

**IN THE COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT
Family Division**

2022/FAM/div/FP/00006

B E T W E E N

AQM

Petitioner

AND

DEM

Respondent

Before: The Honourable Madam Justice Constance Delancy

Appearances: Cassietta McIntosh-Pelecanos with Louisiene Louissaint for the Petitioner

Jethlyn Musgrove-Burrows for the Respondent (*to 1 October 2025*)

Respondent pro se (*2 October 2025 to 22 February 2026*)

Tashana Wilson for the Respondent (*23 February 2026 to present*)

Hearing date(s): 1 August 2025, 11 December 2025, 23 February 2026 and 7 March 2026

Submissions: 10 April 2026

JUDGMENT

DELANCY, J

[1.] This is the Petitioner’s application for a variation of the extant Consent Order filed herein on 12 January 2023. The Respondent opposes the application.

Background

[2.] The parties were married on 14 January 2017 and are the parents of one child DDM born 22 December 2017 (“the minor child”).

[3.] The marriage was dissolved by Decree Nisi on 14 December 2022 (made Absolute on 16 February 2023). The parties steered the issues related to custody, access and maintenance of the minor child of the marriage by a Consent Order on 14 December 2022 (“the Consent Order”) summarized as follows:

- (a) Parties share joint custody of the minor child with care and control to the Petitioner with reasonable access including weekend visits to the Respondent;
- (b) Respondent pays \$200 monthly towards the maintenance of the minor child until attains the age of maturity;
- (c) Respondent purchases of uniforms, books and all school related items for the minor child.
- (d) parties share equally medical, dental, and optical expenses of the minor child

[4.] The terms of the Consent have been varied on two occasions, namely:

- (a) an Order granted 5 January 2024 prohibiting the travel of the minor child outside of the jurisdiction without the expressed permission of the Respondent and that the Respondent have possession of the minor child’s passport.
- (b) an Order granted 11 December 2025 (i) permitting the Petitioner to travel with the minor child from 19 December 2025 to 1 January 2026 to the USA; (ii) directing the Respondent to provide the Petitioner with the minor child’s passport to facilitate the travel; and (iii) directing the Petitioner to deposit the minor child’s passport with the Deputy Registrar of the Supreme Court until further order of the Court.

[5.] The Petitioner remarried on 27 August 2024 and her spouse resides in the United States of America (“the USA”). The Petitioner intends to relocate to the USA and join her spouse and 15-year-old stepson. The Petitioner is desirous of the minor child relocating with her which is the genesis of the current application for variation of the Consent Order.

[6.] The Petitioner filed Summons on 29 July 2024 and an Amended Summons on 9 July 2025 seeking the following:

- 1) The Petitioner is authorized to relocate the minor child to USA and particularly the state of ... one of the states of the USA.
- 2) The Respondent to return the passport of the child to the Petitioner within seven days.
- 3) The Respondent to have access to the minor child alternate Christmas breaks, each Easter break, Thanksgiving break, summer break until two weeks before the reopening of school.
- 4) The Respondent is no longer required to pay school fees for the minor child.
- 5) The autism-related therapy the minor child undergoes to be assumed by the Petitioner as long as the same is covered by her medical insurance through her current employer.

- 6) The Petitioner to permit telephone access and vide call access to the minor child by the Respondent (please indicate how the Respondent would like this carried out).
- 7) The Respondent to be added to all documentation to allow him physical access to the minor child while at school and he is allowed access to all school and therapy records of the minor child.

Evidence

[7.] The Court finds it necessary to delve into the parties' evidence due the sensitive and combative nature of these proceedings. The Petitioner relies on her Affidavit filed 12 August 2025; the Respondent relies on his Affidavits filed 4 January 2024 and 9 March 2026. Both parties were cross-examined by opposing Counsel.

Petitioner

[8.] The Petitioner avers that in or about 2019 they became aware that the minor child was not achieving his development milestones at a normal pace or at all. In August 2021 LR [*de-identified*] school psychologist determined that the minor child has Autism Spectrum, a neurodevelopmental disorder characterized in varying degrees of deficits in social communication, social interaction and restricted, repetitive patterns of behaviour, interests and activities.

[9.] The minor child was also assessed at PCS [*de-identified*] on 14 February 2022 and thereafter commenced occupational therapy on 14 March 2022.

[10.] The minor child was assessed through GS [*de-identified*] in May 2022 and 18 August 2022. He participated in Speech Therapy from 8 October 2022 to 17 June 2023.

[11.] On 20 April 2023 he was assessed at JDH [*de-identified*] and in June 2023 the Petitioner found a school in the USA with an occupational program with a full scope of services for the minor child. She informed the Respondent and they discussed the minor child attending the school and he agreed that it would be helpful for the minor child.

[12.] She disputes the Respondent's position that her primary motivation for relocation was personal, and asserts that her primary focus has always been securing the best possible outcome for the minor child's development and future;

[13.] She asserts that the minor child's current teacher advised that once he reaches "*double digits in age*," she will no longer be able to continue teaching him because his needs will exceed her capabilities. She avers this advice underscores the need to ensure continuity for the minor child's educational and developmental needs and presents that as a practical step forward. She

states that available of specialized facilities in Grand Bahama and more broadly in The Bahamas are limited, and that it is paramount that the minor child receives the best care possible his needs.

[14.] The Petitioner states that the Respondent's assertion that a specialized short-term therapy program, which he estimates to costs \$31,000.00 for a six-week period, would be more beneficial than the child residing in the USA, where he would have continuous, year-round therapy is "*nonsensical*". She further asserts that the care the minor child will receive upon relocation will be at no cost to either parent because it does attract the costs associated with the proposed short-term program.

[15.] She states that her mother intends to relocate to be closer to her and the minor child, and that she will also have support from her spouse's family. She asserts that preparations have been made and that she is well prepared to provide adequate accommodation and overall care for the minor child on relocation.

[16.] She conceded that she and the minor child did not return to the jurisdiction on the exact date agreed between the parties after the 3-month initial period but stated that it was due to the time taken to evaluate the minor child. Further, she made the Respondent aware of the situation contrary to his assertions otherwise.

Respondent

[17.] The Respondent asserts that both parents observed developmental concerns while they were then living together as husband and wife; he worked long hours at his job. He was actively involved in decisions and seeking assistance; it is misleading that Petitioner alone sought resources; he researched and contacted professionals.

[18.] Shortly after divorce, Petitioner began a relationship with current spouse; she then raised relocating the minor child to the USA citing his autism diagnosis; he believes her primary motivation was personal interests; her mother has long resided in the USA, and no such relocation was previously pursued.

[19.] After persistent requests, he agreed to a three-month trial in the USA subject to conditions: arrangements organized before departure, attendance at a school identified by Petitioner, therapy, and daily video calls. Within weeks, Petitioner failed to uphold the conditions; communication diminished; she said she would not return after the agreed trial period; this was contrary to the agreement and the Court's order.

[20.] During the USA stay, he participated in a video conference about the child's progress, and he concluded the program was not yielding intended benefits. Despite repeated requests, Petitioner remained in the USA about five months. He saw the minor child on one occasion

when he traveled to the USA. He avers that the Petitioner acted as though she had sole custody and disregarded his parental rights.

[21.] In December 2023 he persuaded the Petitioner to return to Grand Bahama. Upon her return to the jurisdiction, he sought legal intervention to prevent further unilateral relocation and safeguard his relationship with the minor child.

[22.] He has consistently researched programs and sought professional advice; the minor child's best interest requires involvement of both parents. He acknowledged that the Petitioner criticized him for not taking the child to a popular theme park in the USA; he decided based on age/developmental stage that the minor child would not benefit from or remember it; he intends such opportunities are available when he is older.

[23.] In 2024 he underwent major surgery and was away for medical treatment; during this time the minor child's passport remained at his residence accessible to family members; he did not withhold it from Petitioner.

[24.] He has identified a specialized therapy program for \$31,000 that he is willing to pay; he obtained information and emailed it to Petitioner to facilitate her participation in an online evaluation; Petitioner refused to take part; the evaluation provided detailed information and parenting guidance; he paid \$1,759 without seeking contribution from the Petitioner.

[25.] After the evaluation, Respondent requested Petitioner's consent to take the minor child for the six- weeks treatment program; she refused and said the matter be left to the Court.

[26.] The minor child has strong family support in Grand Bahama from both families; in the USA the Petitioner's only immediate support would be her spouse; her mother lives more than two hours away; maintaining the family structure in Grand Bahama is in the minor child's best interest. He believes Petitioner's relocation plans are driven primarily by personal motives rather than the minor child's welfare. The minor child's best interest is served by remaining in Grand Bahama where he has support of extended family and where he can continue an active role. He requests joint agreement on therapy programs, schools, and specialists with equal input.

Social Services Report

[27.] The Court directed Social Services to investigate and provide its findings and its recommendations ("the Report") to assist the Court and the parties. The investigating officer was not available at the hearing having been re-assigned however the supervising officer attended and Counsel were allowed to seek clarification of matters arising out of Report. The Report may be summarized as follows:

- (a) The minor child is an 8-year-old autistic male child with communication delays;

- (b) The minor child currently temporarily enrolled with a local tutor; he previously attended speech therapy which was discontinued by the Petitioner;
- (c) The minor child requires specialized services which his current tutor cannot provide;
- (d) Both parties are suitable caregivers and are very involved in minor child's life;
- (e) The minor child requires consistent structure, specialized educational support and ongoing therapeutic intervention;
- (f) Both parties recognize minor child's special needs but differ on the approach and methodology to address them.

Issue

[28.] The Court must determine whether to vary the Consent Order (i) to allowed the minor child to relocate to the USA with the Petitioner; and (ii) the course of action for the minor child's education.

Law and Analysis

[5.] It is well established that the Court has the power to vary, suspend or discharge the terms of financial Orders related to a child of the family granted pursuant to Section 27 of in matrimonial proceedings under Section 35 of the Matrimonial Causes Act ("the Act"). Section 35(7) of the Act mandates that the Court must have regard to all the circumstances of the case including any change of the matters that the Court is required to consider under Section 29 of the Act. In particular, the Court must consider:

- (a) the financial needs of the child;
- (b) the income, earning capacity (if any), property and other financial resources of the child;
- (c) **any physical or mental disability of the child;**
- (d) the standard of living enjoyed by the family before the breakdown of the marriage;
- (e) **the manner in which he was being and in which the parties to the marriage expected him to be educated or trained.** [Emphasis added]

[29.] The Court is enjoined by the provisions of Section 3 of the Child Protection Act when making any decisions with reference to children. Section 3 provides:

- (1) Whenever a determination has to be made with respect to —
 - (a) the upbringing of a child; or
 - (b) the administration of a child's property or the application of any income arising from it,

the child's welfare shall be the paramount consideration.

- (2) In all matters relating to a child, whether before a court of law or before any other person, regard shall be had to the guiding principle mentioned in subsection (1) and

that any delay in determining the question is likely to be prejudicial to the welfare of the child.

(3) In determining any question relating to circumstances set out in paragraphs (a) and (b) of subsection (1), **the court** or any other person **shall have regard in particular to** —

- (a) **the ascertainable wishes and feelings of the child concerned considered in the light of his or her age and understanding;**
- (b) **the child's physical, emotional and educational needs;**
- (c) **the likely effects of any changes in the child's circumstances;**
- (d) **the child's age, sex, background and any other circumstances relevant in the matter;**
- (e) **any harm that the child has suffered or is at the risk of suffering;**
- (f) **where relevant, the capacity of the child's parents, guardians or other persons involved in the care of the child in meeting his or her needs.**

(a) the ascertainable wishes and feelings of the child concerned considered in the light of his or her age and understanding

[30.] The Court is unable to ascertain the minor child's feelings based on his special needs and delayed communications skills which is borne out in the evidence of the parties and the observations in the Report.

(b) the child's physical, emotional and educational needs

[31.] The minor child is on the autism spectrum delayed communications and requires specialized education plan and therapy. Both parties acknowledge that the minor child's special needs and are committed to providing the same; however, they differ on the approach to be taken to achieve these goals.

[32.] The Petitioner avers that the minor child would have the benefit of being assessed and placed in special class at school in the area where she proposes to relocate to. Further that she will be supported by her spouse, stepson and the minor child's maternal grandmother. That being in the USA would give the minor child greater access to specialized programs which are not readily available in this jurisdiction.

[33.] The Respondent contends that he has identified an intensive program in the USA which he believes is the better approach to providing the minor child with the individualized interaction and therapy as opposed to long assessment plan which the Petitioner proposes.

[34.] The Report identifies one local government education institution which may provide the minor child with some instruction. It is also apparent from the Report and the testimony of the officer from Social Services that availability of local specialized services is severely lacking. The

minor child's current temporary tutor also acknowledges that she does not have the expertise required to assist the minor child long term.

(c) the likely effects of any changes in the child's circumstances

[35.] Counsel for the Petitioner submits that the relocation of the minor child would serve to improve his development as he would be immersed in a specialized program.

[36.] Counsel for the Respondent submits removing the minor child would disrupt his established routine and severely impede his ability to interact with the Respondent and his sibling. Further, the minor child's delayed communication skills makes communicating via audio and visual platforms extremely challenging for the minor child.

(d) the child's age, sex, background and any other circumstances relevant in the matter

[37.] The minor child is currently 8 years old. The parties share joint custody of the minor child who resides with the Petitioner who has care and control. The minor child spends the weekends with the Respondent. Both parties are actively involved in the upbringing and maintenance of the minor child. The parties' nuclear and extended family also provides support to the minor child.

(e) any harm that the child has suffered or is at the risk of suffering

[38.] Neither parties have identified any harm suffered or potential risk of harm to the minor child; nor has the Report noted any harm suffered or any risk of harm to the minor child.

(f) the capacity of the child's parents, guardians or other people involved in the care of the child in meeting his or her needs.

[39.] It is not disputed that the parties are active parents and the minor child benefits from the respective family support systems. The Report notes that a consistent routine is an essential part of the minor child's development. The minor child primarily resides with the Petitioner who is temporarily sharing premises with a relative pending relocation. The minor child spends his weekends with the Respondent and his older sister.

[40.] The Court notes that the minor child accompanied the Petitioner to the USA in the Summer of 2023 for what supposed to be a 3 month stay which was extended to 5 months. The Petitioner contends that extending the stay was unintentional but conceded that she did not properly communicate with the Respondent. Further that the extension of the stay was due in part to having the minor child evaluated to determine the best education plan to meet the minor child's special needs. The extended stay prompted the Respondent to seek an Order prohibiting the travel of the minor child outside of the jurisdiction.

[41.] The Petitioner is currently employed in Grand Bahama by a company which is based in the USA where she intends to relocate and intends to transfer her employment there. She avers that she willing to facilitate liberal access between the minor child and the Respondent; contribute to any travel expenses and accommodate the Respondent visiting the minor child in the USA. She also is willing to be solely responsible for the minor child's educational expenses which are currently borne by the Respondent.

[42.] The Respondent is employed in Grand Bahama and has the weekends off. The Respondent concedes that he does not currently have the funds to cover the intense 6 weeks' program which he prefers for the minor child and would have to apply for a loan. Further that should the minor child remain in The Bahamas he has proper support system in place to assist with the transport of the child to and from school as his work schedule may not allow for him to do so.

[43.] The Court notes that the Respondent has placed great emphasis on the minor child's challenges with visual communication however the evaluation of the minor child for the proposed intense program was done remotely.

[44.] The Court is satisfied that both parents have the ability to provide adequate living accommodation for the minor child.

[45.] Counsel for the Petitioner submits that the positives of allowing the child to relocate with the Petitioner outweighs the negatives as he would have access to specialized services which are unavailable in Grand Bahama. Counsel relies on the case of **Re: Simon (Proposed Relocation)** (2025) EWFC 249.

[46.] The Court notes the present application bears some similarities to the facts in **Re: Simon, supra** which involved the relocation of a teenage child to a non-Hague Convention on International Child Abduction jurisdiction which is not a concern in these proceedings. The child in these proceedings is younger and the Court does not have the benefit of his direct input due to his special needs. Nonetheless the Court finds some guidance in the observation of *Willans, J* at para.53:

I am satisfied the motivations in this case are genuine and child focused although they lead to different positions. This case is not about removing a parent from the child's life. Any attempt to do so would be bound to fail and would, I judge, fatally impact on the relationship that parent has with Simon. I agree Simon has an 'unbreakable bond' with his father and he is sufficiently sensitive and astute to see through any obstruction raised in such regard. Given the parents love for Simon I am confident neither would attempt the same, in any event I judge they are not motivated to do so.

[Emphasis added]

[47.] Counsel for the Respondent submits that the Court should prioritize the minor child's meaningful contact with his parents over the Petitioner's desire to relocate for family reasons. Counsel relies on the case of **SA v JR** (2025) EWFC 279 (B).

[48.] The Court notes that **SA v JR, supra** also shares similarities with the present case which involved the relocation of a child of tender years to a non-Hague Convention on International Child Abduction jurisdiction. In this case *Willans, J* at para. 20 observed that parents may sometimes strategically shape the evidence laid before the Court:

Overall, I bear in mind the potential for both parents to shape their evidence to their case. This might be strategic: in that it may be thought in JR's interests to overplay the difficulties and SA to underplay the difficulties in the relationship. By this route they could seek to argue their case on relocation highlighting why it will not work or will work. But it is also possible this is subconscious in that each have invested a significant amount into their case and believe in it and are more likely to see the positives of the move/downplay the negatives (SA) or see the negative of the move/downplay the positives (JR). I keep this in mind. [Emphasis added]

[49.] The Court notes that the decisions in **Re Simon, supra** and **SA v JR, supra** were by the same Judge with requests by a parent to relocate to the same jurisdiction with different outcomes. The Court notes that while findings are helpful, it must be mindful of all the circumstances of this particular minor child in these proceedings in determining what is best for this minor child.

Disposition

[50.] The Court must be guided by what is best for the minor child not what is convenient for the parents. The Court finds that there is some merit in the proposals advanced by the parties. The Petitioner's proposal being a further evaluation of the child and long-term schooling solution; and the Respondent's proposal being an intense 6 weeks' program followed by the child attending school locally.

[51.] The Court has reviewed the evidence of the parties, the Report and recommendations outlined therein, and the submissions of Counsel. The Court finds that in keeping with the guiding principle of the CPA that it is in the best interest of the minor child that he be allowed to relocate with the Petitioner.

[52.] The Court in arriving this conclusion considered that the minor child has resided primarily with the Petitioner since the dissolution of the marriage. That the benefit of the minor child having access to special services which are not available in Grand Bahama outweighs the negative of relocating to a new environment. The Court also considered that while the Respondent presented a proposal for a 6 weeks' intense program which may be beneficial for the minor child there no tangible plan for the minor child's long-term access to special services.

[53.] The Court also considered the relative short distance between Grand Bahama and the relocation site of the Petitioner; the availability and frequentness of transportation between the locations and the Petitioner's proposal to contribute to costs of minor child's travel to and from the Respondent.

[54.] The Court hereby orders as follows:

- (i) The Petitioner is authorized to relocate the minor child to USA and particularly the city and state identified in the evidence;
- (ii) That the Petitioner shall provide the Respondent the particulars of her address and contact information;
- (iii) That the Petitioner is authorised to make such decisions related to the welfare of the minor child related his daily medical and educations needs provided that all major medical and educational decisions are to be agreed between the parties such permission are not to unreasonably withheld;
- (iv) The minor child's passport shall be returned to Petitioner within 7 days of this ruling to facilitate such process the relocation;
- (v) The Respondent to have staying access to the minor child alternate Christmas breaks, each Easter break, Thanksgiving break, Summer break until two weeks before the reopening of school in the USA;
- (vi) The Respondent is no longer required to pay school fees for the minor child;
- (vii) The autism related therapy the minor child undergoes to be assumed by the Petitioner as long as the same is covered by her medical insurance through her current employer;
- (viii) The Petitioner shall permit telephone access and video call access to the minor child by the Respondent;
- (ix) The Respondent to be added to all documentation to allow him physical access to the minor child while at school and he be allowed access to all school and therapy records of the minor child;
- (x) Each party to bear their own costs; and
- (xi) Each party have liberty to apply.

Dated the 10 day of August, 2026

[Original signed and sealed]

Constance Delancy
Justice