BARBADOS

[Unreported]

IN THE SUPREME COURT OF JUDICATURE

HIGH COURT

(FAMILY DIVISION)

No. 77 of 2008

BETWEEN:

M.L.B **APPLICANT**

-AND-

S.C.B **RESPONDENT**

Before The Hon. Mr. Justice William J. Chandler, Judge of the High Court

2009: **July 24 and 28**
October 24 and 28;
November 25
2010: **March 24,**
April 08, 09, 12; June 10;
July 12 and 19 and 20;
2011: **March 23 and 24;**
May 30 and 31;
June 17;
2012: **June 27**
2013: **January 11, 18;**
February 01, 15;

Date of decision:

September 11

Appearances: **Mrs. Dawn Shields-Searle for the Applicant**
Mrs. Peta-Gay Lee-Brace for the Respondent

DECISION

THE APPLICATIONS

[1] There are three applications before this Court for its consideration:

(1) The Respondent's application filed on the 17th December 2008 that the Applicant show cause why she should not be committed to Her Majesty's Prison Dodds for contempt of Court in failing, omitting or refusing to obey the Order of this Court dated 26th June 2008;

(2) An application by the Applicant filed on the 13th July 2009 for a variation of the access order made by this Court on the 18th December 2008. This is set out more particularly at paragraph [9] of this decision; and

(3) An application by the Respondent filed on the 17th July 2008 that the Applicant deliver up to the Respondent the minor child of the marriage who was born on the 29th day of December 2003 to facilitate her access to him as outlined in the Court Order of June 26th 2008. This is set out more particularly at paragraph [11] of this decision.

[2] The parties did not pursue the first application and no submissions were received with respect to thereto.

BACKGROUND

[3] The parties were married on the 18th February 2001 at the St. James Anglican Church, St. James, Barbados. There is one minor child "A" (the minor child) of the marriage who was born on the 29th December 2003. The Applicant filed an Application for the Dissolution of Marriage on the 13th February 2008 and the parties were granted a Decree Nisi on the 3rd April 2008 which became absolute on the 27th July 2008. The Applicant

has reverted to using her maiden name but for the purposes of this decision, she shall be referred to as "MLB".

[4] On the 26th June 2008 the Court ordered as follows:

(1) That joint custody of the minor child...be vested in the Applicant/Wife and the Respondent/Husband;

(2) That care and control be vested in the Applicant/Wife with permission to continue to reside in Barbados;

(3) That the Respondent/Husband shall have reasonable access to the said minor child at such reasonable times as may be mutually agreed between the parties but which shall be a minimum of one half of the Easter, Summer and Christmas holidays commencing the Summer holidays of 2008. Costs of the minor child's overseas travel to be borne by the Respondent/Husband;

(4) That during any period the said minor child is afforded access to the Respondent/Husband as set out in paragraph (3) above, the Respondent/Husband shall be at liberty to take the said minor child from the jurisdiction of Barbados at all times keeping the Applicant fully informed of plans and whereabouts and telephone numbers;

(5) That the Respondent/Husband shall pay the sum of $450.00 per month towards the maintenance of the child, in addition to one half of all the minor child's educational (inclusive of school fees, petty fees, uniforms, books and shoes), dental, medical, pharmaceutical and ophthalmic expenses commencing the 30th day of June 2008 and continuing thereafter on the last day of every succeeding month until the minor child attains the age of 18 years or completes her tertiary education, whichever is later or until varied by a Court Order. If the expenses are not paid within 14 days of the presentation of bills, interest to accrue at the rate of 4% from due date until payment.

[5] The Respondent filed an Application under a Certificate of Urgency on the 17th December 2008, supported by an Affidavit, seeking orders to compel the Applicant to

deliver up the minor child forthwith and all her travel documents to the Respondent and orders for committal for contempt of Court.

[6] On the 18th December 2008, this Court granted the following Orders:

(1) That the minor child be released into the custody of the Respondent/Husband from the 18th December 2008;

(2) That the said minor child be evaluated by Dr. Soo Ping Chow for the purposes of determining her fitness to travel to Trinidad from Monday 22nd December 2008 to 30th December 2008;

(3) That the medical report of Dr. Soo Ping Chow be submitted to the Court and a copy served on the Attorney-at-Law acting on behalf of the Applicant; and

(4) That Dr. Soo Ping Chow and Dr. Watson be available for cross-examination if there is no agreement on the medical reports.

[7] Dr. Soo Ping Chow examined the child on the 18th December 2008 and submitted a report to the Court dated the same date. She advised that certain precautions be taken in respect of travel overseas, such as avoiding pollutants, smoke, and animal dander. She also suggested the use of preventative measures such as the influenza vaccine, Zaditen syrup or inhaled steroids if her wheezing became more severe and a Ventolin inhaler for possible future symptoms. Dr. Jhagroo examined the child on 20 December 2008 and her report of the same date was submitted to the Court. She found no reason for "A" not to travel to Trinidad from the 22nd December to the 30th December 2008. She also opined that there was no clinical indication that it was unwise for the child to travel to the United Kingdom if necessary. Dr. Watson also submitted a report on "A" and attended for cross-examination. On the 22nd December 2008, after hearing the evidence of Drs. Watson and Jhagroo, the Court made the following Orders:

(1) That the Barbados passport of the minor child of the marriage be delivered up to the Registrar of the Supreme Court by the Applicant by 1.00 pm today the 22nd day of December 2008;

(2) That the British passport of the minor child of the marriage be delivered up to the Registrar of the Supreme Court by the Applicant/Wife by 2.00 pm today the 22nd day of December 2008;

(3) That the said minor child be permitted to travel to Trinidad with her father the Respondent/Husband from the 22nd day of December 2008 and return to Barbados on the 30th day of December 2008;

(4) That the Applicant/Wife be provided with the telephone number and address of the said minor child whilst in Trinidad; and

(5) That the Barbados passport of the said minor child be delivered marriage be delivered up to the Registrar of the Supreme Court by Mrs. Peta-Gay Lee-Brace by 2.00 pm on the 31st day of December 2008.

[8] Pursuant to the Order, "A" and "SCB" travelled to Trinidad on the 22nd December 2008 and returned to the jurisdiction on the 30th December 2008. On her return, the child presented with certain behavioural complaints and an infection to her genital area.

[9] On the 13th July 2009 the Applicant filed an Urgent Application seeking the following Orders:

(1) That the Order made on the 26th day of June 2008 granting the Respondent/Husband reasonable access to the minor child of the marriage at such reasonable times as may be mutually agreed between the parties but which shall be a minimum of one half of the Easter, Summer and Christmas holidays commencing with the summer holidays of 2008 be varied so that the Respondent/Husband be granted supervised access to the child of the marriage until further order;

(2) That the Order of the Court made on the 26th day of June 2008 which provided that during any period the said minor child is afforded access to the Respondent/Husband, the Respondent/Husband shall be at liberty to take the said minor out of the jurisdiction of Barbados at all times keeping the Applicant informed of plans and whereabouts of the said minor be suspended until further order; and

(3) Such further or other Order as the Court deems fit in these circumstances.

[10] This Application was supported by and affidavit which contained the medical reports of Dr. Sharon Watson, Dr. Angela Jennings, Dr. Adele Bell and Dr. Cyralene Bryce.

[11] On the 17th July 2009 the Respondent filed an application for the following Orders:

(1) That the Applicant/Wife deliver up to the Respondent/Husband the minor child of the marriage who was born on the 29th day of December 2003 to facilitate her access to him as outlined in the Court Order of June 26th 2008; and

(2) Any other Order as this Honourable Court deems fit.

[12] When the matter came on for hearing on the 24th July 2009 the Court, with the consent of both parties, appointed Rev. Dr. Marcus Lashley, Clinical Psychologist, to meet with the parties. Dr. Lashley prepared two reports which were received into evidence.

[13] On the 28th July 2009 the Court made the following Orders by consent:

(1) That the Respondent/Husband will purchase and at his own expense maintain a cellular phone to be given to the mother to facilitate his telephone contact with his minor child every Sunday at 1.00 pm;

(2) That the Respondent/Husband is to have access to the minor child today at 1.30 pm at Chefette Restaurant, Rockley to be supervised by Rev. Dr. Marcus Lashley;

(3) That the parties do continue counselling sessions with Rev. Dr. Marcus Lashley; and

(4) That the matter be adjourned to the 25th day of November 2009.

[14] At the request of the Respondent, Mr. Joseph Tudor was appointed to supervise the Respondent's access on the 8th, 10th, 11th and 13th April 2010. On the 30th May 2011 the Court directed that the Child Care Board be appointed to supervise the access visits.

[15] On the 17th June 2011 the Court made the following Orders:

(1) That the Respondent/Husband to have access to the infant child on Saturday June 18th 2011 between the hours of 11.00 am and 12.30 pm and thereafter each succeeding Saturday from 10.00 am until 1.00 pm;

(2) That the costs associated with the supervised visits be borne by the Respondent; and

(3) That Ms. Margaret Marshall do provide a report on the supervised access visits to the court. That in the event that access cannot be supervised by Mrs. Margaret Marshall that such access can be supervised by Diane Holder who shall send a report on such supervised access. The first such report is to be submitted by the 31st July 2011.

THE CASE FOR THE APPLICANT

[16] The Applicant relied upon her affidavit and oral evidence as well as the evidence of Dr. Sharon Watson, Dr. Adele Bell, Miss Deidre Wentt and Dr. Angela Jennings.

EVIDENCE OF MLB - THE APPLICANT

[17] In her affidavit the Applicant deposed that, since the child's return to Barbados, she had become clingy in the evenings; was afraid of the dark; had difficulty sleeping at night; refused to sleep alone and screamed uncontrollably. The minor child also complained of vaginal itching.

[18] The Applicant further deposed that, on one occasion, she was bathing the child and attempted to look at her vagina when the child starting shouting "no, no, no, don't touch me". The child also said that people did bad things to her which made her afraid. As a result of the above, the Applicant took the minor child to the offices of Dr. Sharon Watson for examination. The doctor referred the child to Dr. Adele Bell, a paediatrician, and to Dr. Cyralene Bryce, a psychiatrist.

[19] In relation to the events leading up to the child's departure to Trinidad on the 22nd December 2008, the Applicant said that she informed the Respondent that the child's bag was packed in a hurry. She admitted that she did not tell the Respondent that he would

have to purchase underwear for the child because insufficient underwear had been packed in the bag.

[20] The Applicant said that, on return of the minor child from Trinidad and whilst they were unpacking the child's bag, switching the minor child's things to another bag, the Respondent stretched out his hand towards her and said "this is what I have been washing her nook nook with".

[21] She did not identify what he gave her at the time. She looked at it when the last of the things were being transferred from the bag. She was able to identify it then. It was Candid cream.

[22] She said that, within the next couple of days, the minor displayed the conduct outlined above. The first thing was her demeanour at the airport. The same night when she was getting her ready for bed, she screamed uncontrollably. As a result of mainly the itching, she took her to the doctor. In examination-in-chief she denied having said to anyone that "SCB" had molested his daughter.

[23] She was shown her affidavit and asked by Counsel for the Applicant to explain the Respondent's behaviour which she referred to in paragraph 32 thereof which reads as follows:

> 32. That I have tried to reason with the Respondent and to deal with the situation but I am tired and I cannot cope anymore with the Respondent's behaviour especially as it threatens the safety and security of our child who is helpless in all of this.

[24] She stated that the behaviour she was referring to was the Respondent's tendency to be belligerent. She said that if you try to have a simple conversation [with him] it turns into a shouting match or a bullying match.

[25] Under cross-examination by Mrs. Lee-Brace, the /Wife said that the situation she referred to in paragraph 32 of her affidavit was joint custody. It also referred to the minor's present condition at the paediatrician. If you could have a civil conversation about "A" and "A's" care and her well being, she continued, such a discussion would obviously include other aspects.

[26] The cross-examination of the Applicant is instructive and is set out verbatim, as it highlights the attitude she displayed towards the several Court orders set out above.

Question: Is it fair to say that between the return of "A" on the 30th December 2008 (from holidays in Trinidad) up until 30th July 2009 you had "SCB's" cell number?

Answer: It is fair to say that. I could have found his email address.

Question: Do you have any emails you sent to him during this period about her present problems following her return?

Answer: I do not have anything on file.

Question: Do you have anything in your possession?

Answer: No, I don't.

Question: But throughout the period from the return of "A" to 13th July 2009 there was no email correspondence from you to "SCB" concerning "A's" presenting problems on her return from Trinidad?

Answer: No.

Question: You never once called "SCB" to discuss with him any issue regarding "A's" welfare since her return from Trinidad and up to filing of the Affidavit on the 13th July 2009?

Answer: No Sir.

Question: But it was "SCB" who made every attempt after the December trip to maintain contact with his daughter and by extension yourself?

Answer: Perhaps that is so.

[27] The Applicant admitted that she had changed her residence from Goodland, St. Michael to her present address in Government Hill, St. Michael without informing the

Respondent. She also admitted that she had had a landline for a couple of months, yet she did not give the Respondent the number. When asked whether she was prepared to reveal this number to "SCB" she responded "No, I am not".

[28] The following extract from the cross-examination relative to the Respondent making contact with his daughter by telephone is also instructive:

Question: Does your cell phone have the capacity to have messages left on it?

Answer: Yes, it does.

Question: How often do you check your messages?

Answer: At least every few days.

Question: How does "SCB" make contact with you?

Answer: I am not aware that he does anymore.

Question: How does "SCB" contact his daughter "A"?

Answer: I am not aware that he does.

Question: Is it true to say that, coming out of the hearing on July 28th 2009 and coming out of the court appointed psychologist, arrangements were put in place for "SCB" to have contact with his daughter every Sunday afternoon by telephone?

Answer: Dr. Lashley made the suggestion.

Question: Were you aware that it was encapsulated in an Order the Court made on or about the 28th July 2009?

Answer: Was it? I did not realise it was a Court Order.

Question: Is it true to say you were at court on 28th July 2009?

Answer: I believe so.

Question: Is it true to say you were at the meeting supervised by Dr. Lashley that took place on 28th July 2009 at Chefette Restaurant Accra?

Answer: I was.

Question: Did you observe "SCB" handing over a cell phone to "A"?

Answer: I remember the phone being placed on the table.

Question: Would it be true to say that at some point during the meeting a reiteration of the agreement that was encapsulated in a court order that morning was again gone through?

Answer: I did not agree to phone calls.

Question: Did you make your feelings known to Dr. Lashley at the time that you were not in agreement with phone calls?

Answer: He knew that at the meeting that took place at his office.

[29] The Applicant was shown and asked to read paragraph 1 of page 6 of the report of Dr. Lashley dated 28th July 2009, which reads as follows:

> "It was agreed that (1) contact by phone between "SCB" and his daughter be re-established immediately. This will be done by cellular phone initially, until a land-line is in place at "MLB's" home. The call will be made by the father on Sundays at 1:00 pm local time. Exclusively for financial reasons, the call will be limited to fifteen minutes (not exactly or strictly, but approximately). "MLB" agreed not to 'hover' during this time so that the child would have some emotional comfort to speak freely. "SCB" agreed to control the time and 'diplomatically' facilitate the termination process as the time elapses. Some consideration was given to this call being facilitated at school should there be some difficulty at home with the cellular phone; this option as well as a few others were deemed not feasible. There was a final confirmation as to the correct phone

number. "SCB" was advised that because of the impact of the disconnect between himself and his daughter, considerable energy should be focused on rebuilding the bond. When asked about the reintroduction of his fiancé to his daughter, he was advised by me that it should be done gradually and after his role/place in the child's life was concretized."

Question: Are you indicating to this Court that as of today's date 12th April 2010, you are saying this was not agreed to?

Answer: This is Dr. Lashley's interpretation of what took place. "SCB" was pushing for the phone calls and the only thing I said was we would be at church as we attend church when a first time was mentioned. I explained my fears and concerns. I never said I actually agreed to this.

Question: Is it true you had an attorney present at the hearing on the 28th July 2009?

Answer: Yes

Question: Is it true that there was no objection to the telephone calls being made on Sundays?

Answer: I was not in favour of it and that was known.

Question: Is it not true that the decision was taken for "SCB" to buy a cell phone, ensure it had enough credit so that the calls could be made on Sundays?

Answer: Yes.

Question: Is it not true you were handed a cell phone on 28th July 2009 that had "SCB's" number pre-programmed in it to facilitate the calls?

Answer: The phone was on the table. It was put into the bag with the rest of "A's" stuff and went home with the rest of her stuff.

Question: Sunday 24th August 2009 was to be the first afternoon "SCB" was to use the cell phone to reach his daughter?

Answer: That is what Dr. Lashley and everybody was saying. That is how the parties felt.

Question: It was encapsulated in a Court Order that "SCB" was to call his daughter at a stipulated time on Sunday afternoons?

Answer: I suppose so.

Question: Did you consider it a priority to make "A" available, the cell phone ready to facilitate the calls?

Answer: Despite my reservations, yes. I felt I should.

[30] The cross-examination of the Applicant in relation to the Respondent's role as a father and his relationship with the Applicant's mother is also important to an understanding of the issues and is also set out hereunder verbatim.

Question: Since "A's" birth and prior to her relocation to Barbados, your mother had become very involved in her day to day care?

Answer: Yes Sir.

Question: Did you have any discussions with "SCB" about his role as father in "A's" life from very early on?

Answer: The fact that "SCB" had no input or no contribution continued as before. He never ever changed a nappy or mixed a bottle of formula.

Question: "SCB" made it clear that he was not raised with his biological father and he was adamant it was not to happen to his daughter.

Answer: Adamant? (in very loud tone) No, he was not adamant.

[31] The Court reminded the witness that she was in a court of law and Mrs. Shields-Searle asked her client to lower her voice.

Question: Did he say he wanted to play an active role in his child's life?

Answer: No, he didn't. While we were in the UK he didn't.

Question: Since your separation and divorce, "SCB" has continued to express his frustration about his lack of access and contact with his daughter?

Answer: Yes, I see his aggression.

[32] The witness denied instructing her mother to prevent the child speaking to her father by telephone in the witness' absence. She also denied that, on the occasions that the child is able to speak to her father, there is always someone listening to the conversation or the conversation is interrupted and the child told she has things to do. She admitted that, since the proceedings began, she never picked up the phone to call the Respondent and allow his daughter to speak to him.

EVIDENCE OF DR. SHARON WATSON

[33] Dr. Watson presented a report to the Court dated the 27th January 2009 and gave oral evidence on the 15th October and 9th December 2009. She stated that the child was brought to her office by her mother on the 12th January 2009 complaining of vaginal itching. The mother reported that the minor child had become clingy and "was now afraid of the dark, had difficulty sleeping and did not want to go to bed alone" since her return from Trinidad.

[34] The examination of the child revealed that the outer area of the vagina appeared slightly reddened. It was difficult to ascertain if the hymen was intact. The doctor said that, during the examination, she asked if anyone had touched her on the area that was itching, and the child replied "papi".

[35] Laboratory tests were requested and an oral antihistamine and anti-fungal medication prescribed. No diagnosis was made at that time but the child was referred to a paediatrician, Dr. Adele Bell and a psychiatrist, Dr. Cyralene Bryce.

[36] In cross-examination Dr. Watson agreed that, on the 12th January 2009, the minor child presented with vulvovaginitis. She also agreed that there was an increased risk for this condition in pre-puberty girls because they do not clean themselves properly after using the bathroom. She further agreed that the following were possible causes of vulvovaginitis:

a. bubble baths;
b. use of perfumed soaps;
c. foreign objects such as toilet paper;
d. localised skin disorders;
e. streptococcal pyogenes;
f. wearing of tight underwear;
g. pin worms; and
h. Sexually transmitted diseases ("STDs") such as gonorrhoea or Chlamydia.

[37] Dr. Watson stated that she could not recall whether she discussed with the Applicant that a possible cause of the vulvovaginitis could be a change of detergent or soap. The doctor could not recall whether she discussed with the Applicant that a change in toilet paper could be the cause of the vulvovaginitis. She could neither recall whether she asked the Applicant about the child's use of body washes or scented soaps nor whether she asked her whether the child wore underwear made of synthetic material as opposed to cotton. The doctor also could not recall whether she informed the mother that the child's previous diagnosis of allergic rhinitis and respiratory tract infection could be a possible cause of the vulvovaginitis. She also could not recall whether she raised with the mother the fact that the child's eczema could be a possible cause of the vulvovaginitis.

[38] The following extract from the cross-examination of this witness is also instructive:

Question: Did you seek clarification from "MLB" whether or not she had spoken to "SCB" about the child's condition?

Answer: In my report I noted that “MLB” pointed out that “SCB” had given “A” Candid cream for the vaginal itching. I cannot recall if these were the exact words. That is in my note.

Question: Did you try to ascertain from “MLB” what, if any, reason “SCB” had given for touching “A” on the areas which were itching.

Answer: No

Question: Did “MLB” reveal to you that “SCB” told her that having gone to the pharmacy the Candid cream was prescribed and he was applying the cream?

Answer: I cannot recall the particular conversation. I do not have that. “Mrs. H” said that “SCB” had given her (“A”) Candid cream for her vaginal itching.

Question: Did “MLB” tell you she was first made aware of “A’s” condition from her father?

Answer: I do not recall. I do know that she was experiencing vaginal itching in Trinidad and was given Candid cream by her father. When I was told about the Candid cream, I cannot recall if I asked how long it was to be applied. I cannot recall if I found out if it was supervised. I did not find out if the mother was applying the cream. I cannot recall if I asked if the child was supervised when applying the cream or if the grand-mother was putting the cream on.

...

Question: What informed your choice to refer the child to Dr. Bell?

Answer: At that time I was unable to contact any of the paediatricians. I told my secretary to try everyone. I cannot recall if she tried to

> reach Dr. Jhagroo or Dr. Soo Ping Chow. I cannot recall if "Mrs. H" told me that the child was a registered patient of Dr. Soo Ping Chow.

[39] The witness stated that she concluded that she wanted an expert opinion or confirmation on the child's condition and, therefore, wanted the child to be examined by a paediatrician. She took swabs of the outer vaginal area and the genital area. She could not recall if she told the child's mother that the results were preliminary and that no definite diagnosis could be made.

[40] The witness said she spoke to Dr. Bell after she had seen the child. When asked whether she told the mother that the child presented with vulvovaginitis but that was not her area of specialty, she said that she told the mother that it was a case of inflammation of the vagina and she preferred the child to be seen by a specialist.

[41] The doctor was asked whether the Applicant raised her concerns of sexual abuse and she responded "possibly, yes." The reasons the mother gave for her concerns were: (1) vaginal itching, and (2) behavioural changes.

She did not agree with counsel's submission that she did not take a complete history relative to the child's complaints. There was no evidence that she had asked why the father was the one who applied the cream.

[42] Dr. Watson gave evidence of the results of the analysis of the vaginal swab which were as follows: "Gram stain, no pus cells seen. Gram positive cocci

-culture- no pathogens isolated. Yeast - nil. Trichomons - nil. Wbc - nil. Epitherial cells - nil".

[43] She explained that the results indicated that nothing unusual was found. She further stated that 'gram positive cocci' meant bacteria which she said could come from stools. Tricomons was one of the sexual transmitted diseases that you look for. There was just a little redness on the outside and clinically the child was clear.

[44] The doctor opined that, had she been told, that "papi" was the one applying the cream, it could have made a difference but her actions would have been probably the same because of the history from the mother that the child had become clingy.

[45] The doctor also gave evidence that the Applicant had been her patient for many years before her daughter became a patient. She agreed that she issued a report in December

2008 that the child could not travel and subsequently changed her mind. She further stated that she was very aware that "MLB" did not want the child to travel with her father.

[46] Dr. Watson gave evidence that the minor child presented with a rash on her buttocks in September 2008 and admitted that she did not discuss with the Applicant the implications of the results nor did she make any reference or link between the possibility of the minor child's vulvovaginitis and not cleaning herself properly after using the bathroom.

EVIDENCE OF DR. CYRALENE BRYCE

[47] Dr. Bryce obtained an MBBS from the University of the West Indies in 1991 and a Doctorate of Medicine in Psychology in 1997. She was practising in the area of psychiatry since 1993 and qualified in 1997. From 1993 to 1997 she had a four year residency.

[48] She first saw the child on the 16th January 2009 on referral from Dr. Watson and subsequently on the 3rd February 2009 and the 17th February 2009. She did not see the child thereafter. "A" became childish and tearful, turned her back to the doctor, gazed at the floor and covered her eyes with her hands. The doctor prepared a report dated the 13th July 2009 which was received into evidence in which she said **"... please take note that situations like these demand that pertinent leading questions not be asked." (emphasis Dr. Bryce's)** She gave oral evidence on the 25th November 2009 and the 23rd March 2011.

[49] In her report, Dr. Bryce stated that the minor child made the following "...utterances of the 27th January 2009":

> "Nothing was good about Christmas.
>
> There was no fun.
>
> I was very, very unhappy.
>
> I do not like the whole of Trinidad.
>
> I did not like being with daddy.
>
> Nothing was fun."

[50] She recorded the following other utterances of 2009-02-03:

> "No, I did not go to church on Christmas Day.

> I did not spend it with mummy...I do not know who I spent it with...I told you already.
>
> I am not talking today because I don't want to...I do not like talking too much.
>
> My father does not live in Barbados. He lives in England...I have never seen him.
>
> I do not want to talk...Talk to mummy and leave me out...that is why I stay outside [that is out in the waiting room with the Office Manager] so that I do not have to talk to anybody.
>
> ...you don't have to talk to me because I don't have anything to chat about."

[51] On the final visit of the 17th February 2009, the child said:

> "I have nothing to say.
>
> I am just scared.
>
> I don't want you to ask me any questions this afternoon."

[52] Dr. Bryce noted the following regarding the child's utterances:

> "I got them from the child once. I could not get them again and there were three things she did not like: Daddy, Christmas and Trinidad. There was a question of which affected which. Which was real? Was she acting out as a result of being brought to the doctor's office? I can't draw conclusions from that."

[53] Dr. Bryce opined that you could not build a relationship between a five year old child and a stranger (doctor) after three contacts. Such contact would constitute getting to know each other but it did not preclude the fact that a relationship could be formed, but it was unlikely.

[54] Her interpretation of the child's behaviour was that "A" was a young child and a stranger to her. She noted that children took time to build trust with adults. Dr. Bryce further stated that the child's fear was of her (Dr. Bryce) and the interaction with her.

[55] The doctor noted that, had the child remained her patient, her focus would have been the severe emotional problems of the chid, relative to its educational activities. She would

have explored the relationship of the child to its mother and father and any decision about the parents relationship would have been guided by the child's comments.

[56] Dr. Bryce noted that interactions between parents and child are best observed when the child is unaware of the observation. At some stage, she further said, she would have liked to see the child interact with her father. That was not discussed with the mother since they had not reached that stage.

[57] In her report Dr. Bryce concluded that the child had been exposed to "a very traumatic stressor" of some kind and this conclusion was based on whether the adults accurately reported the behavioural changes in the child.

EVIDENCE OF DR. ADELE BELL

[58] Dr. Bell gave evidence that she was a doctor of medicine and a qualified paediatrician. She had been practising as a paediatrician for 25 years. Her report, dated the 21st February 2009, was entered into evidence. She gave oral evidence on the 8th April 2010.

[59] "A" had been referred to her by Dr. Sharon Watson. The referral letter stated that the minor child had been experiencing vaginal itching for one day. A post script to the referral letter stated that the child's father had given her Candid cream to use on her vagina when she was in Trinidad in December. The minor child was seen at her office on the 13th January 2009, accompanied by her maternal grandmother and uncle. The uncle left immediately.

[60] The report stated that the grandmother reported that the child had been complaining of vaginal itching for two days and that the grandmother "seemed very distraught". The medication prescribed by Dr. Watson had not been filled.

[61] Dr. Bell made the following findings on her inspection of the child's genitalia:

Hymen: Present and intact

Genitalia: Normal female

A yellow vaginal discharge is present at the introitus

A sample of the discharge was not taken as this had been done by Dr. Watson.

[62] A diagnosis of sexual abuse and vaginal discharge was made. She denied under cross-examination that her diagnosis of sexual abuse was based on the history she received

from the grandmother and the questions asked. The doctor further stated that "five year olds do not usually have a yellow discharge".

[63] Dr. Bell received the laboratory results of the child's vaginal swab on the 29th January 2009. The child was not requested to return for a follow up. A copy of the report was forwarded to the Royal Barbados Police Force.

[64] Under further cross-examination she stated that she knew leading questions were not allowed and that the child volunteered answers. She denied that she asked the child any leading questions.

EVIDENCE OF DR. ANGELA JENNINGS

[65] Dr. Jennings gave evidence that she was a consultant paediatrician practicing from Delaware Paediatrics Associates and the Queen Elizabeth Hospital. She was involved in the field of paediatrics since 1998, but qualified as a paediatrician in 2003.

[66] The minor child was referred to her by Dr. Cyralene Bryce for examination and investigation for alleged sexual assault. She presented a report to the Court dated the 4th February 2009 which was entered into evidence and gave oral evidence on 30th May 2011. The child was seen by Dr. Jennings on one occasion; namely the 16th January 2009 and she was accompanied by the Applicant. Dr. Jennings noted that that the child was a "pleasant girl" and the "clinical examination was within normal limits". The doctor stated that "following examination the child appeared scared and clung to her mother". Given that reaction she opted not to pursue any questions regarding sexual assault. The doctor concluded that her assessment was "suspicion of alleged sexual assault". She reported the matter to the Child Care Board.

[67] The following extracts from the cross-examination are instructive:

Question: Theoretically, if a four-year old child presents with rash on buttocks walk me through the steps one should follow.

Answer: As with any presentation, a detailed history would be taken pertaining to whether it is rash, fever. The questions asked would be to elucidate the cause. The interaction would be both a history and physical exam. So with the history one tries to elicit the cause for the symptoms followed by the physical exam. At the conclusion of the history and physical exam a list of possible

diagnoses would be entertained and given the age of the patient and what the findings were, it would point to a particular diagnosis. This may or may not require further supportive or laboratory investigations.

Question: If in the process of seeing the patient you conclude further laboratory testing is required, are you in a position to make a diagnosis or do you hold off until you get the results of the lab?

Answer: For some diagnoses no laboratory assistance is needed. For others laboratory assistance is needed.

Question: If you have a young child and you are unsure of if it is impetigo or a herpetic lesion, what is the procedure?

Answer: For the two conclusions, the diagnosis is clinical. You can look and make the diagnosis. For impetigo and herpes the diagnosis is visual but one can take a swab as well to support it.

EVIDENCE OF DEIDRE WENTT

[68] Ms. Wentt is a Counsellor attached to Network Services Centre. She prepared a report dated the 13th June 2009 which was entered into evidence.

[69] In her report Ms. Wentt stated that she first saw the minor child on the 26th June 2008. "A" was brought to her to ensure that she was "coping with living in a different country to her father due to the divorce of her parents". Ms. Wentt stated that, during those sessions, she found the minor child to be "a happy and contented little girl".

[70] Sessions with Ms. Wentt were resumed on the 18th March 2009 by the Applicant who stated that she noticed behavioural changes in the child since returning home from her 2008 Christmas holiday in Trinidad. She had four sessions with the child and found her to be not as co-operative, angry and displaying regressive behaviour. Ms. Wentt further opined that "... the "A" I am currently working with has a different personality from the "A" I worked with before. She is whiny, angry and scared".

[71] The child stated that she was forced to lie down while a group of men stood around her. One male proceeded to insert a tube in her anus and released a substance. ... "A" stated that she was afraid and told her father she needed her mother and wanted to go home. Ms. Wentt's conclusion was that the minor child's "abnormal behaviour is a result of the trauma she suffered in Trinidad".

[72] Ms. Wentt recommended that the child "... be allowed to remain in treatment on a regular basis until she has work[ed] through the experience. Her father could consider spending some time in Barbados where he would spend time with the child. This would allow both father and daughter to get to know each other better and the child feels comfortable with her father. In the meantime the child should be given time to work through her experience at her own pace."

CASE FOR THE RESPONDENT

[73] The Respondent relied upon his affidavits filed on the 17th July 2009 and the 6th November 2009 respectively. He gave oral testimony on the 30th and 31st May 2011and additional evidence was given on his behalf by Tamara Jane Evans and Emily Mohammed.

EVIDENCE OF SCB

[74] The Respondent gave evidence that his father was absent during his childhood years and that, as a result, he was of the opinion that it was essential that both parents should have a relationship with their children. He was determined to avoid the shortcomings and failings of his own father and was adamant that this not be visited on "A" or any of his children. He stated that he constantly spoke to the Applicant about the role he intended to play in the life of their child and his desire to play an active role in "A's" upbringing.

[75] His mother-in-law, the Applicant's mother "Mrs. H", used to assist him and the Applicant with caring for their minor child. "Mrs. H" made several trips to London, when the parties resided there, and stayed for several months adopting the role of caregiver. He welcomed and appreciated, and still appreciated, the assistance given by "Mrs. H" to them. However, she went on to assume a role much larger than that of a grandmother and sought to position herself as a parent. He "had to show a degree of tolerance for several

of her idiosyncrasies" and she did not take kindly to challenges to her authority and opinion.

[76] He never changed the child's diaper since "Mrs. H" would say "leave it to me" whenever he offered to do so. He never bathed the child and dressed her on rare occasions. When he offered his help, she responded that she would deal with it. From the child's birth until 2007, he was allowed to spend quality time with her on one or two occasions. Whilst the minor child resided in Barbados with "Mrs. H", he made weekly telephone contact with the child with no limitations to that contact. He was allowed to visit the minor child in Barbados after the Applicant relocated here in October 2007. That access was unlimited but supervised. He gave the example that, on one occasion, he wanted to take the minor child on a drive to St. Philip or the East Coast but was not allowed to do so unless accompanied by "Mrs. H". This restriction was imposed by "Mrs. H"

[77] He further said that, during the period the child resided in Barbados with her mother and grandmother and he resided in London, no information concerning the minor child's welfare was shared with him. He had to enquire.

[78] He made periodic transfers of several hundred pounds sterling towards the child's upkeep. There was no discussion or consultation as to which school she would attend. He also stated that he was informed of the child's progress in school only if he enquired and, on one occasion only, was a school report shared with him.

[79] The Respondent stated that, during this period, the Applicant never properly facilitated telephone contact between the minor child and himself. She never initiated a telephone call so as to allow the Respondent to speak with the child, a situation which continued up until the date of his evidence. He said that, during the period 26th July 2008 and December 2008 despite numerous attempts, often several times during the week, he was unable to speak to "A" save for perhaps a few occasions. Even when the parties agreed that he would call on Mondays at 5:00 pm, he was told that "Mrs. H" was "out back" or that the Applicant's brother was on the internet and he was unable to make contact.

[80] In the time leading up to Christmas 2008, communication between the parties was by email only and centred on the upcoming access visit as ordered by the Court. The Respondent stated that "in the interest of co-operation" he agreed for the Applicant to

travel with the child to London to spend Christmas holidays with him. In London, he would allow the child to see the Applicant "despite it being his access period."

[81] In one of the aforementioned emails the Respondent stated that the Applicant informed him that she had taken up a new job and was therefore unable to take vacation to accompany the minor child to London. She suggested that he should travel to Barbados where she would arrange "suitable private accommodation". His response to this suggestion was "of course, I would not place "A" at risk and so instead I would revert to the original plan of me travelling to Barbados to facilitate access". He further stated that he dismissed the Applicant's suggestion that they should remain in Barbados and, instead, he decided to travel with the child to Trinidad as it had a warm climate.

[82] He said that "... despite an existing court order that I must be consulted on all medical matters relating to "A", I was informed of a diagnosis made some weeks prior that "A" had mild bronchial asthma". This condition was given as a further reason why the child could not travel to London. He asked the Applicant why he had not been informed earlier of the diagnosis and what measures had been put in place in the event of an asthma attack but she never responded.

[83] The Respondent gave evidence that the minor child was with him for four days prior to their departure to Trinidad on the 22nd December 2008. He stated that the Applicant took away much of the child's dirty laundry on the Sunday but did not replenish the clothes. After leaving Court on the Monday he and the child went to the "H" household to collect the child's clothing. They were scheduled to leave Barbados for Trinidad that day. That afternoon he realised that the child did not have enough clothing. He did not arrive in Trinidad until Tuesday night due to industrial action in Antigua.

[84] He said the child's travel bag, which the Applicant packed and handed to him contained no cream, lotion or body wash. He agreed that "A" had been handed over to him on the Friday and that they had not left Barbados for Trinidad until the Tuesday. He asked "MLB" if there was anything that he should have known and was told that he would find out. He knew that "A" had atopic eczema and that she had to use soap and cream only as and when required.

[85] On Wednesday morning in Trinidad he purchased more clothing, specifically, underwear for the child. He did not wash the underwear before the child wore them and he was not aware of the dangers of failing to do so.

[86] Whilst in Trinidad, he and the minor child stayed with the Mohammed family. On the Saturday after Christmas, the child alerted him to the fact that "it hurt down there". She had just showered and was being dried with a towel. He consulted with his fiancé, Miss T.E., and Mrs. Emily Mohammed. He observed redness on her vagina and an odour was coming from it. A doctor was called. After the doctor did not arrive, he went to a pharmacy where he was given Candid cream which he applied to the child himself. He maintained that the child did not cry or tell him that it hurt when he applied the cream. After the cream had been applied for one day the child no longer complained of any discomfort.

[87] On their return to Barbados, whilst at the airport, he informed "MLB" about the rash and about the medicine that was used. He further told her that the child seemed to have responded to the medication. "MLB" ran away.

[88] The Respondent said that since the trip to Trinidad he had no physical contact with "A". In February 2009, he made plans to travel to Barbados but was unable to have any contact with the child as he was confronted with allegations that the child was inappropriately interfered with during their stay in Trinidad. Advice was relayed to his counsel by Mrs. Shields-Searle's office that something untoward happened and they were investigating it.

[89] The Respondent, under cross-examination, said that the minor child washed her vagina herself and cleaned herself after using the bathroom. He stated that the child told him, and he felt, that she could perform these functions herself without being told so by the Applicant.

[90] He said that the last time he saw "Mrs. H" he explained to her that an urgent appointment had been made with Dr. Soo Ping Chow and he needed her to accompany him to that appointment immediately. He called for "A" who came to him. "Mrs. H" flew into a rage and began to pull "A" from his arms. Upon entry into the household, "MLB" attempted to calm "Mrs. H" down. "Mrs. H" shouted at him in a loud and aggressive voice that he will never leave this island with this child. "MLB" then made arrangements

for her brother to accompany them to Dr. Soo Ping Chow. Up until that time he freely visited the "H" household.

[91] In further cross-examination he said that he could not recall if he told "Mrs. H" about the Court Order to take the child to Dr. Soo Ping Chow. He could not recall just calling the child out. When it was suggested that the reason he was told that he was not leaving the island with the child was because he did not tell "Mrs. H" of the Order, he said that he could not attest to "Mrs. H's" state of mind.

[92] He agreed that "MLB" did not tell him that she alleged that he did anything untoward to her daughter.

[93] After the marriage broke down, the relationship with "Mrs. H" was cordial, visits were normal. He existed in harmony with "Mrs. H". When he came to Barbados, he stayed with "Mrs. H". He was encouraged to interact with the child in the presence of "Mrs. H". There were problems and resistance if he attempted to take "A" out by himself. "Mrs. H" would have to accompany them everywhere after the breakdown. He got around by public transportation and, on a few occasions, he rented a car.

[94] He said they sent "A's" car seat to Barbados and, at the times that he came to Barbados and drove there was always a car seat in the car. He had no recollection of "Mrs. H" raising concerns about his driving around in a car without a car seat and, in any event "Mrs. H" would not let them go. He did not have any independent time with the child. He took her to the beach on occasions with "Mrs. H" in tow.

[95] He gave evidence that he was raised in the Hindu as well as Roman Catholic faiths. He recalled a visit to Barbados when he was accompanied by a pundit (Hindu Priest) named Persad who visited Barbados at his invitation. During his stay at the "H" household, the Hindu priest performed a ceremony to celebrate "A's" life and to wish her every success. Hindu prayers were recited and deyas were lit. Pundit Persad brought them [the deyas] in with his personal effects.

[96] "Mrs. H" (who is Anglican) objected vehemently to the ceremony being performed in her household and did not allow "A" to participate. He capitulated to her request and "A" remained in the bedroom. One of the child's tops [clothing] was used in the ceremony since the child was not allowed to take part.

[97] When asked whether there was a change in his relationship with "Mrs. H" after the ceremony, he replied:

> "I continued to tolerate her. She has always been a cantankerous and pernickety woman."

He also said that he had only changed her diaper on a few occasions and had only bathed her when he was allowed to.

[98] He admitted that, prior to "MLB" leaving the household in the United Kingdom, he was cautioned for common assault on her but was not charged. He did not know the reason he was not charged and could not say if it was because "MLB" decided not to pursue the matter. Neither could he say if it was because of his version of events.

[99] He could not recall "MLB" handing him a tub of cream for the child's eczema when she handed over the child to him.

EVIDENCE OF T.E.

[100] Miss T. E. filed an Affidavit in this matter on the 17th July 2009 and gave oral evidence on the 19th July 2010. She said that on the 24th December 2008 she travelled from England to Trinidad where she met the minor child for the first time. She also stayed with the Mohamed family. The residence was small and contained three bedrooms. Two were occupied by the family, the third by the Respondent and the minor child whilst she slept on a mattress in the lounge. The house had thin walls and one could hear conversations in adjoining bedrooms.

[101] All the bedrooms were connected. If all the doors were open one could see from one end of the house to the next. The walls were solid up to about a foot from the ceiling. From that point there were ventilation blocks. She considered herself to be a perceptive person and at no time during the trip had she observed the minor child to be upset. Had she seen the child upset she would have asked her what was wrong.

[102] She stated that the minor child used the bathroom herself and she never saw the Respondent helping her. On the Saturday after Boxing Day the Respondent became aware that the minor child had developed vaginal itching. He brought it to her attention and asked her to have a look. The minor child had "a small little rash on the outside of

her vagina". Miss T.E. then called Mrs. Emily Mohammed, then a trainee nurse, to look at the rash.

[103] Mrs. Mohammed called her family doctor to come to the house to examine the minor child. After two hours, the doctor did not come and the Respondent went to a pharmacy and returned with a cream which the pharmacist had recommended. The cream was applied twice daily on the Saturday, Sunday, Monday and on Tuesday morning before the minor child left to return to Barbados.

[104] Under cross-examination, she said that the cream was not prescribed specifically for "A" by a doctor. There were no instructions or directions on the cream specifically for the child. It was an over the counter medication, a cream for a common rash prescribed by a pharmacist. She was present about three times when the cream was applied and the child did not show any discomfort on these occasions.

[105] Miss. T.E. gave further evidence that the child did not have a shower every night, however, when she did not shower at night, the cream was still applied. She was uncertain whether there was a change in underwear at night before the child went to bed. Once she got the rash her underwear was changed every night. "A's" clothes were washed by Rookmin and "SLB". All the clothes were washed together including her underwear. In her opinion clothes were clothes. She did not insist that the child have a bath when she returned home from playing. Soap was used to bathe the minor child.

[106] Roshan Mohamed was suffering from terminal cancer and used the bathroom often. She only recalled one occasion when he vomited on his frequent trips to the bathroom. There was only one bathroom in the house which was cleaned by Mrs. Rookmin Mohammed. She was unsure how often the bathroom was cleaned but it was not cleaned after each person used it. Eight people used the bathroom.

[107] The Court also received reports and heard evidence from Rev. Dr. Marcus Lashley, Mrs. Margaret Marshall and Ms. Dian Holder, court-appointed supervisors of access.

[108] **EVIDENCE OF REV. DR. MARCUS LASHLEY**

[109] Rev. Dr. Lashley is a clinical psychologist and Reverend in the Anglican Church. He presented reports dated 28th July 2009 and 24th November 2009 to this Court which were accepted into evidence. He gave oral evidence on 28th July 2009. He said that it was agreed that on 25th July the parties would attend his office for a counselling session. Dr.

Lashley stated that, when asked directly whether she felt that the Respondent in some way abused or molested his daughter, the Applicant replied "yes". She further stated that, since that event, she had lost all trust in the Respondent and contact with him had become increasingly emotionally difficult.

[110] The Applicant spoke about the behavioural changes in "A" since her return from Trinidad. She stated that the child appeared sleep deprived and was not excited to talk about the trip. Of even greater significance was the "refusal" of the child to wear night clothes which were possibly used in Trinidad and which they were buried somewhere in the bottom of a pile of clothes in a drawer. Rev. Dr. Lashley stated that "MLB" stated that she understood the actions of the child in refusing to wear the clothes form the Trinidad trip.

[111] The Applicant, he said, gave a similar story of hiding clothes due to some unpleasant or abusive episode in her life. He opined that "it is therefore likely that "MLB" may be projecting what happened to her unto the child and then identifying with the child's actions so as to arrive at an explanation". In psychology this is referred to as 'projective identification' and the possibility of such an occurrence warranted further clinical exploration with both parents.

[112] The following extract is from the cross-examination by counsel for the Applicant:

Question: Is it unheard of in circumstances where abuse is alleged for victims not to want any association with the clothing that they were wearing when the abuse took place?

Answer: It is not unheard of.

[113] Whilst "SCB" denied to Dr. Lashley that the child was harmed in anyway, he admitted that there might have been some "overindulgence" by relatives. Strict routines were waived since it was the holiday period.

[114] Dr. Lashley stated that both parents agreed that the birth of the child was a defining moment in their relationship and life changed for them from that point forward. The presence of the Applicant's mother during this difficult period of caring for a newborn was appreciated by both. However, Dr. Lashley noted that this third party "Mrs. H" was introduced at a time of great instability in the marriage and at a period of multiple

adjustments. It was clear that her presence was seen by the Respondent as a mixed blessing and he learnt to tolerate her.

[115] At this meeting it was agreed that the parties would meet at Quayside Centre, Rockley, Christ Church and then they would go over to Chefette Rockley. Near the end of the visit, the child was taking pictures with the Respondent's camera. The child, accompanied by her father, walked behind a shop, out of the direct line of his sight and that of the mother. At that point the Applicant sprang up as if in a panic and said "This is why I find it hard to trust him" and walked briskly towards them. The visit ended ten minutes later. In response to Mrs. Lee-Brace, Dr. Lashley explained that, when this incident occurred, the child was ahead of the father who was following her.

[116] Dr. Lashley also noted that when the child first saw her father "the child did not run screaming to him. It was as if she needed some time to process her feelings while cognitively responding to the sensory information of seeing him. Clearly, the time away from him and not seeing him on a regular basis has had a negative impact upon the child." He further stated that children can easily forget, to some degree, both people and their relationship to a person if that individual is not in their daily sphere.

[117] There was another meeting on 26th July 2009 at which it was agreed that telephone contact between the Respondent and the minor child would resume immediately. This would be done by cellular phone until a landline was installed in the home of the Applicant. The Respondent would call on Sundays at 1:00 pm. It was further agreed that the parties would meet at Ocean Park at 5:00 pm. The Applicant did not attend the meeting due to work commitments.

[118] In his report of 24th November 2009, Dr. Lashley stated that another meeting was scheduled for 28th July 2009 at Chefette Rockley. At this meeting the child was very pleased to see her father. The Respondent presented the child with a cellular phone which he explained to her was so she could have direct access and regular contact with him. The agreement was that the Respondent would call on Sundays on the cell phone.

[119] Dr. Lashley stated that, since that meeting, he was contacted numerous occasions by telephone, email and text by the Respondent expressing his concern that, since his departure in June 2008, he had been unable to make contact with his daughter. Dr. Lashley attempted to contact the Applicant but up until the time of writing the report had

been unable to do so. He concluded that "having reviewed this case, it is clear that there has been a breach of what has been agreed to by both parties regarding contact with "A." Dr. Lashley noted that he was available to meet with both parents for a pro bono session "given the importance of the child being assured of the love of and contact with both of her parents."

[120] Rev. Dr. Lashley noted in his report of July 28th 2009 that the Applicant suffered post partum depression sometime after "A's" birth. "The Respondent did not understand the Applicant's mental state and never gave her the emotional support she needed. When asked by the Applicant for them to seek professional help for the relationship he refused, which contributed to the further deterioration of the marriage. He expressed regret for his actions. However, the offshoot of his actions was a measure of anger and disappointment towards him by his wife. In her eyes, he simply was not there for her when she needed him most, and she could not express it."

EVIDENCE OF MS. MARGARET MARSHALL AND MS. DIANNE HOLDER

[121] Ms. Marshall and Ms. Holder were appointed by the Court to supervise access of the Respondent to the minor child. A jointly prepared report was submitted and accepted into evidence by this Court. Ms. Marshall gave oral testimony on the 18th January 2013.

[122] Ms. Marshall and Ms. Holder supervised access between May to August 2011 and observed the interaction between the Respondent and the minor child, the general physical, social and emotional disposition of the child, actions and responses from the father and relatives and changes in the interaction over the course of the visits.

[123] They noted that interaction between the minor child and the Respondent were restrained at the start of visits and then gradually her demeanour altered and she was more responsive as the visit progressed. It was further noted that efforts were also made to allow for discussion with the child's father which tended to be tentative at first until "A" warmed up to the visit. At the end, she was usually in a more peaceful and relaxed frame of mind than when the visit started.

[124] In response to counsel for the Respondent's suggestion that the fact that the child was restrained at the beginning of the visit with her father was normal behaviour for a child who did not have sustained contact with her father, the witness responded, "I agree, her anxiety is a result".

[125] The access supervisors observed that the minor child consistently required coaxing and reassurance during the transition phases of leaving her mother to go to her father as well as at the end of the visits when going back to her mother. It was noted that there "seemed to be a sincere effort by her father [the Respondent] to reach out to "A", especially at the start of the visits". The Respondent displayed a desire to visit with the child frequently. It was noted that the child showed consistency in enjoyment of the visits over the period.

[126] The following recommendations were made:

(1) Visitation should continue with her father and be supervised by Court appointed professionals over the course of at least six months with a report provided to the Court at the end of the period. The supervised visits are necessary as "A" is young and vulnerable and has experienced trauma in her past.

(2) [...]

(3) Visits should be made by her father accompanied by no other relatives or persons over the period unless specifically discussed and agreed to by the access professionals at least a week prior to the visit. This is being recommended given "A"'s vulnerability and the details of her past revealed to us. After "A" is introduced to these persons briefly at the start of the visit, the rest of the visit should be restricted to father-daughter interaction unless otherwise directed by the Court.

(4) Both parents should consistently reassure "A" that she will remain living with her mother unless otherwise decided to reduce confusion and ambiguity for her. She will be prone to extreme anxiety unless this is done and this will hamper the success of the visitation visits by her father.

(5) [...]

(6) Urgent attention should be given with the assistance of the attorneys of the parents to the matter of arranging maintenance of "A" by her father.

(7) It is of extreme importance that both parents, with the assistance of the Court, if necessary, arrange to be engaged in joint counselling sessions with a mental health professional immediately. This is imperative to enhance communication between them regarding "A" and her welfare. Presently no such communication exists. This situation is very detrimental to "A"'s growth and is increasing her anxiety presently. In time, if it continues, it will erode her trust in them and place her in a situation of ambivalence and great discomfort which will affect her as she grows and make her prone to emotional maladjustment. The ease with which visitation is presently arranged by us will be greatly enhanced if these parents are receiving counselling.

SUBMISSIONS OF THE APPLICANT

[127] Counsel for the Applicant reviewed the several orders made in this matter and the evidence of the witnesses for the Applicant and the Respondent. She submitted that the Respondent did not give evidence that he took the child to a doctor for the complaints she made to him and his observations about the redness, rash and odour coming from her vagina. She suggested that the question might be asked why did he not take the child to the doctor. No plausible explanation or reason was given for his failure to do so.

[128] She submitted that the welfare of the child is the first and paramount consideration applying ***section 43 (1)*** of the ***Family Law Act, Cap. 214*** of the Laws of Barbados (***Family Law Act***). She relied upon the Australian case of ***Barnett v Barnett*** **(1973) 2 ALR 19 at 25-26** where **Hutley J** said

> "The position, as I understand it, can be illustrated by reference to alleged parental rights. As the welfare of the child is the paramount consideration, the welfare of the child will prevail over parental rights. Parenthood enters into consideration as one of the factors, in certain circumstances the dominant factor, in considering the welfare of the child, but not as a dominating factor if it is in conflict with the welfare of the child.
>
> Just as parental rights are overridden, objections to the conduct of parents because they infringe the conventional moral code can also have no weight except in as far as they reflect upon the parent's fitness to take

> charge of the child. It is possible for a parent to combine promiscuity with deep love and affection for the child.... The welfare of the child includes the child's moral welfare and, in competition with the nonpromiscuous, such a parent is handicapped, but not excluded...
>
> **The issue is not what is justice to the parents but what is for the welfare of the child, and the welfare of the child can best be weighed by disregarding entirely any concept of claim, just or unjust, on the part of the parents. It is their conduct, in so far as it bears on welfare, which is important.**" (Emphasis supplied)

[129] Counsel submitted that, since the professionals had indicated that the child's demeanour had changed since her trip to Trinidad in 2008, the court should continue the order for supervised visits until such time as information or reports from the child's counsellor or doctors on the impact of the supervised visits on the minor child are received.

[130] ***Section 22*** of the ***Family Law Act,*** counsel also submitted, was also instructive on the issue of promoting the welfare of the child and it provides that in exercising its jurisdiction under the Act, that the court shall have regard to "(c)... the need to protect the rights of children and to promote their welfare...".

[131] On the issue of whether the Respondent should be granted supervised access to the minor child without the court first obtaining a report from psychologists or other professional persons who had seen the minor child since supervised visits were ordered, it was submitted that the same principles and sentiments enunciated and considered by the Court in the case of ***In the Marriage of Smythe (1983) 48 ALR 677*** (***Smythe) and In the Marriage of Jurss (1976) 9 ALR 455 (Jurss)*** were applicable to this case. Counsel relied upon the following passage from ***Smythe:***

> "In each case there will be a number of factors which have some bearing upon the welfare of the children. Those most relevant to the children's welfare are given the most weight, those less significant are given less weight. It would not promote the welfare of the children to reach a conclusion that all factors relevant to the children's welfare weigh evenly in the balance and then determine the issue by calling in

> some extraneous factor with no relevance to that welfare. When matters are said to weigh evenly or to be finely balanced all that has occurred is that the court has not yet determined which of the factors of most relevance to welfare should be given pre-eminence over the others. Nor can the court resolve its dilemma by falling back on presumptions about status quo, or the mother's role in relation to a young child. The court has pointed out on numerous occasions that there are no presumptions or onuses; there are factors which in a particular case may have more or less significance according to the circumstances:"

The passage quoted from ***Jurss*** is as follows:

> " ...the welfare of a child in any particular case must be determined on the facts of the particular case...the enquiry is essentially a positive one designed to promote the interests of the child, not to demote the claims of either parent"

[132] Counsel submitted further that bearing in mind the recommendations from the psychiatrist and the counsellor about "A" needing time to deal with her fears and, since there was no information before the court updating the court on the resolution or progress of the child's issues since the matter came before the court in 2009 showing that the child's situation had changed , varying the court's order so as to allow for supervised access to the child by the Respondent would be in the best interest of the child in these circumstances

[133] Counsel's submitted, therefore, that until such reports were made available, the court should withhold its judgment in the matter.

SUBMISSIONS OF THE RESPONDENT

[134] Counsel for the Respondent submitted that the matter concerned the right of access of the minor child to her father and therefore the court must be guided by ***section 43 (1)*** of the ***Family Law Act***. The issue, she suggested was, whether there was any evidence to support the variation and suspension of the access order of 26th June 2008. She further

submitted that the application by the Applicant was a further attempt to alienate the minor child from its father.

[135] The decision of the Court, counsel opined, would determine or have a direct impact on the minor's child access to her father hence the importance of ***section 43(1) Family Law Act***. She relied on the judgment of **Lord** McDermott in ***J v C*** **[1970] HL** at **pages 710-711**:

> "... 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 take into account and weighted, the course to be followed will be that which is most in the interests of the child's welfare...That is of first consideration because it is of first importance and the paramount consideration because it rules upon or determines the course to be followed."

[136] Counsel further submitted that minor children have two rights as recognised by the courts of Australia; namely, (1) the right to know and to be cared for by both of their parents; and (2) the right of direct contact with their parents on a regular basis. She noted the history of the matter and the fact that on 13th September 2008, the child presented with a rash on her buttocks. One possible cause, as given by Dr. Watson, was impetigo (which could be caused by various organisms or streptococcus). The other possible cause was a herpetic legion. At that time the child was under the mother's care and control and had not seen or had physical contact with her father since June 2008. The vaginal swab taken by Dr. Watson in January 2009 was positive for bacteria from stool and clearly pointed to the fact that the minor child was not cleaning herself properly after using the bathroom. The presenting complaint could therefore be attributable to this factual matrix which existed when the child was under the mother's care and control.

[137] She also submitted that the new underwear which the child wore which were not pre-washed and the use of soap during her bath time may all have contributed to the redness or rash on the child's vaginal area. The allegation of sexual impropriety was

unsustainable. The mother, she said, created the crisis by neither providing the special cream used by the child nor sufficient underwear or other clothing for the child.

[138] Counsel further submitted that to absolve herself from her short comings, the Applicant was seeking to characterise the Respondent as an inadequate father. The allegations were designed to prevent the Respondent from having sustained independent physical access to the minor child. Prior to the institution of divorce proceedings, the Applicant, and by extension, her mother, "Mrs. H" had total control over the time the Respondent spent with his infant child. The Respondent was being punished for something which never occurred.

[139] She asked the court to look at the totality of the evidence and to conclude that, from the onset, every attempt was made to thwart the Respondent's independent access to his daughter. She referred to the efforts of the "Mrs. H" to prevent the Respondent from becoming "hands on" with his daughter and the Applicant's attempt to prevent him from travelling with her. She submitted that the Respondent's application should be upheld; the Applicant should be sanctioned for alienating the child from its father and be strongly warned that, should she persist in a course of conduct that deliberately and without good reason frustrated the minor child's right of access to her father, the court would entertain an application by the Respondent to vest care and control of the minor child in the Respondent with supervised access to the Applicant.

[140] In her further written submission filed 23rd May 2013, Mrs. Lee-Brace highlighted the recommendation made by the Supervising Officers that the future success of the "visits can be facilitated by the parents together receiving counselling on how to assure "A" of her primary custody with her mother and that she will be safe during her visits with her father". She submitted that the recommendation should be treated with the utmost caution. What the Supervising Officers were seeking to do, she submitted, was to curtail, if not usurp, the role of the court in determining key aspects of this matter. She asserted that the court had never given up its jurisdiction as *parens patriae* over minor children.

[141] She submitted further that, should the Respondent want to make an application to the Court for primary custody of "A" after the present applications had been decided, the Respondent could not be restrained by a recommendation that he was to accept that primary custody was to vested in the Applicant permanently.

[142] She argued that, from the Supervising Officer's report dated 5th September 2011 and their answers under cross-examination, it was clear that their minds were affected adversely against the Respondent by the otherwise unknown contents of the Child Care Board Report and the background information given to the Supervising Officers by the mother. Notwithstanding that, it was clear from the Supervising Officer's report and oral evidence, that, barring any valid reason as identified by the court, the best way to regularise the relationship between the father and daughter was with regular sustained contact. In other words, increased access for the Respondent was absolutely necessary and in the interest of all parties, especially "A", should the court find no valid reason to curtail the same.

ISSUES TO BE DETERMINED

[143] The following issues have to be determined by this Court:

(1) Whether the Order made on the 26th day of June 2008 granting the Respondent reasonable access to the minor child of the marriage at such reasonable times as may be mutually agreed between the parties but shall be a minimum of one half of the Easter, Summer and Christmas holidays commencing with the summer holidays of 2008 should be varied.

(2) Whether the Order of the Court made on the 26th day of June 2008 which provided that during any period the said minor child is afforded access to the Respondent, the Respondent shall be at liberty to take the said minor out of the jurisdiction of Barbados at all times keeping the Applicant informed of plans and whereabouts of the said minor should be suspended.

The application for an order that the Applicant was in contempt of the order of Court made on the 28th day of July 2009 was not pursued and no submissions were received in respect thereof. Accordingly, no issue arises on that application.

THE LAW: ACCESS

[144] The law relating to access to children of a marriage is found in ***Section 43 (3),(4),(5) and (7)*** of the ***Family Law Act*** which provide as follows:

(3) Where the court makes an order placing a child of a marriage or of a union in the custody of a party to the marriage or union, or of a person other than a party to the marriage or union, it may include in the order such provision as it thinks fit for access to the child by any person.

(4) Where the court makes an order for joint custody of a child of a marriage or of a union, or declines to make an order for the sole custody of the child, it may make orders as to access, or such other orders as it thinks tit.

(5) Where the court makes an order under this Part in respect of a child, the court may also, if it thinks the welfare of the child so requires, include in the order that compliance with the provisions of the order shall, as far as practicable, be supervised by the Chief Welfare Officer or Chief Probation Officer, as the circumstances require.

The Court also has power to vary such an order under subsection 7 of the Act which provides as follows:

(7) The Court may discharge or vary an order under this section, or may suspend any part of the order, and may revive the operation of any part so suspended.

[145] Access involves the right of the child to have contact with either or both parents. The rationale for such access may be discerned from the decision of the Full Court of the Supreme Court of Victoria in ***Roberts v Roberts*** **[1971] V. R. 160** where the Court said:

> "Normally it is for the benefit of the child that it should maintain contact with both parents, the degree of contact between the child and the non-custodial parent varying in accordance with the circumstances of the case. The current view of access is that generally it is highly desirable that a child should have as much contact as possible with both parents, so that there may be created in the child feelings of security often missing in the case of a child with one parent. Moreover, it is now recognized that

> boys require contact with their mothers and girls with their father, as well as with the parent of their own sex."

[146] ***In the Marriage of B*** **1997 FLC 92-755** the Full Court of the Family Court of Australia put the position succinctly and noted:

> "It is now well accepted that in most cases meaningful contact by children with both parents is important to their welfare both in the short- and long-term."

[147] ***Section 43(1)*** of the ***Family Law Act*** provides:

> In proceedings in respect of the guardianship or custody of, or access to children of a marriage or union,
>
> a) The Court shall have regard to the welfare of the children as the first and paramount consideration.

[148] In the local decision of ***Allsop v Kremser*** **(Civil No. 73 of 1979, date of decision October 15, 1985)** the court had to determine whether the father should be granted custody, care and control of two children. In discussing ***section 43(1)*** of the ***Family Law Act,*** the court approved the following statement of **Lord MacDermott** in the case of ***J and Another v C and Others*** **[1970] A.C. 668** at **710:**

> "I think they [the words of section 1 of the Guardianship of Infants Act 1925, which are similar to section 43(1)] 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 interest of the child's welfare as that term has now to be understood. That is the first consideration because it rules upon or determines the course to be followed."

[149] It is clear, therefore, that the Court must take into account all factors which impact upon the welfare of the child when determining (1) whether to make an order of access, (2)

whether to modify such an order or (3) whether to discharge an existing order. In this regard, the Court must bear in mind the allegation of sexual abuse against the infant child. Though the Applicant denied making the allegation, for reasons which shall hereafter appear, the Court considers it important to deal with it in accordance with its duty to consider all factors which impact upon the welfare of the child.

SEXUAL ABUSE

[150] In ***Family Law*, 5th Ed. (2007)** by **Anthony Dickey** at **pages 339-340** the author opines as follows:

> "There has never been any doubt that sexual abuse of a child by a parent or other adult is an important matter to be taken into account in proceedings for an order for contact with a child. Indeed, by s. 60CC(2)(b) of the Family Law Act (Australia) the court is required to take into account as a primary consideration the need to protect the child from physical or psychological harm from being exposed to any form of abuse. However, by virtue of the fact that the best interests of the child are the paramount consideration, the fact of sexual abuse cannot by itself be decisive of the issue of contact with a child. An abusive act might have been an isolated incident, or present circumstances may make it highly unlikely that it will happen again. On the other hand, it is firmly established that contact must be denied if it would expose a child to an unacceptable risk of sexual abuse. This is so even where the court cannot make a positive finding that sexual abuse in fact occurred.
>
> Because sexual abuse is not, without more, decisive of an issue of contact with a child, it is not unknown for a person who has abused, or is suspected of having abused, a child to be allowed contact with the child – usually under strict conditions involving supervision – where this is nonetheless considered to be in the child's interests. For example, a child may still have a strong relationship with a parent who has committed this act against him or her, and the conditions for future contact by this parent with the child might prevent any opportunity for this to happen."

THE BURDEN OF PROOF

[151] The burden of proof in respect of allegations of sexual abuse is on the person alleging the abuse. In this case the Applicant has made the allegation. I have found, after analysis of the evidence of Dr. Watson, Dr. Belle, Ms. Wentt and Dr. Lashley, that she did so allege. The burden of proof, therefore, lay on her.

STANDARD OF PROOF

[152] The standard of proof is the normal civil standard on a balance of probabilities. This was established in the Australian case of ***Re W*** **(2004) FLC 93-192** where the Court stated as follows:

> "In considering an allegation of sexual abuse, the court should not make a positive finding that the allegation is true unless the court is so satisfied according to the civil standard of proof, with due regard to the factors mentioned in Briginshaw v Briginshaw …
>
> There Dixon J said:
>
> > "The seriousness of an allegation made, the inherent unlikelihood of an occurrence of a given description, or the gravity of the consequences flowing from a particular finding are considerations which must affect the answer to the question whether the issue has been proved to the reasonable satisfaction of the tribunal. In such matters 'reasonable satisfaction' should not be produced by inexact proofs, indefinite testimony, or indirect inferences".
>
> The Court continued:
>
> > "His Honour's comments have a direct application to an allegation that a parent has sexually abused a child, an allegation which is often easy to make, but difficult to refute. It does not follow that if an allegation of sexual abuse has not been made out, according to the civil onus as stated in Briginshaw, that conclusion determines the wider issue which confronts the court when it is called upon to decide what is in the best interests of the child.
> >
> > "No doubt there will be some cases in which the court is able to come to a positive finding that the allegation is well-founded. In all but the most

> extraordinary cases, that finding will have a decisive impact on the order to be made respecting custody and access. There will be cases also in which the court has no hesitation in rejecting the allegation as groundless. Again, in the nature of things there will be very many cases, such as the present case, in which the court cannot confidently make a finding that sexual abuse has taken place. And there are strong practical family reasons why the court should refrain from making a positive finding that sexual abuse has actually taken place unless it is impelled by the particular circumstances of the case to do so."

[153] Though not binding on me, I accept the wisdom of this decision and find that it is applicable and accords with our civil standard of proof. (See also ***N & S and The Separate Representative*** **(1996) FLC 92-655)**

DISCUSSION

[154] I saw and observed the Applicant and Respondent in this matter their several witnesses and the Court appointed supervisors under examination-in-chief and under cross-examination. The resolution of the issues is predicated upon the view the Court takes of the credibility of the evidence of these witnesses. I will now analyse the evidence adduced.

THE APPLICANT "MLB"

[155] The Applicant attended the counselling sessions with Dr. Lashley when the agreement for telephone contact was made. She was present in Court on the 28th July 2009 when the Court ordered such access and the provision and maintenance of, a cell phone by the Respondent to be given to the Applicant so as to facilitate the access. At the time of the Court order the Applicant was ably represented by Mrs. Shields-Searle, a senior family law practitioner, and no objection was raised to the order or any aspect of it. Neither the Applicant nor her counsel indicated that there was any ambiguity in the terms of the order. The Applicant must be taken to have fully understood the terms of the order. If one looks at the answers given in cross-examination on the issue of telephone access, it is clear that the Applicant deliberately avoided giving direct answers. When it was suggested that the Respondent wanted to play a part in the child's life, she raised her

voice to such an extent that, she had to be cautioned by the Court and by her own counsel.

[156] When asked whether the Respondent continued to express his frustration about his lack of access to and contact with his daughter, she responded "yes, I see his aggression". This was not a direct response to the question posed. I found the Applicant to be a highly articulate and intelligent young woman. I am of the opinion that she understood the questions and deliberately avoided answering the same directly. Her response to the question posed was an attempt to reinforce an opinion of the Respondent as an aggressive person.

[157] When given the Candid cream by the Respondent and told that was what he was washing "A's" private parts with, the Applicant did not ask the reason why he had to apply the cream. She never asked whether the child had, or complained of, an infection; whether the father sought medical treatment for any complaint or whether there was any diagnosis. She did not communicate with the Respondent at any time after the child's return from her trip about her condition.

[158] I am of the opinion that these enquiries would have been made by a reasonably prudent parent. This evidence must also be seen in the context that the Applicant had failed to pack adequate underwear, special cream or soap used for the child's eczema for the trip overseas. She testified that she was concerned about the Respondent's ability to care for the child, therefore, she ought to have been more careful in ensuring that the child had adequate underwear and medically prescribed items. Whilst it was reasonable for the Applicant to take the child to the doctor to have her complaint attended to, she ought, as a reasonably prudent parent, to have asked the relevant questions of the Respondent so that she could give a full history of the child's complaint to the doctor.

[159] I am also of the view, and hold, that the Applicant ought to have communicated with the Respondent or allowed or facilitated his communication with Dr. Watson so that the doctor could have had a complete picture of what the child had experienced whilst overseas. The welfare of the child, which transcends parental differences, required such communication. The order for joint custody also requires parents to consult each other with regard to medical treatment which their infant child requires. The differences between the parents ought not to have rendered such communication impossible.

[160] I accept the evidence of Rev. Dr. Marcus Lashley in his report dated 28th July 2009 that, when asked directly if she felt that the Respondent in some way abused or molested his daughter, the Applicant said "Yes." This must also be viewed against the professional opinion of Rev. Dr. Lashley, in relation to the child's hiding of her clothes and the Applicant's recounting of a similar experience, of the likelihood that the Applicant "...may be projecting what happened to her unto the child and then identifying with the child's actions so as to arrive at an explanation", a phenomenon he called "Projective Identification." I am also of the opinion that she accused the Husband of abusing the child. If she did not so accuse him, there would be no basis for Dr. Bell to report the matter to the police as a suspected case of child abuse.

[161] In addition the Applicant gave no explanation to Rev. Dr. Lashley as to why the second visitation did not take place. I have also taken into account her answers given in relation to the telephone contact between the Respondent and the child; her attitude to answering the questions which showed a callous approach to the issue of the Respondent's access by telephone and her pretence that no agreement was reached by the parties regarding such access with Rev. Dr. Lashley when the agreement was reduced into an order of Court and find, as a fact, that refused to allow the child telephone access to her father and that refusal was deliberate and calculated.

[162] Dr. Lashley offered to hold an extra counselling session free of charge and the Applicant refused to participate. He had no interest to serve as a professional psychologist. The applicant offered no explanation for her refusal of this offer which could only benefit the child and the parties. I found this to be an unreasonable position for the Applicant to take.

DR. WATSON

[163] In analysing this evidence, the Court took into account Dr. Watson's previous testimony regarding the ability of the child to travel to England with its father. In her report dated 18th December 2008 she made a diagnosis of allergic rhinitis, dehydration and respiratory tract infection which rendered the child unfit for overseas travel. Whilst her statement that she could not recall if "Mrs. H" told her that the child was a registered patient of Dr. Soo Ping Chow is accepted as factual by the Court, she was also aware, from earlier proceedings, that "A" had been seen by Dr. Jhagroo and Dr. Soo Ping Chow who would have had her medical history of eczema, allergic rhinitis from her previous examination.

These doctors are professional persons and have no interest to serve save and except that of their patients. I also accept Dr. Watson's evidence that she instructed her secretary to contact paediatricians, however, I am of the opinion that, had Dr. Watson called either of these doctors directly, she would have had a response from her professional colleagues.

[164] Dr. Watson prescribed an antifungal cream. She must have known the nature of the infection in order to do so. This, however, is not reflected in her report. Doctors are expert witnesses who owe a duty of care to their patients. They also owe a duty to the Court as expert witnesses. It is not for them to take sides. This Court can see no logical or probable reason for the non-referral of this child to one of the qualified paediatricians who had previously examined her. Thereafter, the mother could accept or decline the doctor's advice.

[165] I am also concerned with the fact that Dr. Watson referred the child to a psychiatrist (as distinct from a psychologist) for "...a psychiatric evaluation and appropriate management." in the absence of any observations of presenting psychiatric symptoms. This does not appear to me to accord with a commonsense and practical approach to the child's problem as explained to the doctor. Notwithstanding my concerns, Dr. Bryce's evidence was very useful in resolving this matter.

DR. BRYCE

[166] Dr. Bryce is an expert in the area of psychiatry. She was forthright in giving her evidence and told the Court frankly that she had had insufficient contact with the child to make any informed professional opinion. Dr. Bryce found that the child had been exposed to a traumatic stressor of some kind but that stressor was not identified.

[167] In addition, she noted that she would have liked, if time permitted, to have seen the child relate to its mother and to its father. In her report of 13th July 2009, the doctor stated:

> "...at this time I would like to confirm that "A" is but five (5) years old and the adults involved in this matter need to take serious note of her very high levels of distress and act in her best interest. Such a young child cannot be marshalled into ventilation, the passage of time alone will facilitate that, but in the meantime, everything possible needs to be done to reduce this child's level of distress and fear otherwise she is likely to be left with scars for the rest of her life".

[168] The Court found this witness to have been dispassionate in giving her report and conclusions to the Court. In the absence of sufficient evidence upon which to draw conclusions, she was frank, and refused to draw any conclusions. Her evidence helped the Court to understand the possible underlying causes of the parties conduct.

DR. BELL

[169] The post-script to the referral letter indicated that the father used Candid cream on the child's vagina when she was in Trinidad. No attempt was made to ascertain why that cream was used or what diagnosis, if any, had been made to merit the application of the cream. Similarly, there was no evidence that the child complained to the grand-mother of any abuse. The history of the presenting complaint was given by the grandmother, yet that complaint was not articulated. Further, the diagnosis of sexual abuse was made in the absence of the results of the vaginal swabs. The child's hymen was found to be intact by Dr. Bell. The doctor did not enquire why Dr. Watson's prescription had not been filled nor did she opine on the likely effect of the medication prescribed by Dr. Watson on the child's condition.

[170] Dr. Bell said that a complete history was given by the grandmother, the letter of Dr. Watson and questioning of the child. I have grave doubts about the reliability of this evidence since she admitted under cross-examination that the grandmother said there was no change in underwear, yet she did not ask about what occurred in Trinidad. In addition, Dr. Bell did not factor into her analysis of the child's condition the insufficiency in underwear for the child.

[171] When asked whether the grandmother indicated that there were good reasons for new underwear to be bought for the child in Trinidad, Dr. Bell said that that subject never came up. She was also asked whether it came up in discussions with the grandmother that the child was sent to Trinidad with an inadequate amount of underwear, she said the question was never asked or answered.

[172] Finally, the doctor said that she did not take a sample of the yellow discharge that she found since that had been done by Dr. Watson. She was awaiting the lab results to complete the report on the child. Dr. Bell made the diagnosis of sexual abuse on the 13th January 2009 after examining the child and before she received the swab reports.

[173] In her report dated the 21st February 2009, she said "please note that during the dialogue, "A" was lying partially undressed on the examination couch. Her grandmother was there". No explanation was given for the child being interviewed in a state of undress. The doctor also gave evidence that she was aware that leading questions ought not to be posed to children. The dialogue between the child and the doctor is as follows:

> "A": "every night my daddy put his finger in here." pointing to her vagina.
>
> Dr. Bell: when did your daddy start doing that?
>
> "A": every night, from the first night of the holiday"
>
> Dr. Bell: Did your daddy put his penis in your vagina?"
>
> "A": "he put it in there" pointing to the introitus (entrance) to her vagina "but I said no". "A" said 'no' loudly and with emphasis."

[174] It is clear, from this extract, that the child was asked leading questions especially in relation to whether her father put her penis in her vagina. There was no evidence that the child understood what a penis or vagina was. The whole dialogue was focussed on sexual abuse and not a dispassionate attempt to find out what occurred. The statements attributed to the child were not made to any of the other doctors save and except Dr. Bell. Dr. Bell's approach is the opposite of what Dr. Bryce suggested, namely that leading questions should not have been asked and that "...Such a young child cannot be marshalled into ventilation, the passage of time alone will facilitate that, but in the meantime, everything possible needs to be done to reduce this child's level of distress and fear otherwise she is likely to be left with scars for the rest of her life."

[175] The doctor stated that she knew that a detailed history ought to have been taken and was indeed obtained. It was given by "Mrs. H", Doctor Watson's letter and "A' herself. Yet there was also no attempt to find out about the application of the Candid cream by the father or why it was prescribed. I am of the opinion that this doctor is sufficiently experienced to have known that, in the absence of information why the cream was being used and the reason it was prescribed, that no full or detailed history had been obtained to allow for a proper diagnosis.

[176] The Court has experienced grave difficulty in reconciling this doctor's diagnosis of abuse with the factual evidence which was before her. Further, the diagnosis of sexual abuse is a quantum leap from the complaint referred to in Dr. Watson's referral letter. In the absence of a complete history and a ruling out of other possible causes of the discharge, the Court is of the opinion that, the diagnosis of Dr. Bell is precipitous and without foundation.

DR. JENNINGS

[177] This importance of this evidence is in relation to the steps a doctor would take in making a diagnosis of a child's condition. This evidence contrasts sharply with that of Dr. Watson and certainly with Dr. Bell's evidence. It reinforces the court's opinion that Dr. Bell had not carried out the appropriate enquiries and that she was precipitous in her conclusions. Dr. Jennings made no final diagnosis and confined her observations to a "suspicion."

MS. WENTT

[178] This evidence served to reinforce the presenting behavioural complaints of the child but gave no insight into the cause of the child's behaviour.

THE RESPONDENT'S CASE

EVIDENCE OF THE RESPONDENT "SCB"

[179] The Respondent appeared as an intelligent, articulate young man who is also somewhat arrogant. This can be seen in his manner of delivery and in the condescending way in which he spoke of his relationship with "Mrs. H".

[180] His relationship with "Mrs. H" is far from cordial. I am of the opinion and find that he did not assert his parental rights over his child. The primary role as care giver was passed to "Mrs. H" who, for reasons unknown, excluded the Respondent from a close and meaningful relationship with his daughter. The Applicant made no effort to ensure that the Respondent was accorded the opportunity to be a real father by ensuring that her mother did not exclude him. As the relationship between himself and the Applicant deteriorated, so too did his relationship with his mother-in-law who assumed the role of primary care giver to the child.

[181] He admitted to Rev. Dr. Lashley that he did not understand the Applicant's mental state when she suffered post partum depression shortly after the birth of "A". There is no

excuse for him not giving her the emotional support she needed save and except that he was ignorant of her condition. His refusal of her request for them to seek professional help for the relationship cannot be justified. Despite his expression of regret, he must also shoulder some responsibility for the marital breakdown.

[182] I have alluded to his arrogance. He brought a Hindu pundit into "Mrs. H's" home without first informing her and without sensitising her to the nature and purpose of the ceremony to be performed. This incident further exacerbated an already eroded relationship.

[183] He also spoke condescendingly of "Mrs. H" and described her as a 'pernickety and cantankerous woman'. He also gave evidence that he could not recall if he informed "Mrs. H" of the Court Order allowing him to take the child to Dr. Soo Ping Chow. I found difficulty accepting his answer. I am inclined to the view that he deliberately avoided answering the question directly.

[184] His evidence in relation to the steps he took to ascertain and deal with the child's problem is corroborated by Miss. T.E. When taken in conjunction with the medical evidence, his actions cannot be viewed as unreasonable. He is the father of the child and is duty bound to apply the cream to the affected area. This is not abuse in itself. I found him to be honest and forthright, for the most part, in answering the questions and he was not shaken in cross-examination. He was very credible as a witness.

[185] In relation to the allegation of sexual abuse, balancing his evidence with that of the other witnesses in this matter, there is no evidence that he abused his daughter.

EVIDENCE OF REV. DR. LASHLEY

[186] I found Dr. Lashley's evidence to have been given in a dispassionate and professional manner. He offered to facilitate another visit which was accepted by the Respondent and flatly refused by the Applicant.

[187] I saw and heard him give his evidence-in-chief and under cross-examination and found him to be a witness of truth and on whose evidence the court could rely. The importance of this evidence is to explain the mother's reaction to the child's presenting complaints in terms of her own experience. It provided an unbiased professional assessment of some of the causes of the parties' fractured relationship and the resultant animosity between them which has unfortunately affected their ability to relate to each other concerning their

child. It also underscores the assessment of Dr. Bryce and the observations and recommendations of the Court appointed supervisors of access.

EVIDENCE OF MISS T.E

[188] This evidence assisted the Court in understanding that the child's clothing was laundered with that of the other adult occupants of the Mohamed residence and its possible impact on the child's personal hygiene. The circumstances in relation to the use of the bathroom facilities and the cleaning thereof were also relevant considerations. She deposed up front that she was the fiancée of SCB. She was unshaken in cross examination and I accepted her as a witness of truth.

EVIDENCE OF MRS. MARGARET MARSHALL AND MS. DIANNE HOLDER

[189] Their evidence was of assistance to the court in understanding the child's relationship with its father at the time of the report and the recommendations which followed the report were made within their professional competencies but are not binding on the court.

[190] It appears that some misinformation was given to these supervisors in relation to the Respondent's provision of maintenance for his child but this does not taint their primary observations with respect to the supervised visits.

AFFIDAVIT EVIDENCE OF EMILY MOHAMMED

[191] Emily Mohammed is a qualified phlebotomist and filed an affidavit on 22nd July 2009. She stated that she was studying nursing and she had known "SCB" for approximately 8 years. Her husband was suffering from Colon Cancer stage 4.

[192] She deposed that "SCB", his female companion and his daughter "A" spent Christmas 2008 at their home. She stated that the child was happy but she developed a rash outside her vagina which was discovered the Saturday after Christmas. "SCB" called Miss. T.E and herself who looked at the affected area. "SCB" said he was giving the child a shower and she complained about her private part itching and burning.

[193] She tried to get her employer, a general practitioner to see the child. Due to the holidays, that proved impossible. "SCB" went to the pharmacy and returned with an ointment which was prescribed by the pharmacists. She deposed that, as indicated by the pharmacist, a likely cause of the rash was a change of soap and/or the new underwear that the child was wearing.

[194] This evidence underscored the Respondent's unsuccessful attempts to obtain medical assistance for his daughter and his resort to the assistance of a pharmacist. The evidence is consistent with that of the Respondent and that of Miss. T.E.

DISCUSSION

[195] Having reviewed the evidence, I do not find that the Applicant has discharged the burden of proving sexual abuse on a balance of probabilities. I find that there were myriad circumstances which could have conduced to the child's presenting symptoms of whichlack of adequate underwear, bathing with incorrect soaps, inability of the child to clean herself properly, lack of proper hygiene conditions in the bathroom facilities at the Mohammed residence, failure to segregate the child's clothes (particularly her undergarments) from the communal laundry and failing to pack her medication stand out most visibly.

[196] The Respondent saw himself as the breadwinner, during the marriage, and allowed the Applicant to see after the child. After his separation from the Applicant, he was excluded from attending to the child principally by "Mrs H" with whom he previously shared a good relationship and whom he and the Applicant allowed to assume a primary role in the child's life. I find that the Respondent was ill-equipped to deal with the supervision of the child's personal hygiene. This I attribute to his inexperience in dealing with the child due to his previous exclusion from attending to her bathing, medications and general personal matters.

[197] A lack of communication between the parties further exacerbated parental discord both before and after "A" visited Trinidad with her father. Meaningful communication could have obviated many of the problems created in this case, such as mistrust, misinformation communicated to the professionals and the resultant suspicion of sexual impropriety engendered thereby. I found absolutely no evidence that the Respondent sexually molested his daughter.

[198] These parties must recognise that the welfare of the child requires them to put aside their differences and communicate in "A's" best interests. The analysis of the evidence of Dr. Bryce, Dr. Jennings, Ms. Wentt, Rev. Dr. Lashley, Ms. Holder and Mrs. Marshall clearly reveals this. These are the professionals who I have found to have had no interest to serve in the matter. Any attempt to heal the discord between these parties and promote the

best interests of "A" can only now be achieved by the intervention of professional persons trained in this area.

[199] I find that "A" is not at risk in having continued contact with the Respondent. On the contrary, continued and sustained contact between "A' and the Respondent and the Applicant is in "A's" best interest. It is unfortunate that the passage of time and the discontinuation of the Court ordered supervised visits without an order terminating same now require the continuation of supervision in order to rebuild the bond between father and child. For the elimination of doubt, I reiterate that the orders that I am about to make with respect to access to the minor child are not predicated upon any finding of improper conduct on the Respondent's part. I have taken into account the observations of the professional witnesses and recommendations of the Court appointed supervisors of access in formulating the orders which I now make and which I consider to be in the best interests of the minor child "A."

DISPOSAL

[200] In the circumstances, no order is made with respect to the application in respect contempt proceedings filed on the 17th day of December, 2008. In respect of the application filed on the 13th day of July 2009, it is ordered as follows:

(1) That the Respondent do have access to the infant child on Saturday 28th September 2013 from 10:00 a.m. until 1:00 p.m. and thereafter on alternate Saturdays to be supervised by Ms. Diane Holder until further order;

(2) The costs associated with the supervised visits to be borne by the Respondent and the Applicant equally;

(3) That Ms. Holder do provide a further report on the supervised access to the court on or before Friday 6th December 2013;

(4) The parties and the minor child do attend counselling with Dr. Cyralene Bryce at such times as shall be set by Dr. Bryce and a report presented to the court on or before the 6th December 2013. The costs of the counselling sessions to be jointly borne by the Respondent and the Applicant;

(5) The Respondent to attend parenting sessions with PAREDOS in Barbados or the relevant agency in Trinidad and a report submitted to the court on or before the 6th December 2013.

It is further ordered:

(6) That the Order of the Court made on the 26th day of June 2008 which provided that during any period the said minor child is afforded access to the Respondent, the Respondent shall be at liberty to take the said minor out of the jurisdiction of Barbados at all times keeping the Applicant informed of plans and whereabouts of the said minor is suspended until further order;

[201] The Respondent's application filed 17th July 2009 is dismissed.

[202] The parties are to return to this court on 6th December 2013.

[203] Each party to bear their own costs.

William J. Chandler

Judge of the High Court