

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

2010/FAM/div/FP/00010

B E T W E E N

CM

Petitioner

AND

CM

Respondent

Before: The Honourable Madam Justice Constance Delancy

Appearances: Cassietta McIntosh-Pelecanos for the Petitioner
Respondent pro se

Hearing date(s): 27 July 2026

RULING

DELANCY, J

[1.] This is the Petitioner’s application for a variation of the extant Consent Order.

Background

[2.] The parties settled the issues related to custody, access and maintenance of the minor children of the marriage by a Consent Order on 28 November 2012 filed herein on 14 December 2012 (“the Consent Order”) summarized as follows:

- (a) Parties share joint custody of the children with care and control to the Petitioner with reasonable access to the Petitioner;
- (b) Respondent pays \$450 monthly towards the maintenance of the children until attain they age of maturity;
- (c) The Petitioner pays the school fees for children;
- (d) Parties share equally the medical, dental, and clothing expenses of the children.

[3.] The eldest child has attained the age of majority and is gainfully employed. The youngest child (“the minor child”) who is currently 16 years old has completed 11th grade high school.

[5.] The Petitioner is desirous of the minor child relocating to and being enrolled in a special high school basketball program in the United States of America (“USA”) which is the genesis of the current application for variation of the Consent Order.

[6.] The Petitioner filed Summons on 7 July 2026 together with a Certificate of Urgency to vary the Consent Order to allow the minor child to attend high school in the USA. The Summons, Certificate of Urgency and copies of the Affidavits in Support were served on the Respondent’s Counsel of Record on 13 July 2026 and the Respondent on 14 July 2026.

Evidence

[7.] The Petitioner relies on his Affidavit and the Affidavit of DS [*de-identified*] filed on 23 June 2026. The Summons and Affidavits were served on the Respondent’s Counsel of record on 24 June 2026 and the Respondent on 26 June 2026. The Petitioner also filed a Supplemental Affidavit which was filed and served on the Respondent’s Counsel of record on 16 July 2026. The Respondent appeared at the hearing but did not file any evidence in response nor did her Counsel of record appear. The Respondent relies on her viva voce representations to the Court.

Petitioner

[8.] The Petitioner’s evidence is summarized below:

- (i) The minor child excels in basketball under the guidance of the Petitioner;
- (ii) The minor child’s skills have attracted the attention of scouts in that area;
- (iii) The minor child has been accepted into a high school in the USA which has an elite basketball program;
- (iv) That such high school programs is the path has produced notable Bahamian basketball stars;
- (v) That the minor child dreams of playing in the professional basketball league and can also secure scholarships to assist with obtaining higher education;
- (vi) That neither he nor the Respondent have the financial resources to afford college for the minor child;
- (vii) That the Respondent refuses to consent, citing concerns like “who will cook for him [minor child].” The Petitioner avers that he taught the minor child to cook, clean and wash laundry which he has been doing for several years;
- (viii) That the minor child has expressed anxiety about missing this opportunity.
- (ix) He has spoken to the Respondent on several occasions about the opportunity and the benefits of the minor child attending high school in the USA but she has refused to consent;
- (x) That on his instruction his Counsel wrote to Respondent’s Counsel on 4 June 2026 seeking cooperation, but no response was received;

- (xi) The minor child wrote a letter to the Court expressing his desire to attend high school in the USA (*Exhibited to Petitioner's Supplemental Affidavit*);
- (xii) The minor child has obtained the requisite student visa (*Exhibited to the Petitioner's Supplemental Affidavit*);
- (xiii) The minor child has been awarded a scholarship which covers his full tuition, room and board; and the Petitioner will pay any additional expenses, which alleviate no additional financial burden on the Respondent.

Respondent

- [9.] The Respondent's opposition to the application is summarized below:
- (i) The Consent order gave her care and control of the children;
 - (ii) That sending the minor child abroad undermines her custodial rights and stability;
 - (iii) She is concerned that the child will have to repeat grades that he has already completed in his current high school;
 - (iv) She is concerned about the minor child's maturity, safety, and emotional well-being away from home and ability to live independently.

DS

- [10.] DS's evidence in support of the Petitioner's application may be summarized as follows:
- (i) He has over 30 years' experience in coaching basketball at local high school;
 - (ii) He is the founder of program through which he and assistant coaches (including the Petitioner) have helped over 100 young men secure basketball scholarships;
 - (iii) has worked with the minor child for approximately 4 years, guiding him through national and international basketball tournaments;
 - (iv) The minor child has shown above-average basketball talent and attracted scouts;
 - (v) The minor child has completed grade 11 in The Bahamas. If he completes grade 12, he will be ineligible to attend USA high school sports program due to age restrictions;
 - (vi) Attending the specialized high school in the USA would place him in grade 10, giving him three years of high-level training, exposure to tournaments, and scouts;
 - (vii) This maximizes the minor chances of earning a college scholarship and possibly pursuing professional basketball in the USA or Europe;
 - (viii) He believes relocation this year is the best course of action for the minor child's future.

Issue

- [11.] The Court must determine whether it is in the best interest of the minor child to vary the Consent Order to allowed him to relocate to the USA to attend high school.

Law and Analysis

- [4.] It is well established that the Court has the power to vary, suspend or discharge the terms of Orders related to a child of the family granted in matrimonial proceedings. Section 35(7) of

the Matrimonial Causes Act (“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]

[12.] 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

[13.] The Court interviewed the minor child in camera to ascertain his feelings on the application. The Court found that the minor child to be a mature and intelligent young person

who is focused on a well-thought-out plan to achieve his academic and lifelong goals. He views the enrollment into the elite high school basketball program in the USA as a gateway to higher education.

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

[14.] The minor child is a healthy teenager, who is an above average student currently enrolled in local high school. The minor child excels in the sport of basketball and has received a full scholarship into an elite basketball program at a high school in the USA. He currently resides with the Respondent and enjoys frequent access and interaction with the Petitioner.

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

[15.] Counsel for the Petitioner submits that the relocation of the child would serve to improve his development as he would be immersed in a specialized program. The Respondent expressed doubts that the minor child will be able to take care of himself without her daily guidance. Further that the minor child who recently completed 11th grade will have to repeat grades 10 and 11 at the high school in the USA.

[16.] The evidence of DS is that the window for the minor child to take advantage of the scholarship is closing as he will not be able to enroll in the elite basketball program if he completes 12th grade in The Bahamas. The minor child expressed that he has no anxiety over repeating grades and looks forward to learning new things and improving his education.

[17.] The Court having interviewed the minor child is satisfied that he is able and prepared to attend to his daily needs. Further the Petitioner avers that the minor can cook, clean and wash laundry which he has been doing several years.

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

[18.] The minor child is currently 16 years old. The parties share joint custody of the minor child who resides with the Respondent who has care and control. The minor child spends the weekends and engages in other activities throughout the week with the Petitioner. Both parties are actively involved in the upbringing and maintenance of the minor child.

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

[19.] Neither party has identified any harm suffered or potential risk of harm to minor child.

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

[20.] It is not disputed that the parties are active parents and the minor child benefits from their support. The minor child primarily resides with the Respondent but enjoys frequent interaction and time with the Petitioner. The Petitioner is currently employed; the Respondent is currently unemployed.

[21.] Counsel for the Petitioner submits that the positives of allowing the minor child to relocate and enroll in the elite high school basketball program in USA outweighs the negatives as he would have access to opportunities which are unavailable in The Bahamas.

[22.] The Court is mindful of the minor child's basic rights under the CPA. In accordance with Sections 4 and 5(2) of the Act:

4. A child shall have the right —
 - (a) of leisure which is not normally harmful, **and the right to participate in sports and positive cultural and artistic activities;**
 - (b) to a just call on any social amenities or other resources available in any situation of armed conflict or natural or man-made disasters;
 - (c) to exercise, in addition to all the rights stated in this Act, all the rights set out in the United Nations Convention on the Rights of the Child (the Convention) subject to any reservations that apply to The Bahamas and with appropriate modifications to suit the circumstances that exist in The Bahamas with due regard to its laws.
5. (1) ...
 - (2) It shall be the duty of any person having the charge, care or custody of a child to use his best efforts —
 - (a) to protect the child from discrimination, violence, abuse and neglect;
 - (b) **to ensure that the child is enrolled at, and attends school.**

[Emphasis added]

Disposition

[23.] The Court must determine what is best for the minor child not what is convenient for the parents. The Court notes that the Petitioner and his supporting witness focus on the minor child being able to fulfil his dreams of playing professional basketball. The minor child has expressed that although he dreams of playing basketball at a professional level, he is focused on using the opportunities which the basketball program may afford to him as means to further his education.

[24.] The Court must balance the parental relationship and needs of the minor child. The Court has reviewed the evidence, the submissions of Counsel and the considered the feelings of the minor child. 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 to the USA and attend the elite high school basketball program.

[25.] The Court hereby orders as follows:

- (i) The minor child is allowed to relocate to the USA and attend the elite high school basketball program;
- (ii) That the Petitioner shall be responsible for the minor child's expenses not covered by the scholarship including travel expenses;
- (iii) That the Petitioner shall provide the Respondent the particulars of the high school's address and contact information;
- (iv) No order as to costs.

Dated the 31 day of July 2026

[Original signed and sealed]

Constance Delancy
Justice