IN THE COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

Family Division

Claim No. 2025/FAM/gua/00271

IN THE MATTER OF The Child Protection Act, Chapter 132 of the Statute Laws of The Commonwealth of the Bahamas.

AND IN THE MATTER of ZNN (a Child)
AND IN THE MATTER of ANN (a Child)
AND IN THE MATTER of LAN (a Child)

AND IN THE MATTER OF AN APPLICATION for the Appointment of a Guardian to safeguard the interests of ZNN, ANN, and LAN pursuant to S. 20 A of the Child Protection Act, Chapter 132 of the Statute Laws of the Commonwealth of the Bahamas.

B E T W E E N

N.M.N.

Applicant

AND

M.S.C.N.

Respondent

Before: **The Honourable Justice C.V. Hope Strachan**

Appearances: **Robert Adams K.C. and Samuel Brown for the Petitioner**

Krystal Rolle, K.C. and Darron B. Cash for the Respondent

Hearing date: **5th November, 2025**

RULING

C.V.H. STRACHAN, J

Background Facts

[1.] On 8th July 2025, during a Case Management hearing, the court, with no objection taken by either party, set directives as to the future conduct of the case and, more to the point, the several extant applications which had been filed by the parties. Specific to the issue, the subject of the present Application, the court made the following order that:

> *...all evidence and submissions relative to the Applicant/Petitioner's Guardianship application must be filed and submitted by 15th January, 2026, and that the Guardianship application (like the other applications) should be filed and submitted by 15th January, 2026, and that the Guardianship application would (like the other applications) be determined on the papers. The court scheduled delivery of its ruling on 13th February, 2026.*

[2.] Pursuant to a Notice of Application filed on 29th September, 2025 the Petitioner ("the Husband") made application pursuant to Rules 2.4 (2), 26.1 (2) and (v) of the Supreme Court Civil Procedure Rules 2022 and/or the inherent jurisdiction of the Court for an order that the Case Management Order made by *Strachan J* on 8th July 2025 be varied as follows:

a. The parties shall file all Affidavits and lay over all Submissions respecting the Applicant's Guardianship Application filed herein on 3 June 2025 within fourteen (14) days of the date of this Order. Strachan J shall render her Ruling on the Applicant's Guardianship Application on or before twenty-one days (21) following her receipt of the said Affidavits and Submissions.

b. An Order that costs be provided for.

c. Such further or other relief as the Court thinks fit.

[3.] To ensure that the Application was precipitously attended, a Certificate of Urgency was filed on the same date. I have extracted the contents:

> *I, Samuel Brown R. Brown, of Messrs., Delaney Partners, Counsel and Attorneys for the Applicant, do hereby certify that the Applicant's application lodged by way of a Notice of Application filed herein on 29th September 2025 concerns a matter of urgency in that ZNN, the eldest of the parties' children, has expressed a desire to be separately*

represented and heard on matters that affect him, namely, the pending application for the living arrangements concerning him, and his siblings. As he has written to both parties advising them of his position, in the circumstances, in light of section 3 of the Child Protection Act, this Honourable Court should not further delay the hearing and determination of the pending application for the appointment of a guardian. Accordingly, the application is of great urgency, and the Applicant will not require any days for the hearing of the same, as it will be determined "on the papers."

[4.] In support of the Application, an Affidavit was sworn by the husband and filed on 30th September, 2025. The salient parts of the Affidavit, which seek to rationalize the need for making the present application, are contained in Paragraph 3 thereof:

Since 8th July, a Case Management Order was entered. There have been several developments and changes of circumstances concerning the children of the marriage and our sons, ZNN and ANN, in particular, that underscore the need for the children to be independently represented by a guardian in connection with the issues and matters that directly concern or affect them in the divorce proceedings……"

What then followed was a litany of accounts of interactions between the children and the wife, which the husband insists are a danger to the emotional well-being of the children. Among several other issues, the husband specifically mentioned that the wife refuses to communicate with the children about upcoming holiday plans for Christmastime.

[5.] It is material that the husband proposed to the court in the substantive Application that Attorney Sean Moree be appointed to represent the children in these proceedings, a suggestion vehemently opposed by the wife. In fact, the wife's position is opposed to the idea of the appointment of any guardian. She is of the view that the children are adequately represented by their parents, the parties herein.

[6.] The husband has submitted that the hearing of the Guardianship Application should take precedence over all other applications. That it is a separate Application from the Application for Interim Custody Care and Control in the Matrimonial Proceedings action 2025/FAM/div/00006. It should also be determined that, before the other interlocutory applications that have been filed, including the Domestic Violence Protection Order, the Application for a Gag Order, and the Strike Out Applications. Moreover, he said there is evidence before the court, being an email exhibited to the husband's Affidavit, wherein the eldest son, ZNN, expressed the need for independent representation;

"I want to have a lawyer who can represent what I want and tell this to the judge because I have no idea when I will have the opportunity to do so myself;

If the living arrangement and custody have not been agreed upon by the end of this academic term (December 11th, consider it as a birthday present for me), then I am going to boarding school. I also want to be part of the decision-making for holidays, as for every holiday this year, we have been put through the same uncertainty."

[7.] The husband has invoked s. 3 of the Child Protection Act (CPA), submitting that this is a 'matter relating to a child' and any delay in deciding the issue is potentially prejudicial to the welfare of the children. s. 3. (1) CPA provides;

"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. **[Emphasis added]**

(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 to the matter;
(e) any harm that the child has suffered or is at 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."

[8.] The husband also asserts that if the court does not see fit to deal with the application as requested, the application should be sent to the "duty Judge."

[9.] The wife vigorously opposes the husband's application to vary the Case Management based on the stated premise that the appointment of a Guardian is "urgent", and that what the Application is seeking is an expedited determination of the Guardianship application. Notwithstanding that this is what the husband is seeking, counsel says this is not manifested in the Notice of Application. As such, the Notice contravenes the mandatory requirements of Rule 11.7 of the Supreme Court (Civil Procedure) Rules ("the CPR")2023:

1. An application must state —

(a) Briefly, the grounds on which the applicant is seeking the order; and
(b) What order is the applicant seeking.

A review of the Notice shows that the Application is grounded in Rules 2.4(2), 26.1(2), and (v) of the Supreme Court, which provides;

2.4. (2) Court's discretion as to where, when, and how it deals with cases. (1) Claims and petitions shall be heard in open court and applications shall be heard in chambers except that — (2) An order made in chambers shall have the same force and effect as an order made in open court, and the Court sitting in chambers shall have the same power to enforce, vary, or deal with any such order, as if sitting in open court.

26. (2) Court's general powers of management. (1) The list of powers in this rule is in addition to any powers given to the Court by any other rule, practice directions, or any enactment. (2) Except where these rules provide otherwise, the Court may — (a) adjourn or bring forward a hearing to a specific date;

(v) take any other step, give any other direction, or make any other order for the purpose of managing the case and furthering the overriding objective, including hearing an or directing that such a hearing take place before a Court-appointed neutral third party, to help the parties settle the case

[10.] It is accepted based on the foregoing provisions that the court is empowered to vary the Case Management directions, and that variation can be to bring the hearing of any application or hearing forward. To that extent, counsel for the husband has provided the court with the statutory grounding provisions. However, as Counsel Rolle pointed out, the Notice fails to briefly set out the bases or foundation on which the applicant is seeking the order. The inclusion of the grounds in the Certificate of Urgency does not suffice to satisfy Rule 11.7. The Certificate of urgency was worded as follows:

> *".... the Applicant's application lodged by way of a Notice of Application filed herein on 29th September, 2025, concerns a matter of urgency in that ZNN, the eldest of the parties' children, has expressed a desire to be separately represented and heard on matters that affect him. Namely, the pending application for the living arrangements concerning him and his siblings, and has written to both parties advising them of his position."*

This failure is sufficient to cause the Notice to be dismissed as defective. The argument could be advanced that this is a matter of form, not substance, and it is settled law that the approach

nowadays is that substance is regarded over form, referencing **Harkness v. Bell's Asbestos and Engineering Ltd.** [1964 H. No. 23] [1967] 2 *Q.B.* 729 Court of Appeal, *Lord Denning M.R., Diplock and Russell L JJ.* This case makes clear that courts are to be guided by substance over form, and where a mistake can be rectified, without injustice, the courts ought to allow rectification.

This case (**Harkness**) involved what is termed an "accidental slip or omission" within R.S.C., Ord. 20, r. 11. Hence, the rationale for the defect to be cured. However, the defect in the husband's Notice, in my view, goes far beyond a minor defect; the entire grounds of the Notice were omitted.

[11.] It is also distinctly clear that the wife vehemently disputes the husband's account of the activities occurring between the parties and the children, in particular, herself and ZNN. Moreover, she emphasizes that she is of the view that the husband influenced, if not created, the email purportedly authored by ZNN. I am of the view that the factual disputes, which comprise 100% of the pleadings in this matter, as in the divorce proceedings, have been appreciated by this court when the timetable for the further progress of this matter was determined with the agreement of the parties. Moreover, the son's desire for the appointment of his own counsel was also alluded to by the husband prior to the Case Management being scheduled. I accept Counsel Rolle's position that these factual disputes should not be predetermined by the court prior to considering the substantive application. More to the point, the directions given by the court were with the consent of the parties.

[12.] In the circumstances, I reject the husband's counsel that there is urgency to appoint a guardian, given the several applications filed in this matter and the need to decide these issues prior to moving on with the hearing of the Petition and finalizing the issues concerning the children. On deciding the conduct of their case, the choice was made to file these several interlocutory applications with the knowledge that they would delay the hearing of the Custody, Care and Control Application, which suggests that there is no urgency in having that application heard. Moreover, the same counsel is involved in both proceedings and is therefore keenly aware of the causes for delay in deciding the issues surrounding the children. In any event, even if the decision was made today to appoint a Guardian for the children, no movement could be made before the February 2026 hearing fixture for delivery of this court's ruling on the papers regarding the Gag Order and the Strike-Out Order already scheduled for finalization on that date. I reiterate admonishments made to counsel previously that the filing of numerous interlocutory applications requiring the court's written decisions before the hearing of the substantive applications creates delays that are unavoidable, given the court's calendar and the need to allow all litigants to be heard. All litigation parties are subject to the vagaries of the court's calendar, and when, at Case Management in this particular case, the court and parties were deciding on the

most efficient and expeditious way to deal with the several applications, the dates were accepted, and the mode of dealing with the applications on the papers was agreed upon by all parties.

[13.] I have made arrangements to meet with the children on 9th December 2025 @ 2:30 p.m. pursuant to this court's obligations under s. 3 of the Child Protection Act, particularly the stated consideration in s. 3 (1) (a) – (f), and towards the decision that must be made on the substantive application for custody and the other ancillary matters, if that is some consolation. At that time, I will seek to determine the wishes of the children as it relates to their activities for the Christmas Holidays.

[14.] The Application for the Variation of Appointment of a Guardian Ad Litem is denied on the basis that I do not deem such an appointment to be an **urgent** matter.

[15.] Counsel gave the court the alternative of having the "duty judge" hear the urgent application. However, by way of information, during the course of this Application, yours truly was in fact "the duty Judge".

CONCLUSION

1. The Notice filed on 29th September, 2025 for variation of the Case Management Order dated 8th July, 2025, is dismissed.

2. The costs of this Application is to the wife to be taxed if not agreed.

Dated the 8th day of December, 2025

The Honourable Justice Hope Strachan