

COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

Family Division

Claim No. 2025/FAM/gua/00577

IN THE MATTER OF LSSO (A Minor)

AND IN THE MATTER of an Application under sections 21(4) and 22 of the Child Protection Order, Chapter 132

B E T W E E N

CEDNER ORNELUS

Applicant

AND

ANNASTACIA MCKENZIE

Respondent

Before: The Honourable Madam Justice Cheryl Bazard KC

Appearances: Mrs. Lorna Longley Rolle and Ms. Shequel McPhee for the Applicant
Mrs. Cyd Grant for the Respondent

Hearing Dates: 16 March, 2026

Child Protection Act s. 21(4) – Custody of Minor Child – Child Protection Act, s. 22 – Unwed Parents

RULING

Bazard KC, J:

INTRODUCTION

[1.] On the 26th November, 2025, the Applicant filed an Originating Application seeking the following:-

- a. An Order pursuant to sections 21(4) and 22(1)(a) of the Child Protection Act, Chapter 132 of the Statute of (sic) Laws of the Commonwealth of the (sic) Bahamas seeking sole custody of the minor child LSSO, a male born on the 18th day of May, A.D., 2021 with day to day care and control of the minor child to be given to the Petitioner and supervised access to the Respondent;
- b. The parties shall share equally all educational, optical, dental and medical expenses for the said minor child until he attains the age of eighteen (18) or completes tertiary education, whichever is the latter.
- c. The Respondent shall surrender the minor child's passport and any other identifications to the Applicant.
- d. Such further Order and/or other relief as the Honourable Court may deem just and appropriate in the circumstances.
- e. Costs"

[2.] The Applicant's grounds for the application are as follows:-

- a. The Applicant has been the primary caregiver and has continuously provided a safe and nurturing home environment for the minor child since birth.
- b. The Respondent has not contributed to the child's welfare, showing neglect or refusal to do so, and has exhibited behavior that is inconsistent with the best interests of the child.
- c. It is in the best interest and welfare of the minor child for custody to be awarded to the Applicant."

[3.] The Applicant relied on his affidavit which was also filed on the 26th November, 2025.

The Applicant's evidence/case

[4.] That from inception he has been dedicated to safeguarding the well-being of LSSO.

[5.] That he promised that he would **take complete responsibility** for our child and provide him with the life he truly deserves.

[6.] That he was always the sole parent present, feeding our son, changing him, and comforting him when he cried. It was he that observed LSSO's first steps.

[7.] That not only did he take care of LSSO, but also the Respondent's eldest child who is not his biological child. That he and his family helped the Respondent with tasks such as picking up the child, among other responsibilities.

[8.] That the Respondent lacks a support system to assist in raising LSSO and when LSSO is in her custody, strangers have picked him up.

[9.] That during the relationship, the Respondent frequently left and returned to the residence occasionally, spending time away from their home and having prolonged stays with her mother without LSSO.

[10.] That when LSSO was 9 months old, the Respondent made the decision to leave LSSO in his care.

[11.] That the Respondent has been an absent mother since LSSO's birth and that whenever she manages to spend time with LSSO, he returns with bruises.

[12.] That the Respondent lacks both the financial means and nurturing environment to care for LSSO.

[13.] That there are 8 individuals living in the Respondent's home which consists of 3 bedrooms and 1 bathroom.

[14.] That when LSSO stays with the Respondent, he arrives late to school, missing crucial periods, his homework is incomplete and she lacks the time to assist him with any homework due to her late work hours.

[15.] That he has enrolled LSSO in tutoring to prepare him for K4.

[16.] That when LSSO spends time with the Respondent, he consistently appears to return unwell or exhibiting symptoms such as a cough, runny nose, or cold, along with bruises, scars, or complaints of pain inflicted by the Respondent.

[17.] That on the 26 January, 2025, LSSO returned with a small scar on his forehead resulting from a burn he claimed was inflicted by the Respondent using a spoon. When he confronted the Respondent, she said it was an accident.

[18.] That on the 9th February, 2025, the Respondent contacted him to inform him that LSSO was unwell. That they both accompanied LSSO to the doctor where he was diagnosed with an ear infection.

[19.] That on or about August, 2025, he took LSSO to Oaktree Medical when he noticed what appeared to be ringworm. The diagnosis was later confirmed. That the Respondent withheld the medication from LSSO that week as she was upset with him.

[20.] That on or about 16th May, 2025, LSSO's eyes were noticeably red and he was taken to his pediatrician who confirmed that it was merely LSSO's allergies and he was prescribed medication.

That on the same day, the Respondent removed the child from his custody unclothed and refused to wait for the prescribed medication.

[21.] That in or around June, 2025, when collecting LSSO from school after spending a weekend with the Respondent, he had a band-aid on his forehead. LSSO informed that he fell off the bed.

[22.] That on or about 3rd November, 2025 when he visited LSSO at school, he had a bandage and gauze wrapped around his leg. The Respondent informed that a bowl of noodles had fallen onto his leg.

[23.] That the Respondent exhibits a violent and volatile nature towards LSSO and also attacked him in or about May, 2025 and also his sister, who was assaulted and sustained a bite injury.

[24.] That he has been unable to access the minor child since on or about 18th September, 2025 after the Magistrate's Court hearing.

[25.] That he ensures that LSSO is covered by insurance and that he consistently pays for his education, medical costs and daily necessities. LSSO is currently enrolled at Remnant Academy.

[26.] The Applicant also exhibited a WhatsApp message between him and the Respondent. The said message was sent from the Respondent and reads:

“In all honesty this thing is getting too immature of us trying to raise a child because everything we’re doing is only affecting on von von. I know we both wants (sic) what’s best for him but trying to out do the next parent isn’t going to wrk. Regardless of what you have going on I dnt try to use von Von to get back at you in any way. We both moved on wholeheartedly I respect that. But I want (sic) know if you see all the unnecessary things your (sic) asking of would you be fine with me doing. When I try to do better you do things to have me question myself what I did wrong. Life isn’t perfect I have my flaws but I’m doing the best I could with what I have until I can do even better. I would want us to reach a place where we both could be in the same room together to support Von Von in everything he puts is (sic) mind to. Your (sic) a good father but your (sic) making (sic) sound and look as if I’m unfit to be a mom. If only you know how many times I’ve cried when you have me questioning myself. Hearing von von asked (sic) me if I still loved him hurts bey. I just want us to work as one in places I lack you you would be able to come through and vice versa. Communication and respect would help us so much moving forward. If you were to come to me and say you traveling with Von Von from so to so you let me know when I’ll respect that even if the trip runs in the days I suppose to have him. I know that he’s with you and he’s being taken care of. That’s the place I want to be with you we have plans with our family that’s going to involve Von Von We communicate that

with each other regardless of who days it is. If on one of your day you cant watch Von Von I mind your communicating that with so I could help and I would appreciate the same support.”

[27.] Under cross-examination, the Applicant noted that he was in training at the Royal Bahamas Police Force during the time of and shortly after the birth of LSSO. He was away for 4 months and went home on weekends. He also received additional training as a firefighter for a period of 2 months.

[28.] He admitted that the Respondent took care of LSSO while he was in training. In his absence, he relied on the assistance of his mother and sister.

[29.] For the first 6 months of LSSO’s life, 9 persons lived in the home with them, i.e. he and the Respondent.

[30.] The Applicant again stated that the ringworm was on one occasion and happened after LSSO came from the Respondent.

[31.] That the cut that was sustained after the fall off the bed took 2 weeks to heal and required no hospitalization. The scar is still on LSSO’s forehead.

[32.] As for the noodles incident, he asserts that he would feed LSSO if the food was hot.

[33.] The Magistrate’s Court hearing involved applications by both the Applicant and the Respondent for Protection Orders. Both applications were withdrawn and an out of court custody agreement was signed although the Applicant insisted that it was not agreed. The agreement laid out access to LSSO and took into consideration the Applicant’s work schedule.

[34.] The Applicant testified that he has a router schedule where he worked for 24 hours and was off for 48 hours. There would be a day in between and he would sometimes have 5 days off or 10 days off. He saw LSSO 2 weeks from the 16th March, 2026 and had custody of him for the entire 2 weeks.

[35.] The Applicant never made a report to Social Services for child abuse, nor did he make any other report against the Respondent other than the application for a protection order before the Magistrate’s Court.

[36.] LSSO now suffers from epilepsy and he admitted that neither of them have denied him medical care for the epilepsy treatment. The 1st and 2nd epileptic episode happened in the Respondent’s care, while the 3rd occurred while LSSO was in his care.

[37.] The Applicant also admitted that LSSO benefits from having both parents in his life and that both parties love LSSO and are maintaining LSSO.

The Respondent's evidence/ case

[38.] The Respondent, who is a Department Head at Super Value Food Store, filed a Notice of Application on 23 February, 2026 pursuant to sections 21, 22 and 33 of the Child Protection Act and/or the inherent jurisdiction of the Court for the following Order:

“i. That the Applicant and the Respondent shall have joint custody of LSSO with primary care custody and control to the Respondent and liberal access to the Applicant in the following manner:

ii. The Applicant shall have staying access for one week (during his router week) from Sunday at 6 pm to the following Sunday at 6 pm. The Respondent shall have access to the minor child on the Saturday of the Claimant's router week.

iii. In addition to the above, the Applicant shall have staying access to the minor child every other weekend. The Applicant shall collect the minor child from the school agreed upon by the parties at 3 pm on Friday and return to the Respondent's care by 6 pm the following Sunday.

iv. The Respondent shall have access to the minor child from 8 am to 8 pm on the Saturday of the Claimant's router week.

v. The meeting place for the return of the minor child shall be Town Center Mall, Nassau, The Bahamas.

vi. The Applicant shall pay to the Respondent maintenance for the minor child in the amount of \$300.00 per month, to be paid on or before the last Wednesday of each month.

vii. That the minor child shall remain on the Claimant's health insurance. That the Applicant and Respondent shall equally share the costs of all medical, dental and optical expenses not covered by the Claimant's health insurance.

viii. The Applicant and the Respondent shall equally share the minor child's educational expenses inclusive of tuition, books, uniform, footwear, school supplies and examination fees.

ix. The Applicant shall have exclusive access to the minor child on Father's Day and the Respondent shall have exclusive access to the minor child on Mother's Day. The Applicant and the Respondent shall alternate the summer break (one month each), Easter break, midterm break, Christmas and New Years holidays. The parties shall equally share the minor child's birthday.

x. The parties shall each bear their own costs.”

[39.] The Respondent relies on an Affidavit filed on the 23rd February, 2026.

[40.] That the Applicant and Respondent were in a relationship for 3 years, namely 2020 to 2023.

[41.] That the Applicant and the Respondent lived together with the Applicant's mother, 3 sisters, a niece, a sister's boyfriend as well as the Applicant's cousin. The Respondent's daughter, who was 2 years old at the time also lived in the home.

[42.] That the Respondent was overcome with emotion when she discovered that she was pregnant with LSSO as the relationship was new and it was in the middle of the pandemic. She was ultimately reassured by the Applicant who told her that he would financially take care of the baby.

[43.] That despite this assurance, the Respondent paid for the majority of the prenatal visits inclusive of blood work, scans and prenatal items.

[44.] That while living at the apartment, she assisted with the light bill at all times and bought groceries weekly. She also cooked and helped with meals for the household.

[45.] That when the relationship ended in January, 2023, when LSSO was 2 years old, she left the shared residence and returned home to her family in St. James Road off Kemp Road.

[46.] Subsequent to the break up, the Applicant's mother took care of LSSO when the parties were at work. The Respondent would drop him off to the apartment and collect him at the end of the day. In the summer of July, 2023, LSSO stayed with the applicant for one month and thereafter returned to the Respondent's care and control.

[47.] That owing to the choice of schooling for LSSO and its proximity to the Applicant's residence, it was agreed that LSSO would spend the majority of time at the Applicant for school purposes only. There was never an agreement for LSSO to permanently reside with the Applicant.

[48.] That when the child entered K3 in September, 2025, she reminded the Applicant that she wanted to register the child for Palmdale Primary as this was the school that her daughter attended. She subsequently registered the child for enrollment into Palmdale Primary.

[49.] That on 16 May, 2025, there was a physical altercation between the parties which resulted in both parties making applications for Domestic Violence Protection Orders.

[50.] That the parties attended before Magistrate Ian Marie Darville-Miller on 29 May, 2025 when an interim order was made. The parties again appeared before the aforementioned Magistrate on 14 August, 2025 and it was agreed that an out of court agreement would be made. The terms

were proposed to and accepted by the Court. As such, the Domestic Violence Protection Order applications were withdrawn.

[51.] The terms of the out of court agreement dated 14 August, 2025 read as follows:-

“This Access Agreement is made between Annastacia McKenzie v. Cedner Ornelus in the presence of Mrs. Cyd Grant, Counsel for Annastacia McKenzie and Mr. Quinton Percentie of Counsel for Cedner Ornelus.

The parties have agreed to liberal access as follows:

- 1. Mr. Cedner Ornelus (father) shall have access to LSSO born the 18th May, 2021 (minor child) every other weekend commencing Friday 29th August, 2025 at 6pm. The father shall return the minor child to Annastacia McKenzie (mother) at 6pm the following Sunday.**
- 2. All pickups and drops (sic) off shall be at the Town Center Mall (post office side).**
- 3. The parties shall communicate through the agreed upon third parties, namely Dicara Ramsey and Cedna Ornelus relating to pick up, drop offs and educational information/expenses.**
- 4. The father shall have access to the minor child for one week (specifically his router week). The mother shall have the minor child on the weekend of the father’s router week.**
- 5. The parties have agreed to allow the minor child to remain at Remnant Academy until he completes K-4. Thereafter, the parties shall choose between the following schools for grade one, namely San Pedro, Nassau Christian Academy or St. Cecelias.**
- 6. The parties shall share equally all educational expenses for the monitor (sic) child. The father shall provide the mother with the K-4 list received from Remnant Academy.**
- 7. The father shall advised (sic) the chosen third parties of his monthly work schedule, so the mother will know the week and weekends of access in advance.**
- 8. The father shall keep the minor child insured by his government funded health insurance, the mother shall pay the copay and advise the father when the insurance is being used.**
- 9. The minor child’s birthday shall be shared, and the father shall have access to the minor child on Christmas Eve and Christmas Day. The mother shall have access to the minor child on Boxing Day, New Years Eve and New Years (sic) Day.**
- 10. This mediation agreement is not an enforceable Order under any of the Courts’ jurisdiction.**
- 11. The parties shall revisit the agreement on the mention date, namely, 18 September, 2025 at 12pm.”**

[52.] The agreement was signed by both parties. However, by the time the parties returned to the Magistrate's Court on the 18 September, 2025, the Applicant had resiled from its terms. In a WhatsApp message, the Applicant noted the following:

“Good night. Just to make it plain, at this time there is no agreement in place until the court decides. That means I don't have any set weekend schedule with Von Von right now. As per our conversation earlier, if I plan to collect him, I will confirm it with you directly in advance. If you don't received that confirmation from me, please make your own arrangements. I'm committed to Von Von, but until the court decide, I won't be making any new side arrangements.”

Since then, according to the Respondent, the Applicant visits the son at the school.

[53.] The Respondent makes an average of \$1,960 per month with expenses pegged at \$1,171.75 per month for herself and an additional \$520.00 per month for LSSO.

Issues

[54.] The issue before the court is to determine whether the Applicant should have legal custody of LSSO who turns five years old on the date of this Ruling.

Law and Analysis

[55.] Section 21(1) of the Child Protection Act (“CPA”) provides:

“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.”

[56.] Section 21(2) and (3) of the CP provides:

“(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 18 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 as 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 exist 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.

[57.] Section 22 of the CPA provides:

(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.

(2) Where a court makes an order under subsection (1) or under section 21(4) giving the custody of the child to one parent, it may further order that the other parent pays to the parent having custody of the child a weekly or other periodical sum towards the maintenance of the child as the court thinks reasonable having regard to the means of the parents.

(3) Where any order as to custody of the child or payment to a parent of a periodical sum for the maintenance of the child had been previously made by another court, a court may, if it is of like or superior jurisdiction to the latter court and it thinks fit, in the exercise of its power to make an order for the custody or maintenance of the child under this section, discharge the previous order and substitute any order as it may think fit.

(4) An order may be made under subsection (1) or (2) as regards the custody or maintenance of a child notwithstanding that the parents of the child are then residing together.

(5) An order under subsection (1) or (2) may be varied or discharged by a subsequent order made on the application of either parent or, in the case of an order under subsection (1), after the death of either parent on the application of any guardian

under this Act, without prejudice to the powers conferred by the other provisions of the Act upon an officer of the Department.

(6) A parent granted custody of, or access rights to, the child under subsection (1), may apply to the court to voluntarily give up such custody or access to the child.”

[58.] Section 3 of the CPA provides:

3. (1) Whenever a determination has to be made with respect to-

(a) the upbringing of a child; or

(b), 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.”

Decision

[59.] The paramount consideration for the Court in these circumstances as provided for by Section 3 of the CPA is what is in the best interest of the child. This has been well founded in the oft quoted case of **J v. C [1970] AC 688**. Lord McDermott in referencing the phrase “shall regard the welfare of the infant as the first and paramount consideration” opined that:-

“Reading these words in their ordinary significance, and relating them to the various classes of proceedings which the section has already mentioned, it seems to me that they must mean more than that the child’s welfare is to be treated as the top item in a list of items relevant to the matter in question. I think they connote a process whereby, when all the relevant facts, relationships, claims and wishes of parents, risks, choices and other circumstances are taken into account and weighed, the course

to be followed will be that which is most in the interests of the child's welfare as that term has not to be understood. That is the first consideration because it is of first importance and the paramount consideration because it rules upon or determines the course to be followed..."

[60.] The Applicant in their submissions referred to the case of **Peter Marshall v. Jamelia Cleare [2024] 1 BHS J No. 197** and the dicta of Lewis Johnson J, namely:-

"I think they connote a process whereby, when all the relevant facts, relationships, claims and wishes of parents, risks, choices and other circumstances are taken into account and weighed, the course to be followed will be that which is most in the interests of the child's welfare as that term has now to be understood."

[61.] The evidence before the Court is that both parents are actively involved in the life of LSSO. They both provide financial care. They both assist with educational expenses and both are living in blended environments and have the benefit and support of their respective families.

[62.] While the Applicant's counsel relied heavily on the finding in **Peter Marshall v. Jamelia Cleare *supra***, this case is to be distinguished as there is no issue of mental health regarding the parties to this application.

[63.] There is evidence of the illness of LSSO while in the custody of both parents, but nothing to suggest that they were intentionally inflicted or borne through negligence.

[64.] Both environments provide safety and stability for LSSO. There are healthy support systems on both sides.

[65.] There is no evidence to suggest or support that the Respondent has been found guilty of the provisions of section 21(3) of the CPA.

[66.] The Court does not find any evidence that the Applicant has been the primary caregiver for LSSO as alleged in his grounds for the application; nor does the Court find that the Respondent has not contributed to the child's welfare, shown neglect or has exhibited behavior that is inconsistent with the best interests of the child.

[67.] The Court also does not find evidence to support the Applicant's allegation that he has been unable to access the minor child since on or about 18th September, 2025 after the Magistrate's Court hearing. It is clear from his text messages to the Respondent that he refused to act pending a Court's determination of the issues raised in this application.

[68.] The Court is of the view that the child is presently in a stable environment with the Respondent and should remain in the custody and day-to-day care and control of his mother and access including staying access to the Claimant. The Applicant and the Respondent are to work on their co-parenting skills and communication style. Communication should be direct and not through third parties.

[69.] The court takes into account the evidence led, the demeanour of the parties under cross examination and the consideration of the relevant law and finds as follows:-

i. Joint custody to the Parties with primary care, custody and control to the Respondent with liberal access, including staying access to the Applicant as follows:-

a. The Applicant shall have staying access for one week (during his router week) from Sunday at 6 pm to the following Sunday at 6 pm.

b. The Respondent shall have access to the said minor child on the Saturday of the Claimant's router week from 8 a.m. to 8 p.m. on Saturday;

c. The Applicant shall have staying access to the minor child every other weekend in addition to his router week. The Applicant shall collect the said minor child from the school agreed upon by the parties at 3 pm on Friday and return the said minor child to the Respondent's care by 6 pm on Sunday.

d. The meeting place for the return of the minor child shall be Town Center Mall, Nassau, The Bahamas.

e. The Applicant shall pay to the Respondent the sum of \$300.00 per month for the said minor child; such sum to continue to be paid on or before the last Wednesday of each month and deposited in a bank account of the Respondent.

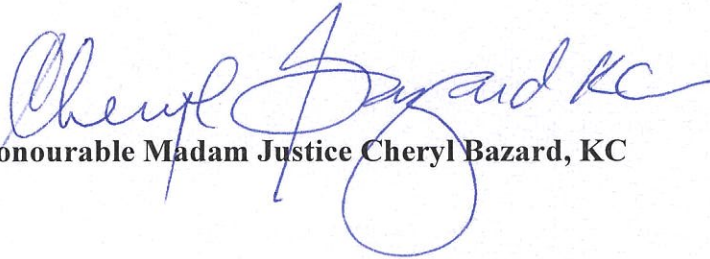
f. The Applicant shall maintain the said minor child on his health insurance policy. The Applicant and the Respondent shall equally share the cost of all medical, dental and optical expenses not covered by the Claimant's said health insurance.

g. The Applicant and the Respondent shall share equally the said minor child's educational expenses inclusive of tuition, books, uniform, footwear, school supplies, examination fees and school related activities.

h. The Applicant shall have exclusive access to the minor child on Father's Day;

- i. The Respondent shall have exclusive access to the minor child on Mother's Day;
- j. The Applicant and the Respondent shall alternate the summer break (one month each), Easter break, Mid-term break, Christmas and New Year's holidays.
- k. The Applicant and the Respondent shall equally share the said minor child's birthday.
- l. The Order is until further Order of the Court or until the said minor child reaches the age of majority, i.e. 18 years;
- m. The parties are at liberty to apply;
- n. Each party is to bear their own costs.

Dated this 18th day of May, A.D., 2026.



The Honourable Madam Justice Cheryl Bazard, KC