

**COMMONWEALTH OF THE BAHAMAS**  
**IN THE SUPREME COURT**  
**FAMILY DIVISION**

**2021**  
**FAM/div/00234**

**BETWEEN**

**A. A. D.**

**Petitioner**

**AND**

**J. S. A. D. (nee M.)**

**Respondent**

**Before: The Hon. Madame Justice J. Denise Lewis-Johnson MBE**

**Appearances:** Monique Gomez of Counsel for the Petitioner  
Gia Moxey-Lockhart of Counsel for the Respondent

**Hearing Dates:** 2<sup>nd</sup> February 2023; 26<sup>th</sup> April 2023; 21<sup>st</sup> November 2023; 1<sup>st</sup> July 2024; 18<sup>th</sup>  
September 2024; 5<sup>th</sup> August 2025

*Family Law – Ancillary Relief – Custody – Access – Child Protection Act – Whether the Petitioner  
or the Respondent should have care and control of minor child*

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**JUDGMENT**

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**Introduction**

1. By a Notice of Intention to Proceed with Ancillary Relief filed on 22 September 2022, the Respondent (“J.S.A.D”) sought the following:

*“Joint Custody of the children of the marriage, with care and control to the Respondent, and reasonable access to the Petitioner, an Order for*

*Maintenance for the children and Order for Expenses of the Children inclusive of Tuition fees and educational expenses up to Tertiary Level Education of the children, Property Adjustment Order and a Declaration pursuant to Section 73(1)(b) of the Matrimonial Causes Act and Costs of these proceedings.*

2. The Respondent in support of her application filed two Affidavits. An Affidavit of Means was filed on 22<sup>nd</sup> September 2022 and an Affidavit in Reply was filed on 28<sup>th</sup> February 2023. The Petitioner (“A.A.D”) filed an Affidavit of Means on 13<sup>th</sup> February 2023.

### **Background**

3. The parties were married on 8<sup>th</sup> August 1998. There are three children of the marriage namely, A.J.D a female born on 2<sup>nd</sup> October 2000, J.B.A.D, a male born on 20<sup>th</sup> July 2004, both are sui juris and AR.J.D, a female born on 7<sup>th</sup> September 2007 (“the minor child”).
4. The court granted a Decree Nisi to the Respondent on 21<sup>st</sup> January 2022 on the ground that since the celebration of the marriage the Petitioner has treated the Respondent with cruelty.
5. The application for ancillary relief was filed on 22 September 2022. On 26<sup>th</sup> April 2023, the parties agreed by Consent Order the division of the matrimonial properties. The court further granted an Interim Order on 21<sup>st</sup> November 2023 in relation to custody and maintenance of the minor child.
6. All ancillary matters have been agreed between the parties save and except the issue of care, custody and control of the minor child. The court invited Counsel for the Petitioner and the Respondent to lay over submissions in relation to this issue. Counsel for the Respondent laid over her submissions to the court on 18<sup>th</sup> September 2024, however the Petitioner’s Counsel has not laid over submissions to date. The minor child who was interviewed by the Court is now 17 and we continued to await the required submissions, however after making a final request for the submissions we are constrained to release this judgment.

### **The Petitioner’s Evidence**

7. The Petitioner in his Affidavit of Means filed on 13<sup>th</sup> February 2023 stated at paragraphs 18 to 20 and 27 (a):

*“18. I paid AR-J.D’s school fee at St. Anne’s School from grade 1 to the present. There is now produced and shown to me true copies of payments to St. Anne’s School marked and Exhibited “A.A.D.6”. I also purchase uniforms, clothes and*

*school supplies. I take care of her maintenance including seeing that the laundry she brings back after the weekend with her Mother are washed and ironed.*

*19. I never refused the Respondent custody of AR-J.D or any of the children. See attached text collectively marked and Exhibited as "A.A.D.7". My family does not have any contention with the Respondent. She has been welcomed at family gatherings but has refused to attend for several years. She has tried to limit my interaction with my family while she freely interacts with her relatives.*

*20. The Respondent left the home without any explanation to the children and falsely accused me of abuse. A court verdict proved that her accusations were groundless. This caused great distress to me and my daughter who had to testify on my behalf.*

*27. I propose the following settlement:-*

- a. There be joint custody of the children of the marriage with care and control to me, the Petitioner, and reasonable access to the Respondent. "*

### **The Respondent's Evidence**

8. In the Affidavit of Means of the Respondent filed on 22<sup>nd</sup> September 2022, she stated at paragraphs 16 to 19 and 33 (a) that:-

*"16. AR-J.D attends St. Anne's School and is in Grade 11. The Petitioner pays the school fees for AR-J.D. I pay all other expenses including but not limited to uniforms and books and educational supplies. When she is with me, I provide for her maintenance.*

*17. AR-J.D has a Bank Account at First Caribbean International Bank. The account was opened by me on her behalf in 2021. It is in my name until she reaches 18 years. I deposit an allowance of \$50.00 to \$175.00 per month.*

*18. AR-J.D lives with the Petitioner at St. Andrews Beach Estates. I prefer that AR-J.D resides with me. However, the Petitioner has refused me custody and often times access to our daughter. So as to avoid contention with the Petitioner, the involvement by the Petitioner's family members, and to preserve my safety, I allow peace to prevail until an appropriate Court Order is made.*

*19. The Petitioner by his manipulative ways has sought to drive a wedge between me and our children by repeatedly telling them that I have abandoned them as their mother. On many occasions, I have wanted to spend time with our children, but the Petitioner has kept them away from me to control my access to them. I have not relinquished custody of our children to the Petitioner. This is a constant argument*

*between the Petitioner and I. Now produced and shown to me attached hereto and marked "A" is a copy of whatsapp texts between the Petitioner and I as an example of what I must endure from him in order to see our daughter AR-J.D.*

*33. I make this Affidavit in support of an application for the following Orders that:  
a. There be Joint Custody of the children of the marriage, with care and control to the Respondent, and reasonable access to the Petitioner."*

9. In the Respondent's Affidavit in reply to the Petitioner's Affidavit of Means filed on 28<sup>th</sup> February 2023, she averred at paragraphs 19 to 21 that:

*"19. I was responsible for purchasing uniforms, school supplies and other maintenance items for AR-J.D. A.A.D purchased supplies and uniforms without my knowledge (especially since the separation thus duplicating items).*

*20. AR-J.D sometimes brings clothes on the weekend that need to wash, and I usually clean them for her. The clothes that she would take home from the weekend stay would be few and would make up her existing load in St. Andrew's. The washing machine in St. Andrew's was purchased by me and AR-J.D is capable of operating the machine.*

*21. AR-J.D is with me on the weekends, and I pick her up and take her to and from school every other week. Once I am made aware of whatever AR-J.D has to do during the weekend or during the week. I pick her up from school, and I take her."*

### **The Respondent's Submissions**

10. The Respondent's Counsel relied on the case of **M.G.O v F.C.O SCCivApp No. 10 of 2015**. Paragraph 18 of the judgment reads:

*"Para 18. The principles enunciated in G v G, were reaffirmed by the House of Lords in the 2001 case of Re B (a minor) [2001] UKHL 70. There Lord Nicholls of Birkenhead stated: "[14] ... But before any question can arise of the Court of Appeal making its own assessment of the requirements of A's welfare and substituting this for the judge's assessment, it must be shown that the judge erred in some relevant respect; by misdirecting himself on the law or the evidence, or by being so plainly wrong that she must have misdirected herself. [15] This principle is so well established as scarcely to bear repetition: see, for instance, the observations of Lord Scarman in B v W (Wardship: Appeal) [1979] 1 WLR 1041 at 1055 ... and Lord Fraser of Tullybelton in G v G (Minors: Custody Appeal) [1985] 1 WLR 647 at 650 – 653. On the instant appeal leading counsel appearing for A's guardian submitted that, since this is not a case in which oral evidence was heard, it was more readily open to the Court of Appeal to substitute its view for that of the trial judge. He submitted that in so far as the Court of Appeal differed from the judge's evaluation of the inferences to be drawn from the primary facts, the Court of Appeal was in as*

good a position as the judge and, therefore, it was entitled to form its own independent opinion. In the light of this submission I must elaborate a little on this point. [16] ***In cases such as the present the first instance judge decides which order, if any, he considers is in the best interests of the child. When doing so the judge is often 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 interests of a child. In all save the most straightforward cases, there are competing factors, some pointing one way and some another. There is no means of demonstrating that one answer is clearly right and another clearly wrong. There are too many uncertainties involved in what, after all, is an attempt to peer into the future and assess the advantages and disadvantages which this or that course will or may have for the child.*** [17] Hence the rationale underlying what I may call the principle in *G v G*. Courts of appeal exist to remedy mistakes in the first instance process. The Court of Appeal is not intended to be a forum in which unsuccessful litigants, where no error occurred at first instance, may have a second trial of the same issue by different judges under the guise of an appeal. The mere fact that appellate judges might have reached a different conclusion had they been carrying out the evaluation and balancing exercise does not mean that the first instance judge fell into error. That fact does not, of itself, require or entitle the Court of Appeal to intervene. [18] ***Frequently a judge at first instance will exercise his discretion as described above in proceedings where he will also have to evaluate witnesses and their oral testimony. Depending on the circumstances, this feature may be an additional reason why an appellate court should be slow to intervene. But the presence of this additional feature is not an essential ingredient of the circumstances in which the principle in G v G is applicable. The principle in G v G applies irrespective of whether the evidence before the judge is oral or written, disputed or agreed. This principle is applicable in the present case even though the evidence before Bracewell J was wholly in written form.***”

11. Counsel also referred to section 21 of the Child Protection Act. This section provides:

“21. (1) The mother of any child born out of wedlock shall be the guardian of that child and a court shall be capable of exercising with respect to the child born to a single woman all the powers conferred upon it by this Act with respect to a child born within wedlock.

(2) Subject to subsection (3), the mother of any child born out of wedlock shall have and be entitled to the custody of the said child, until it attains the age of eighteen years.

(3) The mother of any child born out of wedlock may be deprived of her custody under this Act by order of a court where —

(a) such mother has deserted or abandoned the child in such a manner likely to endanger the health or well-being of the child;

(b) such mother is by reason of intemperate or immoral habits, (such as prostitution or drunkenness,) or for any reason, unfit to have custody of the child;

(c) such mother does not exercise proper care and control of the child;

(d) the order depriving her of custody, if made, will be in the best interest of the child, and a social service officer has so confirmed by a written report or in evidence before the court;

(e) the court is satisfied that there exists some other circumstances not provided under paragraphs (a) to (d) which render the mother unfit to exercise the rights and assume the duties of custody.

(4) Without prejudice to subsection (3) the father of a child born out of wedlock may in the course of any proceedings for a maintenance order or in other proceedings make application to any court for custody of the child and the court may make such order if it is shown to the satisfaction of the court that it is in the child's best interest for him to have custody."

12. It is Counsel's submission that the court is to determine the best interests of the minor child when considering the evidence, both oral and written, of the Petitioner and the Respondent. The court ought to also consider the wishes of the child and the parents demeanour.
13. The Respondent only has limited custody and access to the minor child. Outside of that, the Petitioner makes every attempt to exclude the Respondent for her children lives. The relationship between the parties is still strained even subsequent to the granting of the decree nisi, which the court found that the Petitioner was responsible for the breakdown of the marriage between the parties.
14. The minor child is almost an adult. Counsel submits that the Petitioner is not able to teach his daughter how to be a woman. The Respondent is best suited to assist the minor child with future needs. Further, the Respondent is involved in the minor child's life.
15. Both the Petitioner and the Respondent now have to find accommodations in light of the sale of the properties owned by them. The Respondent has found such accommodations, however, the Petitioner has not.
16. Counsel further submits that the court should take into consideration the minor child's evidence when the court met with her on two separate occasions. In this regard, it is Counsel's submission that it is in the best interest of the child that the Respondent should be awarded care and control of the minor child with reasonable access to the Petitioner.

## **Issues**

17. The sole issue for the court's determination is:-

- i. Whether care and control of the minor child should be granted to the Petitioner or the Respondent?

## **Decision**

18. It is most unfortunate that Counsel for the Petitioner has failed to provide submissions, considering the age of the minor who plans to enroll in a tertiary institute; the Court is issuing this judgment without the benefit of Ms. Gomez's submission.

19. By Section 3 (1) of the Child Protection Act, Ch. 132 ("the CPA") the court is to have regard to what is in the child's best interest in all of the circumstances of the case. It states:-

"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."

20. Subsection (3) states: -

"(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 the care of the child in meeting his or her needs."

21. The court met with the minor child very early on in the proceedings and it was determined at that time she would remain with her father primarily as the mother did not have adequate accommodations to house her. The minor child at the time of the meeting was 16 years old. She graduated from St. Anne's School in June 2024 and planned to enroll at the University of The Bahamas in August 2024 to pursue her Bachelor's degree in Psychology.

22. Counsel for the Respondent relied on s. 21 of the CPA which the court does not agree applies. The parties in the instant matter are married. Section 22 of the CPA is applicable in this regard.

23. From the evidence and testimony of the parties, both parents have a good relationship the minor child. In **C v. C (a minor custody (1991) 1 FLR 223)**, the court opined:-

*“...the ideal environment for the upbringing of a child is the home of loving, caring and sensible parents, her father and mother. When the marriage between father and mother is at end, that ideal cannot be attained. When the court is called upon to decide which of two possible alternative is preferable for the child's welfare, its task is to choose the alternative which comes closest to that ideal.”*

24. The Respondent in examination-in-chief averred that the communication between her and the Petitioner could be better at times. When she communicates via WhatsApp through text messages, the Petitioner answers sometimes. When she calls him he does not answer at all, the Respondent stated:-

*“I would like to see a better communication between A.A.D and myself as parents when it comes to co-parenting. I can tell that it is taking a toll on her [AR.J.D], but she is trying her best to please both of us as parents and not to, I guess, disappoint us. I have spoken to her a few times in terms of co-parenting. Of course I know it can be better. I don't have to be his friend and he don't have to be my friend, but we are parents. I think we have to communicate better.”*

25. The Petitioner accepts that there is a lack of communication between him and the Respondent. He stated that:-

*“... she is very confrontational. She is unreasonable, and she is very argumentative and she loves to have the last say. So, yes, there are times I didn't answer her back on WhatsApp because she would ask me a question, I would answer; and then I would see the tone in the way she answered me. I would leave it alone because I don't want to argue.”*

26. This lack of communication does not benefit the child. While the marriage has ended the responsibility of parenting continues. It is hoped that these adults will quickly act in the child's best interest. It is unfortunate that the child felt as if she had to choose a side.

27. Justice Gray – Evans, as she then was, opined in the case of **Nb v Eb FAM/div/FP 55 of 2010**, at paragraph 46 of the judgment that:-

*“49. It is, therefore, of vital importance that a more amicable relationship develops between the husband and the wife. It is essential that the parents do whatever they can to work out their differences in the best interest of their children, whom they say they love...”*




28. It is not disputed that both parents love and care for the minor child. The Petitioner has paid the child's school fees throughout her life and the Respondent has contributed towards school uniforms and other expenses. She has contact with the Respondent and spends time with her.
29. As to accommodations, the court inquired of both parties as to their future living arrangements once the matrimonial home is sold. The Petitioner stated that he may move in with his mother, who lives alone or he may rent a place. According to him, his mother's home is comprised of four bedrooms which is sufficient space for him and the children to reside.
30. The Respondent indicated that she has rented a two bedroom apartment but would like to have the St. Andrews Beach Estates home where all of the children can reside. She is currently speaking with the bank in hopes that she can take over the mortgage. If not, she would have to sign the necessary documents for the matrimonial home to be sold.
31. Both parties are capable of providing a safe and loving environment. They appear to be good parents and the child will not be at risk with either parent.
32. While the minor child has lived primarily with the Petitioner since the breakdown of the marriage, the court thinks that it is in the best interest of the child to reside primarily with the Respondent and liberal access is given to the Petitioner. Given the age of the child, she will guide the level of liberal access.

### **Conclusion**

33. Having considered the evidence of the parties, the submissions of Counsel for the Respondent and the law, and the demeanor of the parties, the court orders that:
  1. The parties are granted joint custody of the minor child, A.R.J.D., with primary care, custody and control to the Respondent and liberal access to the Petitioner.
  2. No order as to costs.
  3. Declaration granted pursuant to Section 73(1)(b) that arrangements have been made for the welfare of the child and they are satisfactory.

Dated this 22<sup>nd</sup> day of August, A.D. 2025

  
The Hon. Madam Justice J. Denise Lewis-Johnson MBE