IN THE COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

Family Division

2025/FAM/div/00006

B E T W E E N

N.M.N.

Petitioner

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**
	Gail Lockhart-Charles K.C. and Tatyanna Maynard for the Respondent
	Sean Moree K.C. and Peteche Mitchell on an Application on behalf of ZN and AN for the Appointment of a Litigation Guardian
Hearing On Papers: Submissions Date	**29th January 2026; 11th and 21st March 2026**

Matrimonial proceedings, interlocutory application, application to be appointed litigation guardian for children of the marriage, affidavit evidence, cross-examination of affiants, and exceptional circumstances.

RULING

C.V.H. STRACHAN, J

Background Facts

[1.] This judgment concerns an interlocutory application in highly contested and acrimonious divorce proceedings. It relates to the children of the marriage. The immediate issue is whether the court should allow the cross-examination of two individuals, whose evidence is said to be central to appoint a litigation guardian for them.

[2.] There are two proposed witnesses, Mr. Sean N.C. Moree KC (Mr. M), the proposed litigation guardian, an attorney of Messrs. McKinney Bancroft & Hughes ("MBH"), and Mrs. Erin Hill (Mrs. H), a partner of the firm whose affidavit supports the application. The objections by the wife to the application challenge Mr. M's independence, raising concerns about hearsay in Mrs. H's affidavit. The wife contends that procedural fairness requires their evidence to be tested orally before the court decides whether to appoint Mr. M as litigation guardian.

[3.] The issue for determination is not the ultimate merits of the wider proceedings. It is whether, consistent with fairness, proportionality, and the overriding objective, the court should direct oral evidence and cross-examination at this interlocutory stage, and if so, to what extent.

[4.] Since the husband, filed the Petition on 13th January 2025, the wife, filed an Answer and Cross-Petition on 16th January 2025, after which numerous applications were made seeking various reliefs, including competing applications by both parties under the Domestic Violence (Protection Orders) Act, Chapter 99A, ("DVPO") on behalf of themselves and the three minor children of the marriage. It is also noted that, following those competing DVPO applications, the court issued four Interim Protection Orders with the cooperation and consent of both husband and wife in November 2025, on 18th December 2025, 3rd February 2026, and 27th March 2026.

[5.] The Notice seeking his appointment as Litigation Guardian was filed by Mr. M on 26th January, 2026. The subjects of the application were the two (2) sons of the marriage, namely ZN

(m) born 11th December, 2010, aged 15 years, and AN (m) born 20th February, 2013, aged 13 years ("the children"), who were included in the wife and the husband's said DVPO applications.

[6.] Contrary to the wife's position, Mr. M's application is supported by the husband, who has actually agreed to fund his engagement. In fact, the wife's position is that no litigation guardian is needed at all. Mr. M's application arose after a complaint the wife made to the Royal Bahamas Police Force and the wife's application to the court for a domestic violence protection order for herself and the children, naming the husband as the perpetrator. Notwithstanding, that the complaint was against the husband, the wife, detailed incidents of aggressive behaviour meted out upon her person by ZN and AN which she contends were the result of the husband's encouragement, incitement and negative influence over ZN and AN. Mr. M contends that these incidents, as described in the wife's report to the police, and to the court, seeking the DVPO are complaints of criminal acts. This means that the wife accused both ZN and AN of crimes, and that, because of those accusations, the boys need to be represented in these divorce proceedings by a litigation guardian.

[7.] The application to be appointed litigation guardian was expressed in exact terms by Mr. M, who described himself as a partner of the Chambers of MBH, counsel and attorney-at-law. The appointment was being sought pursuant to rule 23.8(2)(b) of the Supreme Court Civil Procedure Rules, 2022 (as amended). He said the grounds of the application were that, on 29 April 2025, the wife had made an application under the Domestic Violence (Protection Orders) Act for a Protection Order against the husband on her own behalf and on behalf of the sons of the Parties and their sister, LAMN, also a minor, born 4 November 2016, who is not included in the subject application. That, on 1st July 2025, the Petitioner had made an application under the Domestic Violence (Protection Orders) Act for a Protection Order against the wife on his own behalf and on behalf of the children; that the parties had made these applications against each other on behalf of the children without their consent or permission; that, so far as the sons of the Parties were concerned, over the course of these proceedings and all related proceedings it had become abundantly clear that they required independent legal representation and a litigation guardian to be assigned to intervene on their behalf and defend their legal rights, specifically in relation to various allegations made against them and the use of covert recordings of them; and

that he could fairly and competently conduct proceedings on behalf of the children and had no interest adverse to them. He also stated that the written evidence to be used at the hearing of the application would be the affidavit of Mrs. H filed on 27 January 2026, and that a draft of the order sought was attached.

[8.] The application to cross-examine Ms. H on the contents is best illuminated by extracting the contents thereof:

> *"I, **ERIN M. HILL,** Counsel and Attorney-at-Law of the Western District of the Island of New Providence, one of the Islands of the Commonwealth of the Bahamas, **MAKE OATH** and say as follows:*
>
> 1. *I am a Partner in the Chambers of Messrs. McKinney, Bancroft & Hughes ("**MBH**"), the attorneys retained by the Petitioner to represent the minor sons of the parties, **ZNPN** ("**Z**") born 11th December, 2010, and **ANTN** ("**A**") born 20th February, 2013 (the "**sons of the parties**").*
>
> *2. I am duly authorized to make this affidavit on behalf of the sons of the parties in support of the application for an order appointing Mr. Moree KC as their litigation guardian pursuant to rule 23.8(2)(b) of the Supreme Court Civil Procedure Rules, 2022 (as amended).*
>
> *3. Where facts are within my personal knowledge, they are true. Where facts and matters are not within my personal knowledge, they are true to the best of my information and belief and derive from the sources stated.*
>
> *4. True copies of the documents to which I shall refer to in this Affidavit are now produced and shown to me marked Exhibit "**EMH-1**". References in this Affidavit to tab numbers are to the tab numbers in "**EMH-1**".*
>
> *5. As the extant divorce proceedings and the other applications/proceedings related thereto have progressed, it has become abundantly clear that the sons of the parties require independent legal representation and a litigation guardian to be assigned to advise them, intervene in these proceedings on their behalf, and defend them.*
>
> *6. Both parties have made applications pursuant to section 4 of the Domestic Violence (Protection Orders) Act, Chapter 99A of the Statute Laws of the Bahamas, against each other, on behalf of their children, without any child's consent or permission:*
>
> *i.) On 29th April, 2025, the Respondent made an application for a Protection Order against the Petitioner for her protection and on behalf of the sons of the parties and their sister, **LAMN,** who is also a minor, born on the 4th day of November, A.D., 2016 (collectively the "**Children**"). The Respondent's application is annexed to the Notice of Hearing filed 6th November, 2025.*

ii) On 1st July, 2025, the Petitioner made an application pursuant to the Domestic Violence (Protection Orders) Act for a Protection Order against the Respondent for his protection and on behalf of the Children.
These applications have been set down to be heard on 2nd – 3rd February, 2026.

7. Despite lodging the Protection Order application purportedly for the protection of all the Children, the Respondent has taken an adverse position towards the sons of the parties and has made various allegations against them which affect their legal rights. Specifically:

i) Naming the sons of the parties in her Domestic Violence Protection Order Application without their consent or approval while relying on evidence which accuses them of a crime- see the following paragraphs of the First Affidavit of MSN filed 30th April, 2025:
"33. ...my son A pushed and hit me."
"80. ... A wouldn't calm down even when I tried to settle him down. He was so angry that he hit me and then pushed me back onto a chair."
"82. ... enraged A shouted at me, hit me, and pushed me..."
"86. ... I tried to avert another incident like the one which occurred on 25th January, 2025 when A attacked me over the half term trip… Z then got up and tried to block me in an attempt to stop me from walking away...";
"268. Z was extremely angry and was very aggressively pursuing me in the staff kitchen..."

ii) *The Respondent has lodged a criminal complaint with the Royal Bahamas Police Force against the Petitioner which involves A and alleges his abuse/assault against her (see paragraph 85 of the First Affidavit of MSN filed 30th April, 2025 where she states: "85. ... My police report was about N behavior in inciting A to attack me..."). The Respondent has also stated that Z requires the intervention of the Department of Social Services "due to a troubling escalation in aggression by the child Z, including verbal and physical attacks on Mrs. N and his siblings" (see the Letter to the Court dated 8th December, 2025 which is attached and exhibited hereto at* ***TAB-7****). Z and A, as minors, have been accused of crimes by their mother, and any decision of this Court with respect to these allegations would significantly affect these young men, now and in the future;*

iii) Covertly recording the sons of the parties without their knowledge or permission on numerous occasions which the Respondent seeks to rely on. At paragraph 243 of the First Affidavit of MSN filed 30th April, 2025, the Respondent sets out a chart with the various recordings referenced in the said Affidavit, the transcripts of which are exhibited at MSN-1. The majority of the recordings listed in the chart (10 out of 14) refer to A, and most of the transcripts exhibited include soundbites from the sons of the parties, see specifically:

Transcript dated 23rd February 2025 at Exhibit MSN-1 page 6,
Transcript dated 10th November 2024 at Exhibit MSN-1 page 9,

Transcript dated 18th February 2025 at Exhibit MSN-1 page 10 – 11,
Transcript dated 25th January 2025 at Exhibit MSN-1 page 16 - 20,
Transcript dated 25th March 2025 at Exhibit MSN-1 page 30, and
Transcript dated 5th April 2025 at Exhibit MSN-1 page 49 - 54; and

*iv) Counsel for the Respondent has foreshadowed the making of an application pursuant to section 64 of the Child Protection Act, seeking a Supervision or Care Order in her Letter to the Court dated 8th December, 2025 (at **TAB-1**).*

*8. The sons of the parties lack legal capacity as they are minors: Z is 15 years old and A is 12 years old. That said, they are intelligent and possess sufficient understanding to comprehend the claims their mother has made against them and make independent sensible decisions relating to the same. An example of this is Z's email to the Court dated 11th November, 2025 where he sets out A and his position on the proceedings to date and desires moving forward. A copy of this email is attached and exhibited hereto at **TAB-2**. The sons of the parties are **Gillick** competent but are desirous of legal Representation in these proceedings.*

9. In consequence of the above, the appointment of Sean N. C. Moree KC as counsel and attorney and litigation guardian is necessary for the proper protection and representation of the sons of the parties in the extant proceedings and any other proceedings which have been or will be commenced by the Respondent against her sons. It is essential that they be represented separately to ensure that they receive sound independent legal advice, which is not clouded by their parents' competing interests.

10. Mr. Moree KC is an Attorney-at-Law with over 20 years of experience in Supreme Court Family law litigation. I am well acquainted with Mr. Moree KC and verily believe that he is a fit and proper person to act and can fairly and competently conduct proceedings as the litigation guardian for the sons of the parties.

11. Mr. Moree KC has confirmed that he has no interest in the matters in question in this cause averse to any of the parties. Mr. Moree KC, counsel for the Petitioner and counsel for the Respondent have informally outlined their various positions on his appointment as litigation guardian in correspondence to the Court, including the letters to the Court dated:

i) 15th December, 2025 from Mr. Moree KC;
ii) 29th December, 2025 from Mrs. Lockhart-Charles KC;
iii) 5th January, 2026 from Mr. Adams KC;
iv) 8th January, 2026 from Mr. Moree KC;
v) 8th January, 2026 from Mrs. Lockhart-Charles KC; and
*vi) 19th January, 2025 from Mr. Moree KC, which are collectively attached and exhibited hereto at "**TAB-1**".*

12. The Petitioner has agreed to pay all legal costs and expenses associated with Mr. Moree KC's representation of the sons of the parties notwithstanding the fact that the interests of the sons of the parties may be contrary to his. He has been advised that Mr. Moree KC's representation of the sons of the parties does not extend to advocating for either party in relation to any claim. In this regard, Mr. Moree KC owes a duty exclusively to the sons of the parties and to the Court.

13. I verily believe that the contents of this Affidavit are true.

[9.] The wife's affidavits in opposition to Mrs. H's Affidavit were her Fifth Affidavit filed, and her Ninth Affidavit filed 6th February 2026. She also relied upon an Affidavit filed by her housekeeper, Miriam Domingo, filed 12th February, 2026. She disputes the allegations made by Mrs. H in her Affidavit, upon which the application to be appointed Litigation Guardian is based. In particular, she took exception to Mr. M's account of the incident which occurred on 12th December, 2025, as he recounted it in a letter to the Court dated 15th December, 2025 where he said;

> *"The incident which occurred on Friday (12th December, 2025) only highlights the need for Z and A to have separate legal counsel. At the request of the Respondent, an officer from the Department of corrections, and shortly thereafter the Respondent's legal counsel appeared unannounced at the family home and confronted the children without any explanation or preamble. The presence of the Respondent's counsel which I find inexplicable, only exacerbated an extremely chaotic and traumatizing experience which led to law enforcement being called."* **[Emphasis mine]**

The wife says this is totally false and she has the video recordings to prove it. She said that her attorney only entered the property after the husband's lawyer arrived (and only because the husband and his lawyer came onto the property). As a result, she is at a loss as to how Mr. M could say that he found it to be inexplicable.

[10.] The wife also objects to the impression given in Mrs. H's Affidavits that she (the wife) had made a criminal complaint to the police about her sons and not her husband. She filed an application on 29th January 2026 seeking the following reliefs;

> i. An Order directing that Mrs. H, the deponent of the Affidavit dated 27th January 2026 filed in support of the application for appointment of Mr. M as litigation guardian for the children of the parties, do attend Court for cross-examination on her said Affidavit.

ii. Directions that the Court shall not determine the application dated 26th January 2026 for appointment of Mr. M as litigation guardian unless and until Mrs. H has attended for cross-examination, and/or the wife has had a fair opportunity to test the evidential basis for the Court's satisfaction under CPR 23.6 and 23.8(5).

iii. An order requiring Mr. M to be cross-examined on the issue as to whether he can fairly and competently conduct proceedings on behalf of the minors, and has no interest averse to the minors, as required by CPR 23.6 and 23.8(5).

[11.] The wife through her counsel's submissions speaks of her suspicions regarding an existing relationship between Mr. M and his law firm with the husband. She disputes the reliability, balance, and evidential basis of Mr. M's and Mrs. H's assertions.

[12.] The application to cross-examine Mr. M is made on the grounds that there is a real and serious issue as to whether he is independent and disinterested for the purposes of CPR 23.6 that he can fairly and competently conduct proceedings on behalf of the minors, and that he has no interest averse to them. In setting out the grounds for making the application, Mr. M acknowledged that he was engaged by the husband to act on behalf of the minor children. The wife's suspicions are supplied through submissions and Affidavits reference below, were aroused by the fact that MBH is the husband's attorney in other matters. She feels that Mr. M introduced a narrative about the events of 12th December, 2025, and the wife's DVPO Application, which the wife suspects were adopted by Mr. M from the husband. She disputes their account. She suggests that Mr. M asserted locus standi or authority despite there being no court order and despite the court's direction that welfare issues concerning the children be addressed through the Department of Social Services (DSS). These assertions are of such a nature that only through cross-examination of Mr. M would the Court be sufficiently equipped to decide whether Mr. M meets the criteria of CPR 23.6. Therefore, the wife seeks an order requiring Mr. M to be cross-examined before any decision is made on his appointment. She relies on the Second Affidavit of Kara Neely as written evidence for the hearing, and has attached a draft of the order sought.

[13.] The Affidavits of Kara Neely sworn on 27th January 2026 and 29th January 2026 respectively, confirms the wife's intention to vigorously defend the account of the incident that occurred on 12th December 2025 as advanced by Mr. M through his correspondence with her counsel and in Mrs. H's affidavit. She emphasized that the inability to cross-examine Mrs. H and Mr. M on the disputed account of the events and of the intervention of Dr. H. Shyann Williams is

prejudicial to the wife's case and she justifies the wife's opposition to the appointment because the children are not litigants to these proceedings; that the court can glean the necessary information about their needs, wishes and circumstances through The Department of Social Services; that to involve the minors as parties even via a litigation guardian would expose them to the stress of litigation unnecessarily and draw them into adversarial conflict. She states further that Mr. M was initially engaged by the father and claims to represent the children raising serious impartiality concerns; that Mr. M cannot act independently if influenced by the father, especially given the allegations of parental alienation tactics deployed by the father against the mother; Mr. M's appointment could harm the minors by entangling them in a dispute, potentially alienating them from one parent or causing emotional distress; the mother has provided affidavit evidence of the father's controlling behaviour and that the present application appears to be a tactic to manipulate the proceedings rather than to protect the children.

[14.] **THE ISSUES TO BE DETERMINED AND /OR ADDRESSED ARE AS FOLLOWS;**

1. Whether Mrs. H should be ordered to attend this Court to be cross-examined on her Affidavit sworn 27th January 2026, filed in support of the application for appointment of Mr. M as litigation guardian for the minor sons of the parties.

2. Whether Mr. M shall be ordered to attend Court to be cross-examined as to the issue of whether he can fairly and competently conduct proceedings on behalf of the minors, and has no interest adverse to the minors, as required by CPR 23.6 and 23.8 (5).

3. Whether the determination of the application dated 26th January 2026 for the appointment of Mr. M as litigation guardian should be suspended and adjourned pending completion of the cross-examination of Mrs. H and Mr. M.

[15.] Both counsels have provided comprehensive Submissions addressing the issues. Mr. M has provided submissions on behalf of the minor children as well. These have been extremely helpful and will be outlined further in this Ruling.

THE RELEVANT LEGISLATION

[16.] **i. The Supreme Court Civil Procedure Rules 2022 (CPR)**

Part 30 (1) The Court may require evidence to be given by affidavit instead of, or in addition to oral evidence. (2) In this Part, "deponent" means the maker of an affidavit. (3) Whenever an affidavit is to be used in evidence, any party may apply to the Court for an order requiring the deponent to attend to be cross examined.

Part 8.25 (3) Evidence – general. (1) No written evidence may be relied on at the hearing of the claim unless— (a) or (b). (2) The Court may require or permit a party to give oral evidence at the hearing. (3) The Court may give directions requiring the attendance for cross-examination of a witness who has given written evidence.

Part 11.13 Powers of Court in relation to the conduct of an application. (1) (2) The Court in an exceptional case and where circumstances require such a step so that justice may be done — (a) issue a witness summons requiring a party or other person to attend the Court on the hearing of the application; (b) examine any party or witness at such a hearing whether by putting written questions to the witness and asking the witness to give written answers or orally. (3) Any party may then cross examine the witness. (4) The Court may exercise any power which it might exercise at a case management conference.

Part 26.1 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; (b);(c); (d) decide the order in which issues are to be tried; (e) direct a separate trial of any issue; (f) (g);(h); (i); (j); (k); (l); (m); (n) instead of holding an oral hearing deal with a matter on written representations submitted by the parties; (o);(p) require the maker of an affidavit or witness statement to attend for cross-examination; (q) stay the whole or part of any proceedings generally or until a specified date or event; (r);(s);(t); where there is a substantial inequality in the proven financial position of each party, order any party having the greater financial resources who applies for an order to pay the other party's costs of complying with the order;(u);(i);(ii);(iii);(iv);

(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;

CPR Part 23.6 - 23.7 Conditions to act as litigation guardian. A person may act as a litigation guardian if that person — (a) can fairly and competently conduct proceedings on behalf of the minor or patient; and (b) has no interest averse to that of the minor or patient.

CPR Part 23.8 (2)(b) – How person becomes litigation guardian by court order. (1) The Court may make an order appointing a litigation guardian with or without an application. (2) An application for an order appointing a litigation guardian may be made by a — (a) party, or (b) person who wishes to be a litigation guardian.

CPR Part 23.8 (5) The Court may not appoint a litigation guardian under this rule unless it is satisfied that the person to be appointed complies with the conditions specified in rule 23.6.

SUBMISSIONS

[17.] A decision on the present application would determine whether there would be an adjournment of the substantive proceedings for the cross-examination to take place. Mr. M has pointed out that the application for the children to be joined as parties to the divorce proceedings is not before the court presently, but the right is reserved to have it heard at a later date.

Submissions on cross-examination by the wife and her Counsel in support of their application for Mr. M and Mrs. H to be cross-examined.

Mrs. H

[18.] It is submitted by Mrs. Lockhart Charles that this is an exceptional case in which the court is being asked to act upon disputed second-hand evidence attributed to Mr. M in relation to matters lying at the center of the present application, including the boys' wishes, his role and involvement in relation to them, the circumstances of any retainer, his independence, the absence of any adverse interest, and the question whether the children ought to participate in the proceedings or be joined as parties. Counsel says that if the court decides, as Mr. M submitted, **The Queen v The Right Hon. Perry G. Christie, Prime Minister of The Commonwealth of The Bahamas (in his capacity as Minister for Crown Lands and Others Ex Parte Coalition foto protect Clifton Bay** [2016] 2 *BHS J* No. 134 ("Clifton Bay") prevents, or weighs against, cross-examining Mr. M because he did not swear an affidavit himself, that does not mean the court should simply accept the disputed assertions without scrutiny. Instead, she says the court should give no weight to factual assertions said to come from Mr. M and passed on second-hand through Mrs. H unless and until they are properly proved by admissible evidence.

[19.] The submission is that those issues fall to be resolved before the court can properly determine questions of participation and representation; **Re NRA and Others [2015]** COPLR 690: *"So the issue whether {...} should be appointed as a litigation friend is fact and case sensitive and will turn on whether in all the circumstances the [proposed litigation friend] satisfies the relevant Rules and more generally whether he or she can properly perform the functions of a litigation friend and so in a balanced way consider and properly promote P's best interest."*

[20.] It is further contended that Mrs. H's affidavit repeats disputed assertions, including matters said to derive from Mr. M, and that it would be procedurally unfair and unsafe for the court to rely upon such material, (affidavit sworn by counsel of the same firm) or to make findings adverse to the opposing party, unless the evidence is properly tested. In that regard, reliance is placed upon **Re Finethic Limited et al** [2022] 1 *BHS J.* No. 179, **Cordelia Delores Ward et al v FML Group of Companies Limited** (2022/CLE/gen/00484).

[21.] Counsel says fairness requires cross-examination before the court can rely on Ms. H's disputed statements or make findings against the other party. In **Guthrie v Guthrie** SCCivApp No. 13 of 2015, the Court of Appeal said that in contested matrimonial proceedings, if an affidavit shows many factual disputes, the judge should not decide those issues without cross-examination. At paragraph 89, the Court said *"the learned judge could not reasonably prefer the evidence of one party over the other without seeing the parties' conflicting assertions and denials tested before her" and that "It was an unreasonable exercise of the judge's discretion to make the findings of fact and the orders she ultimately made without the benefit of cross-examination."*

[22.] Counsel further submits that where credibility, source, and reliability matter, the court may require more than affidavit evidence alone. She cites **Coyne v DRC Distribution Ltd.** [2008] EWCA Civ 488 and **Global Steel Holdings Ltd. v Parson (Ptc) Ltd.** [2024] EWHC 1968 (Comm). The essence of the argument is that this is not a case in which the impugned passages may simply be disregarded as inadmissible, argumentative, or expressive of opinion, because the challenged material goes to the heart of the application.

[23.] It is also said that privilege cannot be invoked to advance the application whilst at the same time insulating from scrutiny the material said to support it, and that, if factual matters attributed to Mr. M. are to be relied upon, they ought to be proved by his own sworn evidence and, if necessary, tested in cross-examination; failing that, no weight should be attached to them. **PCP Capital Partners LLP v Barclays Bank plc [2020] EWHC 1393 (Comm), Clements v Frisby [2022] EWHC 3124 (Ch).**

[24.] It is further submitted that, although cross-examination at an interim stage will not ordinarily be permitted, the present case meets the requisite threshold by reason of the centrality of the disputed matters and the demands of fairness. The court is said to have ample case management powers under CPR 26.1(2), CPR 8.25(3), and CPR 11.13 to require that the evidential basis of the application be properly tested. The proposed cross-examination is said to be limited and directed to discrete matters, namely the circumstances of Mr. M's involvement in the retainer, his communications with the children, the wishes or instructions said to support the application, the basis upon which he maintains that he can act independently and without adverse interest, and any other factual matters attributed to him in Mrs. H's affidavits or otherwise relied upon in support of joinder and appointment. It is also submitted that cross-examination of Mrs. H would serve to establish whether her evidence proceeds from her own knowledge or merely repeats assertions made by Mr. M. More generally, the contention is that where issues of source, credibility, and reliability are of central importance, affidavit evidence alone may be insufficient, particularly where the material relied upon is hearsay, and concerns alleged oral statements as to the children's wishes. In those circumstances, it is submitted that fairness requires an opportunity for cross-examination before the court can safely place reliance upon such evidence.

[25.] Counsel argues that the hearsay provisions in sections 38 and 39 of the Evidence Act matter because Mrs. H's affidavit is hearsay. She says section 58(3) is especially important because, where a statement was made orally rather than in a document, it generally must be proved by direct oral evidence from the person who made it or from someone who directly heard or perceived it. Her point is that if the court is being asked to act on assertions about what the children allegedly said, wanted, instructed, or communicated, it is entitled to require a fair and proper evidential basis before relying on them.

[26.] Counsel says section 40 reinforces the need for cross-examination because, where hearsay evidence is admitted, fairness requires that the opposing party should have the opportunity to cross-examine.

Submissions by Mr. M to counter the wife's application to cross-examine Mrs. H and Mr. M

[27.] Mr. M argues that cross-examination should be refused because it would be unfair, costly, and contrary to the approach taken on interlocutory applications under CPR r 1.1. He accepts that the court has discretion to order cross-examination of an affidavit witness in such applications, but says there is no automatic right to it and that it is an exceptional step, relying on **Clarke v Guardian News & Media Ltd.** [2025] EWHC 180 (KB). He says Bahamian courts adopt the same cautious approach, citing **Louis M. Bacon v Carvel Francis** [2019] 1 *BHS J.* No. 104 **and Attorney-General of The Commonwealth of the Bahamas v Ricardo F. Pratt** [2025] 1 *BHS J.* No 44; and contends that cost, practicality, fairness, and the court's ability to determine issues on written evidence can justify refusing cross-examination. He further says that although the CPR permits oral evidence or cross-examination, the real issue is whether Mrs. H's affidavit contains anything sufficiently special or exceptional to warrant that course, and he disagrees with the wife's contention that it does. He maintains that CPR 23.8 permits the proposed litigation guardian to make the application, that Mrs. H's affidavit makes clear that he is doing so, and that the affidavit explains why the application is brought and provides the relevant background, some disputed and some not. He says CPR 23.6 requires the proposed guardian to be competent and able to act fairly for the minors, that Mrs. H's affidavit contains statements directed to satisfying that requirement, and he accepts that the wife challenges the way that material is presented. He argues that cross-examining Mrs. H on her statement that he has no adverse interest would serve no useful purpose, especially since CPR 23.6 requires that assertion in the application, and he similarly says there would be no benefit in cross-examining her on the statement that the husband agreed to pay the legal costs of his representation of the children, because he remains subject to duties owed only to the children and the court. He adds that the fee arrangements were disclosed to the wife and her counsel, that Mrs. H did not mention them in her affidavit, so cross-examining her on them would achieve nothing, and that no

evidence has been produced to challenge his independence or his ability to act fairly and competently for the minors. His overall position is therefore that nothing exceptional has been shown to justify cross-examining Mrs. H, and that doing so would only cause unfairness, expense, and unnecessary delay.

[28.] Further arguments advanced by Mr. M against cross-examination of himself and Mrs. H are that, for the court to allow cross-examination at this interlocutory stage of these divorce proceedings, would be contrary to the overriding objectives in CPR 1.1 to decide cases expeditiously and using no more than proportionate resources. The information gleaned from such an exercise will take the evidence no further than it already is, and would not be proportionate to the costs.

DISCUSSION AND ANALYSIS

The Procedural Framework

[29.] In family proceedings, the court controls how evidence is presented and whether cross-examination is allowed. Under CPR Part 11.13, it may permit cross-examination or require the maker of an affidavit to attend, but at hearings other than a final hearing, facts are usually proved by written evidence, and any cross-examination requires permission under CPR Part 30(1), not as of right. The court may also limit evidence and cross-examination under Part 11.13(2) – (3). It is noted that the Evidence Act 2008, ss. 38 and 39, allows hearsay in civil proceedings, and s. 40 allows the court to permit the maker of a hearsay statement to be called for cross-examination. That matters here because one complaint is that Mrs. H's affidavit includes assertions said to come from others rather than only from her own direct knowledge; hearsay. While under the Evidence Act 2008, s. 39, hearsay is admissible, its weight depends on reliability factors, including whether it was reasonable to call the maker, whether anyone had a motive to misrepresent matters, and whether the circumstances suggest an attempt to prevent proper evaluation of the evidence.

[30.] There are rules on children's representation. A child may instruct a solicitor/guardian to act as litigation guardian if the solicitor/attorney is satisfied the child is "Gillick competent." The court may appoint a litigation guardian where necessary to protect the child's interests, provided

the conditions in CPR Part 23.6 are met, including that the person can act fairly and competently for the child and has no adverse interest. Finally, regard must be had to the overriding objective in CPR Part 1.1, saying that although family proceedings are formally excluded from the CPR, its fairness principles still provide useful context, and fairness has been applied in reaching the decision.

The Authorities

[31.] There is no automatic right to cross-examine in family proceedings. The court can control the evidence and may refuse or limit cross-examination if that is fair and proportionate case management. The issue is not entitlement, but whether cross-examination would genuinely be useful and justified.

[32.] The case law shows that in cases involving children, the court has wide discretion over procedure. Although the approach is investigative, a family judge does not have to allow oral evidence on every issue. Some applications can be decided on limited written material, while others may require a full oral hearing, and where a case falls on that scale is a matter for judicial case management. **Re B (Minors) (Issue Estoppel)** [1997] 3 WLR 1 supports that approach. These cases also make clear that family proceedings are not managed in the same way as ordinary civil litigation, because the court must focus on the interests of the children and on a process that is both fair and efficient. Delay may be prejudicial. This is front and center of my deliberations.

[33.] The court also has the flexibility to hear oral evidence at an interim stage if needed. It may do so at a case management or review hearing, and fairness may justify allowing cross-examination of an important witness whose evidence is being materially relied on. **Re S-W (Children) [2015] EWCA Civ 27** supports that approach. However, it does not give anyone an automatic right to oral evidence; the court must decide whether it is likely to affect the outcome and whether fairness requires it. Undoubtedly, Mrs. H's Affidavit does set out assertions which are disputed by the wife. However, it is unlikely that cross-examining her on those assertions would change the fact that the wife disputes her account of the facts and will most certainly not

change the wife's objections to Mr. M's appointment as litigation guardian, which is the issue to be decided at the end of the day. That being the case, disallowing cross-examination of Mrs. H and Mr. M balances the scales of fairness between the litigants.

[34.] The family case law also cautions against turning interim hearings into mini-trials just because witness statements conflict. Generally, interim applications should not involve extensive cross-examination to resolve disputed facts, especially where the court only needs to decide whether there is enough material to justify a procedural step rather than finally determine historical allegations. I am of the view that the Affidavit of Mrs. H, together with the Affidavits by the wife and her witness Miriam, provides sufficient context for the interlocutory application for Mr. M to be appointed litigation guardian.

[35.] The legal test for appointing a litigation friend/guardian is whether the person can act fairly, competently, and without any conflict of interest. That is confirmed in **Hossein Chaharsough Shirazi (by his Litigation Friend Leila Golesorkhi-Shirazi) v Susa Holdings Establishment** [2022] EWHC 477 (Ch), which, although not a family case, is relevant. The passage also makes clear that a litigation friend's role is different from that of a welfare guardian. A solicitor attorney may be able to act as litigation guardian or friend, but that role does not mean they can provide an independent welfare assessment. That distinction is supported by **Re M (Republic of Ireland) (Child's Objections) (Joinder of Children as Parties to Appeal) [2015]** EWCA Civ 26.

[36.] The overriding objectives of the Supreme Court Civil Procedure Rules 2022 (CPR) Rule 1.1 are applicable pursuant to Rule 68 of the Amendment: -

> *Rule 68 of the principal Rules is revoked and replaced with the following as a new Rule 68: "68. Application of the Supreme Court Civil Procedure Rules. (1) Subject to these Rules and the provisions of any enactment, where — (a) these Rules do not adequately provide for a matter of practice or procedure; and (b) there is no practice direction issued covering the matter of practice or procedure pursuant to rule 68A, the Supreme Court Civil Procedure Rules shall apply with the necessary modifications. (2) Notwithstanding rule 2.4 of the Supreme Court Civil Procedure Rules, the court shall, where the circumstances permit, follow the practice and procedure observed in civil proceedings commenced in the court under the Supreme Court Civil Procedure Rules."*

[37.] When Mr. M referred the Court to **Roberts v Gary Faizey** [2006] EWCA Civ 381; [2006] All ER (D) 83 (Apr) he did so appropriately, given the exposé of *Pill J* against what he termed satellite litigation involving ancillary points thereby affecting the cost-efficient, expeditious, just and fair disposition of the case;

> *"21 The. CPR have "the overriding objective of enabling the court to deal with cases justly" (CPR1.1(1)). That includes, under 1.1(2) saving expense, ensuring that a case is dealt with expeditiously and fairly, and having regard to the courts's resources. The present attempt by the respondent's advisors to achieve what is likely to have been a two-day hearing, with specialist medical evidence, to resolve an issue of minimal importance to the outcome of litigation and where and where an application had been made with good reason supported by responsible evidence was fundamentally at odds with the overriding objective."*

Analysis

[38.] In the final analysis, the focus of this court is on what must be decided now: whether Mrs. H should be cross-examined on her Affidavit evidence and whether Mr. M should be cross-examined as the applicant for appointment as litigation Guardian for the minor children. It is my view that cross-examination should be allowed only if it would genuinely help decide those issues. Mrs. H's affidavit is being used mainly for background and procedural history. Whether cross-examination achieves anything of value to my deliberations has led me to question if the proposed guardian's independence is being directly challenged with proper evidence, because in that case, limited oral questioning may be justified. In such cases, the cross-examination might be allowed but would be limited or confined. It would also have to be tightly controlled and proportionate. The court would have to guard against the hearing becoming a mini-trial or full fact-finding exercise, since this case involves children, where delay and cost can, in and of itself, be unfair. That approach is supported by **Re B (Minors) (Issue Estoppel)** [1997] 3 WLR 1.

[39.] I am also cognizant of the manner in which this matter has been conducted thus far, the numerous delays caused by the multitude of interlocutory applications which are consuming court time, and the court's ability to get to hear the substantive application for the Decree Nisi. I am determined not to turn this application into a mini trial.

[40.] Mr. M in assessing some of the pertinent contents Mrs. H's affidavit in his submissions pointed out that Mrs. H's statement that Mr. M is "*fit and proper person to act and can fairly and competently conduct proceedings as the litigation guardian for the sons of the parties*; "was simply a statement of her belief based on her knowledge of him and that cross-examining her on that could take the court nowhere, is a position with which I agree.

[41.] When Mrs. H said *"Mr. M has confirmed that he has no interest in the matters in question in this cause adverse to any of the parties"* it is self-evident as Counsel submits that Mrs. H's confirmation would have come from Mr. M. Cross-examining her on that issue could take the court nowhere.

[42.] Mrs. H's statement that *"the Petitioner has agreed to pay all legal costs and expenses associated with Mr. Moree KC'S representation of the sons of the parties notwithstanding the fact that the interests of the sons of the parties may be contrary to his. He has been advised that Mr. Moree KC's representation of the sons of the parties does not extend to advocating for either party in relation to any claim. In this regard, Mr. Moree KC owes a duty exclusively to the sons of the parties and to the Court,"* is information that has been communicated to opposing counsel. Mr. M submits, that cross-examination would achieve nothing. Again, I am of a similar view. Nothing in this statement is unclear. Cross-examination on a disclosed agreement to pay; advice given to a party outside the presence of the wife, and a statement as to where duty is owed, is unlikely to uncover or reveal anything pivotal that is not already resident in the written script.

[43.] It is also true that, as Mr. M pointed out, cross-examination is to challenge the truthfulness or credibility of the deponent's evidence, which is before the Court. Mr. M has no evidence in the form of an affidavit before the court, and to that extent, any argument advanced by the wife that there is a real and serious issue, as to whether Mr. M is independent for the purposes of CPR 23.6 and can competently and fairly conduct proceedings on behalf of the minors, and has an interest adverse to the minors would defy the rules set down for the conduct of litigation.

[44.] I am also cognizant of the fact that a litigation guardian has only a limited procedural role: as **Re M (Republic of Ireland) (Child's Objections) (Joinder of Children as Parties to**

Appeal) [2015] EWCA Civ 26 ; the role is to conduct the case fairly and competently without conflict, not to provide an independent welfare assessment. So, if the objections are vague, the court should usually decide the issue on the papers; if there are clear and important disputes affecting the appointment test, it may allow short, topic-limited questioning. Here the objections are not really vague and the disputes so clear I find there is really no need to cross-examine Mrs. H or Mr. M.

[45.] Finally, it is clear that Mr. M's suitability as a litigation guardian for the children is a mixed question of fact and law. This cannot be determined on the basis of cross-examination. In **Attorney-General of The Commonwealth of the Bahamas v Ricardo F. Pratt [2025] 1** *BHS J.* **No. 44** where *Klein J* was faced with the task of determining an application to have a litigant declared a vexatious litigant he held:

> *"Ms. King's assertion that Mr. Pratt is a vexatious litigant is not a question of fact alone, but a mixed question of fact and law, which the Court must determine from the affidavits and based on legal principles. It cannot be determined on the basis of any cross-examination. Again, to the extent that any personal opinion is expressed in any of the affidavits, I can safely ignore them."* **[Emphasis Mine]**

I adopt *Klein J's* approach moving forward and in dealing with the substantive application to appoint Mr. M.

Conclusion

[46.] The court's task is to secure fairness without losing sight of the interlocutory character of the hearing. In family proceedings concerning children, the court has broad powers to shape the process, and usually should decide interim procedural applications on written evidence unless oral testing is truly necessary.

[47.] There is no automatic right to cross-examine either the proposed litigation guardian Mr. M, or Mrs. H at this interlocutory hearing. The governing rules confer discretion, not an entitlement. The Court has the power to control the way in which any matter is to be proved

pursuant to rr 26.1, 29.1: and 30.1 CPR. In exercise of the conferred discretion, I have considered all of the circumstances of the case.

[48.] Hearsay in Mrs. H's affidavit is admissible, but its weight depends on reliability and the circumstances in which it is advanced. If the affidavit contains central, contested hearsay that the court cannot fairly evaluate without oral testing, the court may permit focused cross-examination of the relevant maker or of Mrs. H insofar as she can properly speak to the making of the statements. This court can fairly, and has evaluated the written evidence of Mrs. H containing the disputed hearsay. I am of the view that given its informational origins, possibly, emanating from the Husband, who is a client of her firm and who is paying the retainer for the firm's interaction with the children the specter of impartiality is a factor. It is to be considered and is considered. However, it does not meet the criteria of exceptionalism requiring cross-examination as espoused in **Clifton Bay** supra and as submitted by the wife. A much weightier reality is that the application has been made for representation of minors who are dependent on one parent or the other to engage and/or to pay any proposed litigation guardian (no other mode or method of payment has been suggested). It stands to reason that the same argument is capable of being put forward if the mother was the parent who engaged the firm or was paying the firm. Therefore, I am of the view that this court can fairly evaluate the contested hearsay on the written affidavit of Mrs. H, without cross-examination.

[49.] On the issue of appointment, the court must be satisfied that any proposed litigation guardian can fairly and competently conduct the proceedings and has no adverse interest, Civil Procedure Rules 2023 rr 23.6; **Hossein Chaharsough Shirazi (by his Litigation Friend Leila Golesorkhi-Shirazi) v Susa Holdings Establishment** [2022] EWHC 477 (Ch). If the challenge to independence raises a real and material issue incapable of fair determination on written evidence alone, limited cross-examination of the proposed appointee may be appropriate. I am of the view that the spectre of possible conflict of interest and possible partiality, raised by Counsel Lockhart-Charles and the wife has been sufficiently particularized in light of the asserted rationale behind why the minors need representation. Moreover, within the Affidavit of Mrs. H lies sufficient particularity as to how and why the appointment of their firm came about. The details written into her Affidavit suffice to aid this court in deciding the issue of the appointment of Mr. M as litigation guardian without the need to cross-examine Mrs. H or Mr. M. Again, I am

of the view that it fails on the exceptionalism test in **Clifton**. It is capable of determination on the written evidence available to the court. Cross-examination of Mrs. H and Mr. M is not appropriate in the circumstances. The issue of the actual appointment not being decided presently.

[50.] Although the opportunity exists for cross-examination to be confined to the question of the proposed appointee's independence and competence; the reliability of key assertions in Mrs. H's affidavit; and any matter essential to the court's decision on joinder and appointment. The Court must consider whether the risk of such an exercise being extended to general credibility attacks or to disputed merits issues outweigh the benefits of cross-examination. This is moreso the case for consideration where merits issues are to be reserved for later in the proceedings.

[51.] In the circumstances, I am not persuaded that this was a matter in which it would be a proper exercise of my discretion to allow cross-examination of Ms. H or Mr. M, nor is there any cogent basis for me to strike out any affidavit evidence. I find that there is sufficient evidence to determine Mr. M's suitability as the Litigation Guardian for the children in these divorce proceedings without the need for any cross-examination, even limited in scope and/or tightly controlled. Having regard to there being no automatic right to cross-examination in the circumstances, and taking into consideration the need for caution and to not conduct a mini trial; and with a view to the overriding objectives of proportionality, dealing with the case expeditiously and fairly the application to cross-examine Mrs. H and Mr. M is refused.

[52.] I find that there is sufficient evidence to determine Mr. M's suitability as the Litigation Guardian for the children in these divorce proceedings without the need for any cross-examination, even limited in scope and/or tightly controlled.

Disposition

1. Cross-Examination of Mrs. Hill (Mrs. H) is refused.
2. Cross-examination of Mr. Moree (Mr. M) is refused.
3. Costs of the application are reserved pending the outcome of the substantive application on joinder and appointment of the litigation guardian.

Dated the 7th day of May, A.D., 2026

The Honorable Justice Hope Strachan