these proceedings are already severely stretched and should not be employed in deciding the same matter twice unless there is good reason to do so; (b) that any delay in determining the outcome of the case is likely to be prejudicial to the welfare of the individual child; but (c) that the welfare of any child is unlikely to be served by relying upon determinations of fact which turn out to have been erroneous; and (d) the court's discretion, like the rules of issue estoppel, as pointed out by Lord Upjohn in Carl Zeiss Stifung v. Rayner & Keeler Ltd. (No.2) [1967] 1 A.C. 853, 947, "must be applied so as to work justice and not injustice."

(2) The court may well wish to consider the importance of the previous finds in the context of the current proceedings. If they are so important that they are bound to affect the outcome one way or another, the court may be more willing to consider a rehearing than if they are of lesser or peripheral significance.

(3) Above all, the court is bound to want to consider whether there is any reason to think that a rehearing of the issue will result in any different finding from that in the earlier trial. By this I mean something more than the mere fact that different judges might on occasions reach different conclusion upon the same evidence. No doubt we would all be reluctant to allow a matter to be relitigated on that basis alone. The court will want to know (a) whether the previous findings were the result of a full hearing in which the person concerned took part and the evidence was tested in the usual way; (b) if so, whether there is any ground upon which the accuracy of the previous find could have been attacked at the time, and why therefore there was no appeal at the time; and (c) whether there is any new evidence or information casting doubt upon the accuracy of the original findings."

[21.] Further, it is Counsel's view that there is not a scintilla of 'new' evidence that has been presented for the Court to consider re-litigating the issue of contact and access between the wife and G.G.

[22.] The husband's Counsel further submits that the Court of Appeal decision of **M.G.O v F.C.O [2017]** 2 *BHS J.* No. 113 is highly instructive in relation to this matter. It is crucial that the Court gives proper consideration to section 3(3) of the CPA ("the welfare checklist") in making a determination of any application concerning the upbringing of a child. The **M.G.O** case concerned an appeal against a final custody order. In that case:

(i) The father initiated child custody proceedings in the course of divorce proceedings pursuant to the Child Protection Act ("the CPA") and the Matrimonial Causes Act ("the MCA"). By his application, the father sought sole custody, care, and control of the children to the marriage with supervised access by the mother.

(ii) After the father filed his application, the mother also filed a Summons seeking ancillary relief in the divorce.

(iii) On 11th September 2013, by consent, living and parenting arrangements for the welfare of the children were implemented by the parties, with the assistance of the court. Both parents were granted joint custody, care, and control of the children on specific terms and conditions agreed between them.

(iv) After the interim parenting order was entered on 11 September 2013, the mother applied for further ancillary relief, seeking, inter alia, a final order for joint custody, care and control of the children.

(v) In preparation for that hearing, both parties filed what the Court of Appeal described as "...a veritable mountain of affidavits and counter affidavits..." each party seeking to lay an evidential basis for the orders they sought.

(vi) In support of his position, the father filed multiple affidavits in which he sought to establish, inter alia, that the children's welfare would be better served by an order granting sole custody, care and control of them to him on the basis that joint custody, care and control was not in the children's best interests given that the mother suffered from a borderline personality disorder and mood swings.

(vii) Further the father also claimed that while the joint custody was in place, the mother had demonstrated an unwillingness to promote the children's relationship with him by encroaching upon agreed upon periods of time during which he was responsible for their custody, care and control.

(viii) The mother also filed affidavit evidence denying the father's allegations about her fitness as a parent or lack thereof. Her affidavits also sought to persuade the court that she was fit and suitable as a parent in the face of those challenges.

(ix) Both applications were heard together in a contested proceeding that lasted six days and on 13 January 2015, the Chief Justice (as he then was) delivered his Ruling in which he decided to continue the terms of the earlier order entered in the proceedings on 11 September 2013 and which had been in place, at that time, for more than 15 months. The Chief Justice reasoned that whilst the children's living arrangements were not ideal, no evidence had been provided demonstrating that their current living arrangements were having a negative impact on their well-being.

[23.] In that case, the Chief Justice's Ruling to continue the earlier order entered on 11 September 2013 was appealed to the Bahamas Court of Appeal by the father on several grounds. One of the grounds of appeal was that the Chief Justice failed to properly consider the evidence regarding, inter alia, the mother's mental health issues and the expert evidence

adduced as to 'risk of harm' to the children's welfare as specified in section 3(3) of the CPA.

[24.] Counsel referred to paragraphs 33 to 36 of the Court of Appeal judgment of M.C.O. At paragraph 37 of the Judgment, the Court of Appeal accepted the father's contention that the Chief Justice had failed to properly consider the factors specified in the welfare checklist in section 3(3) of the CPA and the evidence that had been adduced by the parties in relation to those factors, including but not limited to, the expert evidence as to the possible risk of harm to the children concerned.

[25.] It is noteworthy that in arriving at their conclusion, the Court of Appeal:

(i) Rejected the Chief Justice's decision to prefer the expert evidence of Dr. Major "...in the face of... startling contradictory conclusions..." by other more qualified professionals whose reports in large part the Chief Justice appeared to ignore. It was specifically highlighted that the fact Dr. Major had met with the mother more recently and more frequently than the other professionals involved was insufficient to justify the Chief Justice's wholesale acceptance of her evidence over the evidence of the other professionals;

(ii) Held that the Chief Justice was "...duty bound..." to order an independent assessment of the mother's mental health, including her ability to successfully co-parent the children before he made his decision. Indeed, at paragraph 50 of the Judgment, the Bahamas Court of Appeal made it abundantly clear that 'before ruling' in the manner that he did, the Chief Justice ought to have undertaken the course proposed by the mother/respondent in her unheard Summons and by Dr. Michael Neville that an independent assessment be performed as to (a) whether the mother, in fact, had a mood disorder or borderline personality disorder (b) if such conditions existed, whether they impact upon the welfare of the children generally and the mother's ability to adequately provide parental supervision, guidance and support to the children.

(iii) Held that it was incumbent upon the Chief Justice to do more than he had done in light of the requirements of section 3 of the CPA. It was not enough for the Chief Justice to merely state that it was not in the best interests of the children to again change their living arrangements or that they have on all accounts adjusted well to their new arrangement. He was obligated to

discuss the various and nuanced aspects of the evidence before him and to justify his conclusions based on that analysis;

(iv) Held that the Chief Justice's failure to properly consider the evidence was an 'abdication' of his responsibilities under section 3 of the CPA. Reference was made to paragraph 67 of the Judgment.

(v) Held that "...up-to-date evidence of the current state of the joint living arrangements, including the children's views of the arrangements..." was necessary before any determination could be made about whether the children's custody and access arrangement ought to have been changed. Accordingly, The Bahamas Court of Appeal directed a re-hearing of the applications considered by the Chief Justice but allowed the arrangements that had been earlier implemented since 2013 to remain in place pending that rehearing. See paragraphs 68 and 69 of the Judgment.

WISHES AND FEELINGS OF G.G. AND A.D.

[26.] The Husband's Counsel included in his submissions the view that the Court is obligated to consider the wishes and feelings of the children. Section 3(3) of the CPA mirrors section 1(3) of the Children's Act 1989 of England. Both sections impose an obligation on the Court to consider the wishes and feelings of a minor child, taking into account the child's age and understanding, when making decisions about the child's upbringing.

[27.] Counsel relied on three English authorities. In **Re D (a child) (abduction: rights to custody) [2006] UKHL 51**, the *House of Lords*, at paragraph 58, emphasized that ascertaining the wishes and feelings of children before making an order regarding their upbringing is crucial as they are the ones who must live with what the Court decides:

> *"It is the child, more than anyone else, who will have to live with what the court decides. Those who do listen to children understand that they often have a point of view which is quite distinct from that of the person looking after them. They are quite capable of being moral actors in their own right. Just as the adults may have to do what the court decides whether they like it or not, so may the child. But that is no more a reasons for failing to hear what the child has to say than it is for refusing to hear the parents' views."*

[28.] In **Re H (a child) [2008] EWCA Civ 1245**, the English Court of Appeal decided the Judge in the proceedings below had failed to give due regard to the wishes and feelings

of the child concerned in that case. The dictum of Ward LJ at paragraphs 25 and 26 of the Judgment are instructive:

> *"**[25]** This appeal is very finely balanced but, notwithstanding reminders of G v G (Minors: Custody Appeal) [1985] 2 All ER 225, [1985] FLR 894, [1985] 1 WLR 647 and, more deeply seared into my soul, Piglowska v Piglowski [1999] 3 All ER 632, [1999] 2 "FCR 481, [1999] 1 WLR 1360, I have come to the conclusion that the judge did err in this case. I have reached that conclusion because, as I have endeavored to indicate as I recited the judgment, he paid some lip-service to the child's needs but did not in my judgment sufficiently take on board her understanding of her predicament and the depth of her feeling. Of course he is right to say that a ten-and-a-half-year-old child's wishes are not determinative of her future, but a ten-and-a-half year old who has so consistently throughout the many months of this inquiry maintained a wish to be with her mother, demonstrated again to some extent by her return there within the last few days, this is a child in some distress."*
>
> ***"[26]** It follows, therefore, that her wish to be with her mother and the perpetuating of the strong and significant attachment to her mother is a weighty factor to bear in the scales..."*

[29.] Further in **Re (a child) (residence order: treatment of child's wishes) [2009] EWCA Civ 445**, the English Court of Appeal also decided the Judge in the proceedings below failed to properly take into account the wishes and feelings of the child concerned in that particular case. At paragraph 55 of the Judgment, *Rix LJ* stated:

> *"**[55]** I accept that the judge had a difficult decision, made none the easier by the absence of the CAFCASS reporter and by the mother's proper concern about delay. This was a situation with which he had to deal as best he could. Nevertheless, in my judgment, he has erred in more than the balancing of the weight of various checklist factors. He has erred essentially, in setting on one side the firm evidence of the child's own wishes, and in rejecting the CAFCASS reporter's own clear recommendation, in favour of a return to residence with the mother, together with the reasons given for both. He has not done so because of any new evidence or of a reasoned challenge to the opinion of Dr Cochrane. He has simply critically discounted the child's wishes, and essentially ignored Dr Cochrane's recommendations and conclusions, and has done so without hearing either. The CAFCASS reporter is, to a very great extent, the eyes and ears of the court, especially where the child is concerned, but the judge has not "listened" to the child, and he has ignored the reporter."*

[30.] Counsel for the husband submits that this Court's duty is to ascertain the wishes and feelings of both children, which the Court must consider. G.G. is 10 years old. He has been assessed several times, which has been given in evidence to the Court. He is intelligent and able to express his wishes and feelings as reflected in the multiple reports prepared by

Dr. McCartan, his therapist, Mrs. Maria Mercedes Hope, and the Interview notes prepared by Justice Loren Klein as a result of his meeting with G.G. in March 2024.

[31.] A.D. is 14 years old. Although it is expected that she can express her own views, this Court has not been able to determine, without any evidence, A.D.'s present capacity to express her own wishes and feelings. G.G.'s and A.D.'s wishes and feelings should be determined before the Court makes any decision in relation to the Summonses filed by both the wife and husband. It is submitted that such evidence ought to be made available so that submissions can be made to assist the Court in making a determination in each party's Summons.

LIKELY EFFECT OF ANY CHANGE IN CHILD'S CIRCUMSTANCES

[32.] The husband's Counsel continued by pointing out, that while the Court has multiple reports and interview notes regarding the effects of changes on G.G.'s circumstances, there is a significant lack of evidence concerning the impact of changes on A.D. Specifically, A.D.'s second abduction from New Providence, her relocation to Toronto, Ontario, and her multiple school changes since returning to Toronto have not been adequately addressed. The husband further notes that despite making numerous requests to the wife for information regarding A.D.'s well-being, the wife has refused to provide such details. The husband argues that this information is crucial for properly understanding A.D.'s circumstances and should be made available to both parties.

[33.] This evidence would allow both parties to make informed submissions regarding A.D.'s welfare, which is a key factor in the welfare checklist. The Respondent emphasizes that the Court needs this information to make an informed decision on the application in each Summons.

RISK OF HARM AND CAPACITY TO MEET THE CHILD'S NEEDS

[34.] The husband claims that the wife's conduct has caused emotional harm to G.G. Specifically, the husband points out that the wife failed to see G.G. for nearly a year, despite being entitled to do so under court orders. Additionally, the husband accuses the wife of running a "Love Campaign" on social media and other platforms, which allegedly embarrassed G.G. and further harmed him emotionally.

[35.] The husband highlights that the wife has admitted to suffering from Post-Traumatic Stress Disorder (PTSD) and a Traumatic Brain Injury (TBI). The Petitioner's own evidence indicates that the TBI, caused by a history of concussions, was severe enough that her medical costs were paid by the husband. Those expenses totaled hundreds of thousands of dollars.

[36.] The husband presents expert evidence that the wife's admitted conditions PTSD and a TBI may negatively impact her mental well-being and her ability to adequately care for G.G. The experts, Dr. McCartan and Dr. Michael Neville, suggest that it is currently unclear how these conditions might affect G.G., potentially putting him at risk of emotional or other harm if the wife's ability to provide proper supervision is compromised.

[37.] In the circumstances, the husband recommends that the wife undergo a thorough assessment to evaluate her mental and emotional state. This would allow the Court to make informed decisions about the necessary preparatory steps before any contact is reinstated between G.G. and the wife. This approach aligns with the guidance of the Bahamas Court of Appeal in the ***M.G.O*** case, specifically referenced in paragraphs 50 and 79.

[38.] The husband highlights that the wife has refused to cooperate with Dr. McCartan in developing the necessary recommendations or protocols for the potential restoration of access between her and G.G. In response to this lack of cooperation, the husband has reasonably proposed that the wife appoint an independent expert who is qualified in child psychology, parental alienation, and family reunification therapy.

[39.] This independent expert, in collaboration with Dr. McCartan, would develop a comprehensive plan that outlines the necessary steps for the family, including any required assessments, to prepare for the possible reunification and restoration of access between A.D. and G.G., A.D and the husband and G.G. and the wife. The husband suggests that such a joint effort is crucial to ensure that the process is properly managed and in the best interest of the children involved. The wife's independent expert and Dr. Denise McCartan together will, within sixty (60) days, produce to the Court a joint expert report.

[40.] The husband argues further that, without the additional evidence and information outlined earlier, particularly regarding A.D.'s wishes and feelings, and the impact of recent changes on her circumstances, the Court would be led into error if it proceeds with hearing and deciding the wife's Summons or the husband's Second Summons at this stage. Specifically, the husband suggests that making any decisions on interim custody and access for G.G. or A.D. without these critical assessments would not serve the best interests of the children.

[41.] Therefore, the husband respectfully requests that the wife's Summons be adjourned or dismissed. The wife should be directed to appoint an independent expert, as suggested in the husband's Summons. This expert, along with Dr. McCartan, should jointly develop a comprehensive plan for restoring access, which will include necessary assessments for the wife, A.D., and potentially re-assessments for the husband and G.G.

[42.] By following this approach, the Court would be better equipped to make a well-informed decision, ensuring that its actions align with the paramount consideration of the children's best interests. This process is consistent with the duty outlined in section 3 of the CPA and the Court's responsibility to thoroughly assess all relevant factors before making any interim orders regarding custody and/or access.

[43.] It is critical in determining the issues herein to note that at the close of the arguments advanced by respective counsels for the husband and wife and moments before the court adjourned the proceedings to retire for the writing of this judgment, counsels submitted to the court that there was consensus that the Two (2) experts in the person of Drs. Annalease Richards (wife) and Dr. Harry Ferere (husband) be engaged to plan the reunification process. This compromise, I find, is significantly influential in the decisions which have to be made in this matter. [Emphasis Mine]

ISSUES

[44.] The issues for the Court's consideration are:

1) Whether the Court should consider a rehearing of the Interim Stay of Access application in light of the ruling made in the CPA Proceedings on 30th May 2025?
2) Whether the Court should accede to the husband's first Summons and order an independent assessment of the wife and A.D. prior to the hearing of the wife's Summons dated 4th December 2023?
3) Should the Court consider the wishes and feelings of A.D in these proceedings?
4) Should the court order the appointment of experts to assess the parties, the children, and to plan a reunification plan?
5) Should the court accede to the parties' individual requests for access to the respective children?

THE LAW

[45.] For ease of reference, the relevant provisions of the Law, on which the husband and wife's applications are grounded, are set out immediately hereunder. The guiding principle in relation to the rights of a child is stated under s. 3 of the Child Protection Act, Ch. 132 ("CPA"). This section provides: -

> *"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."

[46.] Section 22 (1) of the CPA states:

"22. (1) A court may, upon the application of any of the parents of a child or in the course of the hearing of any such application by one parent make such order as it may think fit regarding —
(a) the custody of the child; and
(b) the right of access to the child mentioned in section 14 by either parent; and
(c) any other matter affecting the child, having regard to the age and the best interests of the child and taking into consideration the conduct and wishes of the parents and the child."

[47.] Section 74 (1) (a) of the Matrimonial Causes Act, Ch. 125, ("MCA") provides that:

"74. (1) The court may make such order as it thinks fit for the custody and education of any child of the family who is under the age of eighteen —

(a) in any proceedings for divorce, nullity of marriage or judicial separation, before or on granting a decree or at any time thereafter (whether, in the case of a decree of divorce or nullity of marriage, before or after the decree is made absolute);"

[48.] According to rule 51 of the Matrimonial Causes Rules, Ch. 125 ("MCR") provides that:

> *"51. (1) The petitioner, or (if he has entered an appearance to the petition for this purpose) the respondent spouse or the guardian of any children of the marriage or any person who has obtained leave to intervene in the cause for the purpose of applying for the custody of, or who has under an order of the court the custody or control of, such children may at any time, either before or after final decree, apply to the judge for an order relating to the custody or education of the children of the marriage, or for directions that proper proceedings be taken for placing such children under the protection of the court.*
>
> *(2) A petitioner may at any time after filing a petition in a matrimonial cause, and a respondent spouse may at any time after entering an appearance apply for access to any children of the marriage, but an application for access by the spouse against whom a decree (whether nisi, final or absolute) has been made, shall be made to the judge, unless the other party consents to give access to the children and the only question for determination is the extent to which access shall be given."*

ANALYSIS AND DISCUSSION

[49.] Section 74 (1) (a) of the MCA and rule 51 (1) of the MCR gives the Court the power to exercise its discretion concerning matters relating to children in matrimonial proceedings.

[50.] The wife's application was made on 4th December 2023. Her application was scheduled to be heard on 5th and 6th May 2025. Prior to the hearing of the wife's application, the husband filed two Summonses. Both Summonses were made on 25th April 2025. The first Summons requested an Order that the wife appoint an independent expert and undergo an assessment to prepare for the possible reunification and restoration of access. The Husband's request is that such assessment be conducted prior to the hearing of the wife's application for access. In his second Summons, the husband sought interim joint custody and access of A.D. The Court gave an oral ruling that the hearing of the wife's Summons for an Interim access order and the summons for the independent expert assessment would be heard simultaneously. Reasons to be given in writing. This I now do.

ISSUE 1: Whether the Court should consider a full rehearing of the Interim Stay of Access application in light of the ruling made by Justice Klein in the CPA Proceedings on 30th May 2025?

[51.] Firstly, this Court vehemently disagrees with the notion that *Klein J's* judgement is impugned. The Court has the discretion to decide whether a full rehearing of the matter is

warranted. There are certain circumstances which occurred in the hearing before *Klein J.* which could well warrant a rehearing on the matter of access in this court based on the principles in **Re: B** supra and, in particular, the Supplemental Affidavit evidence of the wife in particular paragraphs 9 to 15 and 31 to 40, the Court noted that a full hearing of the matter concerning interim access was not made.

[52.] Considering each principle (a) whether the previous findings were the result of a full hearing in which the person concerned took part and the evidence was tested in the usual way. Rolle and Rolle was appointed Counsel for the wife on the date of the hearing on 6th December 2022, and made an appearance on that date on the wife's behalf. Counsel requested an adjournment of the matter to be allowed time to provide submissions and for the wife to file an Affidavit. The Court did not permit the wife's Counsel time to make her submissions on the matter or for the wife to file an Affidavit before the matter was ruled upon on 7th December 2022. (b) if so, whether there is any ground upon which the accuracy of the previous find could have been attacked at the time, and why therefore there was no appeal at the time. The Ruling in respect of the application for interim access was made on 30th May 2025. Counsel for the wife made an application to appeal this decision which was filed on 13th June 2025. Counsel appealed on seven grounds. (c)whether there is any new evidence or information casting doubt upon the accuracy of the original findings. The wife filed a Supplemental Affidavit on 3rd June 2025. This Affidavit is also in support of her Summons made on 4th December 2023. In the wife Supplemental Affidavit, she explains at paragraphs 9 to 15 and 31 to 40 the circumstances that led to the ruling made in the CPA Proceedings. This evidence was not in existence at the hearing in December 2022, therefore, this would be new evidence in this regard.

[53.] *Justice Klein* stated at paragraph 14 of his judgment delivered on 30th May 2025 that: -

> *"On 6 December 2022, one day before that hearing was due to take place, the Court received a summons supported by the affidavit of Counsel BW, filed on 1 December 2022, seeking leave for both counsel for the defendant to withdraw. The Court heard the application for withdrawal, which it granted, but indicated to counsel for the defendant that the withdrawal of counsel would not take effect until the order providing for that was filed and served on the defendant, and directed counsel to remain and participate in the hearing to revise the draft Order. During the hearing, the court went through the terms of the draft Order and made revisions based on the competing drafts. This led to a revised Parenting Order that was entered on 7 December 2022 ("the Revised Parenting Order"). That Order also granted liberty to apply to both parties."*

[54.] Considering the judgment of Justice Klein, at paragraph 14, the wife's previous attorneys made an application to withdraw which was granted by the Court in the CPA

Proceedings. This confirms the claims made by the wife that her then attorneys did not wish to represent her in the proceedings. Further, the wife notified the Court by email stating that she did not have an attorney to represent her in the CPA proceedings in November 2022. This gives a distinct impression that the wife's opportunity to defend the application with the possibility of presenting new evidence was missed.

ISSUE 2: Whether the Court should accede to the husband's applications and order an independent assessment of the wife and A.D. prior to the hearing of the Petitioner's Summons dated 4th December 2023?

[55.] Counsel for the wife relied on the case of **Re C (Direct Contact: Suspension) [2011] EWCA Civ 521**. In that case, the mother's access to the child was suspended, due to an attempt being made on her own life, however the Court emphasized at paragraph 6 of the judgment that "My approach at the final hearing will be this: that C should see her mother regularly, unless there are powerful reasons why not." While the facts of **Re C** and the instant matter are quite different they are similar only to the issue of the wife's access to G.G. being stayed on an interim basis by an Order made by Justice Klein. The reason for the Interim Stay of Access Order was due to her posting messages on social media concerning G.G. and her husband. As a result of the Order, the wife has not had access to G.G. since 2023, except for a short meeting with him held in September 2023 that lasted approximately four minutes. There is no evidence that post *Klein J.'s* order that the social media postings continued. In any event, it seems an overreach to equate the behaviour of the **Re C** wife with social media postings.

[56.] Counsel for the husband also relied heavily on the authority of **M.G.O v F.C.O [2017] 2** *BHS J.* **No. 113**. This case can be distinguished from the instant matter. That matter was a final judgment concerning custody, whereas this matter is an interlocutory application for interim custody and access. Further, the parties in **M.G.O.** were granted joint custody, care, and control on terms and conditions that were agreed. While it is clear from the husband and wife's application that they agree that there should be a joint custody order, the terms and conditions have yet to be established.

[57.] There were also allegations of abuse by the mother in **M.G.O**. There have been no allegations made of any abuse by the wife towards G.G. Finally, the mother in that case had suffered from borderline personality disorder, but aside from the questionable opinions of Dr. McCartan and Dr. Neville there is no credible evidence that the wife is suffering from a serious mental condition. No disorder or diagnosis has been made by any doctor with respect to the wife's mental state in the present matter, which this court should rely

on. The wife admitted to a traumatic brain injury she suffered in the past, but to her knowledge, she did not suffer any memory loss as a result of the brain injury, nor is there any credible evidence before the Court which suggests this. This finding is rationalized in the several paragraphs which follow.

[58.] Counsel for the husband urged the Court not to continue with the hearing of the wife's Summons until the wife and A.D have been independently assessed to avoid the matter being appealed as it did in **M.G.O v F.C. O's** case.

[59.] Counsel for the husband proceeded to inform the Court that he would be unable to cross-examine the wife unless she was independently assessed, and the matter was adjourned to hear submissions on this issue.

[60.] To determine whether the wife needs to be independently assessed prior to the hearing of her application, the Court has to consider why the wife's access to G.G. was denied in the first instance. In the Ruling made on 30th May 2025 in the CPA Proceedings, Justice Klein considered, inter alia, the evidence of the three experts that had interviewed G.G. and the Court's subsequent interview with G.G held in March 2024 in the presence of Dr. Harvey Ferere. *Justice Klein* made a decision to temporarily suspend contact between the wife and G.G. as a result of her social media posts that the Court deemed could have caused possible harm to G.G.

[61.] In that judgment *Justice Klein* found at paragraphs 96 to 98 that:

> *"96. In my view, I am not able to identify any appropriate (or any reasons at all) to depart from the views of the experts and the other information and evidence to which I have been referred. I am not of the opinion that the evidence of three eminently qualified experts, who have had more than one contact with AB, can be dismissed so out of hand, as the defendant seeks to do. They all indicated that the actions of the defendant have caused emotional harm to AB, and that this could be exacerbated by further contact without a protective protocol. In light of this, they all recommended that further contact/ access should be suspended pending some form of behavioral adjustment by EF, including professional help. In fact, Dr. DM indicated that EF's admission that she was suffering from PTSD added an additional layer of concern of the risk of "anger and irritability" manifesting during visitations, much like the situation in* ***Re C.***
>
> *97. However well-meaning and noble her motivation for the social media campaign might be (she described it as a "love campaign"), it appears that EF did not take into consideration the likely harm that could result to AB from this intrusion on his privacy, including emotional and possible physical harm, and that it could have a deleterious effect on his perception of her and their relationship. To my mind, this shows a callous disregard for the position or welfare of the child, and seeks to champion EF's alleged parental rights*

over the welfare of AB. This is clearly counter-intuitive to the welfare and best interests of the child philosophy which underpins the CPA.

98. In the circumstances, and taking into account all of the evidence and the information available to the Court, I am of the view that the interim order made to suspend contact/access should continue until further Order (by this Court or the Court seized of the MCA proceedings), or pending compliance by the defendant with the terms of the Interim Stay of Access Order..."

[62.] The interests of a child are of paramount importance to the Court, s. 3 of the CPA. In that regard, the Court understands the position taken by *Justice Klein* as G.G.'s interest is the central focus. In this Court's review of the evidence of the experts, it is interesting to note that Dr. Neville and Dr. Denise McCartan had not met or interviewed the wife prior to making their assessments of her in their reports. Dr. Neville, at page 7 of his Affidavit filed on 30th April 2025, averred that:

"I have not met with Ms. M [the wife] but I have been concerned with certain aspects of her behavior, which may indicate some type of mental health difficulties. [Mr. N.G] has told me that she received a diagnosis of traumatic brain injury in Canada after a number of sports-related concussions. In her fillings, Post Traumatic Stress Disorder has also been mentioned. I am concerned by a number of issues that some of which I have listed below; it is my opinion that the totality of her actions provide strong evidence for a mental health evaluation."

[63.] In the Affidavit of Dr. Denise McCartan (Dr. D.M.) filed on 9th May 2025, she emailed the wife and her Counsel in an attempt to interview the wife for a third report, at the request of the husband. Due to prior reports made by Dr. McCartan, which gave negative opinions about the wife, without meeting/ or communicating her, Counsel for the wife indicated that the wife would not be willing to do an interview with her.

[64.] Dr. D.M., as referenced in the CPA Proceedings, at paragraph 96 of the judgment, stated that the wife admitted to having Post Traumatic Stress Disorder (PTSD). This is purely speculative. This Court has not been provided with any medical report from any physician/ therapist/ psychologist diagnosing the wife with PTSD. In fact, it is surprising that Dr. DM has made such a statement, given that the wife is not a medical doctor and cannot self-diagnose herself. Therefore, the concern for the wife's "risk of anger and irritability" manifesting during visitations, much like the situation in **Re C**" carries no weight in this instance. It is concerning how both experts can come to such a conclusion just on isolated incidents that the wife is purported to have made without having met her.

[65.] Likewise, Mercedes Hope, another of the husband's experts, confine her evidence to theorizing about PTSD, given that she too had never met the wife.

[66.] In the premises, I accept Counsel Rolls' submissions that the experts did not meet the threshold as established in **National Justice Compania Navierasa S. A. v. Prudential Insurance Company (Ikarian Reefer) [1993] 2 EGLR 183** for their duties and responsibilities as expert witnesses in civil proceedings. They are as follows: -

> 1. Expert evidence presented to the court should be, and should be seen to be, the independent product of the expert uninfluenced as to form or content by the exigencies of litigation (**Whitehouse v Jordan [1981] 1 WLR 246, 256**, per *Lord Wilberforce*).
>
> 2. An expert witness should provide independent assistance to the court by way of objective unbiased opinion in relation to matters within his expertise (see **Polivitte Ltd v Commercial Union Assurance Co plc [1987]** 1 *Lloyd's Rep* 379, 386, per *Garland J* and In **re J [1990] FCR 193**, per *Cazalet J*). An expert witness in the High Court should never assume the role of an advocate.
>
> 3. An expert witness should state the facts or assumptions upon which his opinion is based. He should not omit to consider material facts which could detract from his concluded opinion (In **re J**).
>
> 4. An expert witness should make it clear when a particular question or issue falls outside his expertise.
>
> 5. If an expert's opinion is not properly researched because he considers that insufficient data is available, then this must be stated with an indication that the opinion is no more than a provisional one (In **re J**). In cases where an expert witness who has prepared a report could not assert that the report contained the truth, the whole truth and nothing but the truth without some qualification, that qualification should be stated in the report (**Derby & Co Ltd v Weldon The Times, 9 November 1990**, per *Staughton LJ*).
>
> 6. If, after exchange of reports, an expert witness changes his view on a material matter having read the other side's expert's report or for any other reason, such change of view should be communicated (through legal representatives) to the other side without delay and when appropriate to the court.
>
> 7. Where expert evidence refers to photographs, plans, calculations, analyses, measurements, survey reports or other similar documents, these must be provided to the opposite party at the same time as the exchange of reports (see 15.5 of the Guide to Commercial Court Practice)."
>
> The judge added at the end of that quotation that in addition to those considerations, the expert witness will know that he must give evidence honestly and in good faith and must not deliberately mislead the court. He will not expect to receive protection if he is dishonest or malicious or deliberately misleading.

[67.] The wife is not opposed to having professionals appointed to establish a protocol/ parenting plan for reunification between the parties and the children. The professionals, in her view, should commence meeting with the parties immediately. The husband has the

same view; however, his wish is for the professionals to implement a parenting plan for reunification, which could take up to three months before the hearing of the wife's application. The wife's concern is that the parenting plan could possibly result in a further delay in resuming contact between her and G.G., given that she has been deprived of access for more than two years.

[68.] It was agreed between the parties that a professional should be appointed from both sides to ensure fairness during the process. The wife has indicated that she wishes for Dr. Annalease Richards to be appointed on her behalf. The husband has nominated Dr. Harry Ferere to devise a plan for reunification jointly with Dr. Richards.

[69.] The Court does take note that the husband filed his summonses approximately 16 months after the filing of the wife's application. In fact, his summonses were filed 10 days before the hearing of the wife's application, which could seem to be a strategy used to further delay these proceedings.

[70.] It is quite clear that the wife has not seen G.G. since 2023. He is now 10 years old. At the time that the wife left the jurisdiction, G.G. was 7 years old. Whilst the wishes and feelings of G.G. has been ascertained by the evidence of three independent experts, the husband's Counsel is of the view that A.D.'s wishes and feelings ought to be determined as well. It is his position that A.D. has never been independently assessed, and she should be in order to make an informed decision on the matter.

[71.] The husband's agreement to the reunification can be found where his Counsel indicated at paragraph 199 of his submissions that in the alternative should the Court not accede to the husband's suggestion to appoint Dr. McCartan as an independent expert in this matter that: -

> *"Alternatively, this Honourable Court ought to appoint Dr. Harry Ferere and Dr. Annalease Richards as Court-appointed experts to jointly develop and oversee implementation of the recommendations/ protocol for restoration of access required."*

[72.] The Court is of the opinion that reunification is in the best interests of the parties. The doctors responsible for devising the plan must necessarily interview all of the parties and would assess them independently as to the advisability of the reunification process. The doctors would also be responsible to implement and oversee the plan in particular, the wife and G.G. It is my view, that the sessions implementing/overseeing ought to commence immediately and not three months down the line.

CROSS EXAMINATION OF THE EXPERTS

[73.] Counsel for the husband asserts that the wife's Counsel had an opportunity to cross examine the witnesses including Dr. Denise McCartan, Dr. Neville, and the husband but she chose not to. Counsel relied on the cases of **Griffith v TUI (UK) Ltd. [2023] UKSC 48** and the recent decision in this Court of **S.F.P v R.M.P 2025/FAM/div/00152**. Both **Griffith v TUI and S.F.P v R.M.P** referred to the authority of ***Browne v Dunn (1829) 57 ER 909.***

[74.] It is well-established law that cross-examination is crucial in civil proceedings to test a witness' credibility. As Counsel for the husband rightly pointed out, the failure to cross-examine as indicated in the cases mentioned above:

> *"(1) on any matter it implies that the cross-examiner accepts the witness's evidence as credible and reliable on that point appears to depend on the tenor of the cross-examination on other matters and on considerations of fairness (2) Failure to cross-examine a witness on a material point has been said to preclude the cross-examiner from leading evidence to contradict the witness (3) but that drastic rule does not appear to be followed in modern practice, no doubt because the court is able to prevent prejudice to the other party by such means as recalling the witness for cross-examination and awarding expenses (4) or allowing proof of replication (5) or admitting the evidence subject to comment (6) Failure to cross-examine on a material point does not prevent the cross-examination of subsequent witnesses on the same point (7) Before the abolition of the Civil Evidence (Scotland) Act 1988 of the corroboration rule, failure to cross examine a single witness on an essential point did not supersede any necessity for corroboration of their evidence on that point.*

In both civil and criminal cases, any failure by a party to cross-examine which is not satisfactorily explained may lead the court to draw inferences averse to that party, especially where it appears that the failure has caused prejudice or unfairness to the other party. The court is unlikely to attach any weight to submissions on the issues which are based in fact or inferences which have not been put to the witness who could apparently have dealt with them, or to criticisms of the credibility or reliability of the witness.Where a party or an accused gives evidence about a matter which has not been expected to be able to speak to it, they are likely to be asked in cross-examination why they are giving evidence about a matter which was not put to that witness. Unless the failure to cross-examine can be satisfactorily explained, they may be further asked whether they have not fabricated or tailored their own evidence on the matter after hearing the evidence of the witness, and the court may be invited to draw that inference."

[75.] Several witnesses, including the husband, Dr. Denise McCartan, and Dr. Michael Neville, swore on oath or by affirmation that their Affidavits were true and correct. When the witnesses were tendered for cross-examination, Counsel for the wife elected not to

cross-examine any of them. As a result of this, the Court has to consider whether to attach any weight to the submissions made by Counsel on behalf of the wife, as the witness' evidence was not challenged. The Court has considered Counsel Adam's submissions on that issue and accepts his view that Counsel Rolle's submissions are precluded from consideration based on the Ruling in **Browne and Dunn** supra. However, even ignoring those submissions I find that, the medical evidence of the several doctors do not persuade me of the veracity of the conclusions in their reports as to the wife's mental condition.

ISSUE 3: SHOULD THE COURT CONSIDER THE WISHES AND FEELINGS OF A.D IN THESE PROCEEDINGS?

[76.] As stated earlier, A.D. is the biological daughter of the wife. Pursuant to s. 3(3) of the MCA, the child's wishes and feelings shall be considered in matrimonial proceedings concerning the upbringing of a child or the administration of a child's property.

[77.] The wife has stated under oath that she does not have an issue with the restoration of contact between the husband and A.D. Her concern is the time frame when the reunification will commence. She contends that there has been a delay in the hearing of her application. Counsel for the husband is of the opinion that G. G's wishes and feelings surrounding the wife and A.D. have been ascertained; however, A. D's wishes and feelings have not. Considering the cases submitted in respect of the wishes of a child particularly **Re D (a child) (abduction: rights to custody) [2006] UKHL 51**, **Re H (a child) [2008] EWCA Civ 1245** and **Re (a child) (residence order: treatment of child's wishes) [2009] EWCA Civ 445**, the Court agrees with Counsel for the husband that A. D's wishes and feelings ought to be determined to enable possible restoration of contact between the parties. The Court, however noted that it is not bound to heed the wishes and feelings of children which was considered in the decision of **R.L.H v T.O.H [2022] 1** *BHS J.* **No. 120.** *Justice Stewart* (as she then was) opined at paragraph 31 of the judgment that: -

> *"31 I interviewed the three children of the marriage in order to ascertain their wishes on day to day care and control, which of course I am not bound to heed. However, the interview provided valuable insight concerning what is in the paramount interest of the children..."*

In this case, given the agreement to appoint Dr. Richards and Dr. Ferere, their assessments will encompass the children's wishes and feelings.

CONCLUSION

[78.] In addressing some of the issues, notwithstanding, the agreed position of the parties, I find the failure to cross examine the husband may have in other circumstances

proven fatal to the wife's case. However, as the parties have arrived at a compromise (though late in the hearing of the application) with respect to the appointment of the experts the argument is moot.

[79.] The implication that the wife is suffering from some mental condition resulting from her past head injury featured in the arguments advanced by the husband's counsel. This was alluded to in the reports of Dr. Neville and Dr. McCartan, relied on by the husband. However, it is notable that their respective diagnoses/opinions were compiled without having direct interaction and engagement with the wife. The absence of any medical report whereby the wife was personally assessed by a professional in the relevant field should be treated with skepticism. Moreover, the wife never admitted at any stage in her evidence of having been diagnosed with any mental disorder for the court to require her be assessed. Because of the devastating implications and possible stigma that is often attached to mental disease and disorder, I consider it essential that mental disease or illness be diagnosed only after direct contact with the individual. Moreover, diagnoses made from information provided by one party against the other in adversarial conditions should be viewed with skepticism. It is important to note that this Court has not been provided with any medical report from any physician/ therapist/ psychologist diagnosing the wife with PTSD.

[80.] I consider that when Counsel for the husband proceeded to inform the Court that he would be unable to cross examine the wife unless she was independently assessed belies what he had demonstrated in the trial proceedings before this court where cross-examination of the wife by Counsel Adams, over the course of several days of trial, left no impression of any such incapacity.

[81.] The specter of rehearing the case for the wife's access to GG loomed large in the husband counsels' submissions in support of *Klein J's* order remaining in place. He was vehemently opposed to relitigation of the matter of access, and that the stay of access of the wife be permitted to stand. Indeed, through the providence of the compromise that has been reached by the husband and wife as to the reunification process it is no longer necessary to decide the issue. Most significantly a review of Justice Klein's ruling and order where he says;

> *"I am of the view that the interim order made to suspend contact/access should continue until further order (by this court or the Court seized of the Matrimonial Causes proceeding……."* *[Emphasis Mine]*

is precise in its wording and explicit in the manner in which his order is to operate.

[82.] The order was interlocutory and not final in nature. It stands to reason that upon the making of any other order final or interlocutory, by consent of the parties or otherwise, the order ceases. Even the appeal against the order filed by the wife will be affected by the order whereupon the husband and wife have agreed to the appointment of the two (2) experts to devise a reunification plan which position the court views as an advisable approach and will not hesitate to direct.

[83.] This court is of the view that reunification of the parties and the children is not only desirable but in their best interests as required under S. 3 (1) of the Child Protection Act and s. 74 (1) of the Matrimonial Causes Act. The fact of reunification dictates the participation of the wife and GG, the husband and AD, as well as GG and AD. This is at variance with *Klein J's* order, wherein the Interim Stay of Access order made to suspend the wife's contact with GG was continued. The wife's ability to access GG through the unification process will be at variance with and in contradiction to *Klein J's* stay of access order. When reduced to an order from this court, it becomes the "further order" that *Klein J* referred to, and therefore his order must fall away.

[84.] I note also that upon making the order, *Klein J* also dismissed the wife's summons to vary the order and her application to stay the order. It is my view that the necessity to vary the Klein J order or for a stay is rendered nugatory.

[85.] The agreement between the husband and the wife to engage Dr. Annalease Richards and Dr. Harry Ferere, experts in child psychology, parental alienation and family reunification to jointly develop and implement the recommendations/protocol for restoration of access/reunification having now been recognized by this court as in the "best interest" of the children, and given the lapse of time from the last opportunities of access, has now taken on the character of **urgency**. [Emphasis Mine]

[86.] It is, in fact, the urgent nature of the matter, particularly for the wife, and the fact that hearing and determining the wife's application for access to G.G., the husband's application for access to A.D., and the husband's application for the wife to be assessed prior to reunification, which motivated the Court to hear the applications simultaneously. To have done so caused no violence to any of the parties' interests. Moreover, this Court is cognizant at all times of efficiency in the employment of judicial time and costs as it relates to the client.

[87.] I am of the view that since reunification is possible and has been accepted by both the husband and wife as a process to be undergone in the divorce proceedings, and in the existing circumstances the sooner the process is engaged, the better for the children.

[88.] In light of the urgent nature of the reunification the court, while not dictating to the experts as to the manner, mode and timeline for devising the relevant plan or for the actual implementation of the reunification between the parties, finds it necessary to define some timelines for the process to occur in an expedited manner.

[89.] In the circumstances, the Court will adhere to the husband's request to have all of the parties, including the husband, the wife, A.D. and G.G. undergo independent assessments as part of the reunification plan with a view to a report being compiled, produced and submitted for possible reunification of the respective child with the relevant parent and as between the children the assessment to be done by Dr. Annalease Richards and Dr. Harry Ferere. It should be noted that the three months proposed by the husband for the joint experts to establish a plan will not be entertained by the Court. The Court will impose strict timelines for the reports to be issued to avoid any further delays in the matter.

[90.] The remit of Dr. Annalease Richards and Dr. Harry Ferere to be addressed in their report will be consistent with those factors as are set out in s.3 (3) of the CPA and as established in **MGO v. FCO** supra, which are as follows:

(a) the ascertainable wishes and feelings of the child concerned considered in the light of his or her age and understanding; the wishes and feelings of A.D was a central issue for the husband's application, which can be ascertained by the chosen experts for consideration in devising their unification plan but also for consideration when making the final order I these proceedings.

(b) the child's physical, emotional, and educational needs; - It is essential that this be addressed by Drs. Richards and Ferere, in devising their plan, given the assertions made by the husband about GG being affected by the social media postings spoken of before Klein J., and the outcome of the last visit between GG and the wife.

(c) The likely effects of any changes in the child's circumstances; It will be important for Drs. Ferere and Richards to determine whether the fact that the wife has not interacted with him for this considerable time has had an effect on the child.

(d) The child's age, sex, background, and any other circumstances relevant to the matter; The age of GG may be central to his ability to readjust to the wife' reuniting with him.

(e) any harm that the child has suffered or is at risk of suffering; It may be critical to review or contemplate any risk inherent in the timing of the process of reunification or any related factor.

(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 – Notwithstanding the agreement

made by the husband and wife to appoint the experts and to adhere to a reunification plan an assessment of their respective capacities to meet the children's needs futuristically is warranted.

[91.] In all the circumstances I am cognizant throughout these proceedings that pursuant to s. 22 (1) of the CPA, s. 74 (1) of the MCA and the 51(1) of the MCR either and/or both parents are entitled to apply for and be granted access to the child/children and my approach at [this] and at the final hearing will be as in **RE C;** that G.G. should see his mother regularly, unless there are powerful reasons why not. Evidence before the court indicates that AD's natural father is present and active in her life as a result of the wife's previous marriage and divorce. The experts may have to navigate this in devising the reunification plan for A.D. and the husband.

[92.] I note that both the husband and wife have asked the court that a joint custody with care and control to the husband be awarded. The court finds that this is an acceptable position and in the best interest of the children.

DISPOSITION

[93.] Having considered the oral and well written submissions of both Counsel, the law and the authorities, in the interim and until further Order the Court orders that: -

1. In acceding to the husband's application for the appointment of experts, the Court orders that Dr. Harry Ferere as nominated by the husband and Dr. Annalease Richards as nominated by the wife be appointed, as joint experts to conduct independent assessments of the husband, the wife, A.D and G.G. as a step toward reunification.

2. The court in acceding to the husband's application, orders that the experts, after assessing the parties jointly, develop a plan with the recommendations/ protocols for the restoration/ reunification of access of the wife to G.G., the husband to A.D. and G.G. to A.D.

3. The assessment shall, among other relevant and/or necessary things, shall encompass the considerations outlined in S. 3(3) CPA (the remit to be provided to the experts by way of written communication from this court.)

4. A report of the assessments and recommendations is to be provided to the Court from both experts jointly within six (6) weeks of the date hereof. Such report to be delivered to the court within the Six (6) week period and shall be received into evidence by the court on 3rd September, 2025, at 9:30 a.m. via Zoom.

Implementation of the reunification process shall begin immediately thereafter. (meaning by 6th September, 2025.)

5. Upon the receipt of the plan for reunification, the wife shall be entitled to have access to G.G. in accordance with the plan devised by Drs. Annalease Richard and Dr. Harry Ferere. The husband shall be entitled to have access to A.D. in accordance with the plan devised by Drs. Annalease Richard and Dr. Harry Ferere subject to the rights of the natural father as under any court order or arrangement currently in force by any other court in this jurisdiction or any other.

6. To clarify the parental rights of the husband and wife, in this ongoing process and until further order and in consideration of the fact that they have both in their applications asked the court to order joint custody of GG to them with care and control to the husband and access to the wife, I make that order as prayed by both parties.

6. The court adjourns the balance of any of the parties' respective summonses to a date to be determined upon their application.

7. As both parties have prevailed in their respective applications, I order that each party shall bear their own costs of their respective applications.

Dated the 7th day of August A.D., 2025

The Honourable Madam Justice C.V. Hope Strachan