

BARBADOS

IN THE SUPREME COURT OF JUDICATURE

HIGH COURT

CIVIL DIVISION

Family Suit No: FL 0218 of 2017

BETWEEN

JASON WHITE

APPLICANT/HUSBAND

AND

CHARNELE WHITE

RESPONDENT/WIFE

Before The Honourable Madam Justice Pamela Beckles, Judge of the High Court

**2017: May 19
 June 28
 September 8**

Appearances:

Ms. Alicia Dells, Attorney-at-Law on behalf of the Applicant/Husband

Ms. Hal Gollop, Q.C., Attorney-at-Law on behalf of the Respondent/Wife

DECISION

Introduction

[1] This matter commenced by way of an ex parte application filed under a certificate of urgency dated 18th May, 2017 by Alicia Dells, Attorney-at-Law for the Applicant/Husband.

[2] The application was first heard on the 19th May, 2017 by

Justice Beckles who made the following Orders:

- “(a) That the Respondent/Wife shall be prohibited from leaving the jurisdiction until further Order of the court.
- (b) That the Applicant/Husband is permitted to serve the relevant immigration authorities and airline companies operative in this Island with a copy of this Order prohibiting the Respondent/Wife from leaving the jurisdiction until further Order of the court.
- (c) That a copy of this application and the accompanying documents shall be served on the Respondent/Wife as soon as possible.
- (d) That the matter is adjourn until Monday 22nd May, 2017 to be heard before the **Honourable Madam Justice Pamela Beckles** at 9:30 a.m.
- (e) Liberty to apply.”

[3] The substantive application concerns the custody, care and control of the minor child of the marriage J-Shawn Zaayr Omar White (the minor child). Under this application, the Applicant/Husband applies for the following orders:

- “(a) That the Applicant/Husband and the Respondent/Wife shall have joint custody of the minor child of the marriage J-Shawn Zaayr Omar White with the care and control of the said minor child vested in the Applicant/Husband.
- (b) That the Respondent/Wife shall forthwith return the minor child of the marriage J-Shawn Zaayr

Omar White, who was born on the 1st day of July, 2014, to the jurisdiction of Barbados.

- (c) That the Respondent/Wife shall be responsible for paying the airfare and the necessary travel expenses associated with the return of the said minor child to the Island of Barbados.
- (d) That the Respondent/Wife shall be prohibited from leaving the jurisdiction until she has returned and/or delivered the said minor child of the marriage to the Applicant/Husband.
- (e) That the Applicant/Husband be permitted to serve the relevant immigration authorities and airline companies operative in this Island with a copy of this Order prohibiting the Respondent/Wife from leaving the jurisdiction until the said minor child is returned to Barbados or until further Order of the court.
- (f) That the Respondent/Wife shall deliver up her passport and/or other travel documents to the Registrar of the Supreme Court within 24 hours of service of this Order.
- (g) That the Respondent/Wife shall deliver up the minor child's passport and/or other travel documents to the Applicant/Husband once the minor child is returned to this jurisdiction.
- (h) Such further Orders as this Honourable Court deems necessary.
- (i) Liberty to apply.”

[4] The parties were married in Barbados on the 18th April, 2015. The Applicant/Husband is a Barbadian and the Respondent/Wife a Jamaican. The minor child was born on the 1st July, 2014 in Jamaica

and is the only child of the marriage. The minor child has dual citizenship and resided in Barbados with the parties from on or about November, 2014 at their matrimonial home situate in Baywoods in the parish of St. James until around May 2016 when with the Applicant/Husband's consent, the Respondent/Wife took him to Jamaica with her. The minor child has been in Jamaica from then and has not returned to Barbados. However, the Respondent/Wife subsequently returned to Barbados without the minor child.

- [5] The Applicant/Husband filed an affidavit in support of his application. The matter came on for hearing on the 28th June, 2017 with the Respondent/Wife being present and represented by Attorney-at-Law, Mr. Hal Gollop, Q.C.
- [6] After hearing both parties the court made the following Orders:
- “(a) That both parties file and serve their written submissions on both points raise *in limine* by the 19th day of June, 2017.
 - (b) That the Order made by the **Honourable Madam Justice Pamela Beckles** on the 19th May, 2017 is hereby vacated.
 - (c) That the matter is adjourned for the 28th June, 2017.
 - (d) Liberty to apply.”
- [7] Written submissions with supporting authorities were filed by both parties addressing the main issue whether the court has jurisdiction to

hear the instant application. The detention of the Respondent/Wife in Barbados is no longer an issue as that Order was vacated on the 28th June, 2017.

Affidavit Evidence

- [8] The Applicant/Husband filed an affidavit in support of his application which gives some background information. Therein, he asserted that while the Respondent/Wife was pregnant with the minor child she returned to Jamaica to give birth. The Applicant/Husband stated that he subsequently visited Jamaica to attend the birth of his son.
- [9] He averred that after the birth of his son he returned to Barbados in July, 2014 and the Respondent/Wife and his son then came to Barbados in November, 2014. On her return they resided at the matrimonial property situate in Baywoods in the parish of St. James for approximately two years before her return to Jamaica to receive medical treatment.
- [10] According to him it was agreed that the child and the Respondent/Wife would return to Barbados in order for the child to begin nursery school in the upcoming school year. However, this never materialized.
- [11] The Applicant/Husband asserted that it was only when his father visited Jamaica in or around June 2016 and attempted to see the minor

child, but was denied access by the Respondent/Wife, that he realized something was wrong. He noted that communication between him and the Respondent/Wife had reduced significantly as she stopped answering his calls.

[12] The Applicant/Husband further deposed that he subsequently visited Jamaica to see his son but upon reaching the residence of the Respondent/Wife's family, she informed him that the child was with her mother in the parish of St. Mary.

[13] Subsequently, on one occasion, the Applicant/Husband was able to see his son.

[14] The Applicant/Husband contended that he tried making arrangements to see the child on his birthday in order to spend quality time with him but the Respondent/Wife informed him that she sent the child back to his grandmother's house in St. Mary.

The Applicant/Husband contended that after he realized that the Respondent/Wife was deliberately withholding his son from him, he threatened to deal with the matter legally.

[15] In his affidavit the Applicant/Husband revealed that upon his return to Barbados on 15th July, 2016, he discovered that the Respondent/Wife's belongings were removed from the matrimonial

- home and that among the missing items were the minor child's birth certificate and the Respondent/Wife immigration documents.
- [16] In or about November, 2016 the Respondent/Wife returned to Barbados and informed the Applicant/Husband that she returned to Barbados but left the minor child with her mother in Jamaica. The Applicant/Husband contended that he pleaded with the Respondent/Wife to return the minor child to Barbados but she has refused to do so.
- [17] The Applicant/Husband is of the opinion that he is able to adequately care and provide for the child and that he should be vested with the care and control of the minor child with reasonable access to the Respondent/Wife.
- [18] The Affidavit also revealed that the Applicant/Husband is fearful that if the Respondent/Wife is allowed to leave the jurisdiction that he will never see his son again.
- [19] In light of the application and affidavit in support thereof, on 19th May, 2017 the **Honourable Justice Beckles** ordered, inter alia, the Respondent/Wife not to leave the jurisdiction until further Order of the Court.

The Applicant/Husband' Submissions

- [20] The Applicant/Husband submitted that the court derives its jurisdiction from the Family Law Act, Cap. 214 of the Laws of Barbados. In particular, he asserted that pursuant to **section 19 (1)(b)(ii)** of the said Act the High Court is empowered to hear matrimonial causes instituted under the Act which constitutes matters concerning the guardianship, custody or maintenance of children.
- [21] He further submitted that with the exception of conditions or restrictions as may be contained in the Family Law Rules, the jurisdiction of the High Court may be exercised in relation to persons or things outside Barbados.
- [22] Alluding to **section 40(1)** of the Act, the Applicant/Husband submitted that where there is no court Order of the High Court with respect to the guardianship and custody of the child of the marriage, each party to the marriage is a guardian of every child of the marriage who has not attained the age of 18 years and the parties to the marriage have joint custody of each child.
- [23] The Applicant/Husband submitted that the removal of the child from Barbados to Jamaica by the Respondent/Wife resulted in the denial of his rights to guardianship and custody and a denial of the child's right to maintain contact with both parents, which is an essential element in

the promotion of the welfare of the child. He further submitted that the removal or retention of a child is wrongful if the act is contrary to the rights of custody under the law of the state in which the child habitually resides.

[24] The Applicant/Husband contended that the Respondent/Wife initially decided to leave the minor child in Jamaica without consulting him.

[25] It is the Applicant/Husband's further contention that since the Respondent/Wife removed the child from this jurisdiction, she has since returned to reside in Barbados but decided to leave the minor child who is of tender age in Jamaica with a third party.

[26] The Applicant/Husband further submitted that such actions are inimical to the welfare of the minor child and in such circumstances it is in the best interest of the child if he is vested with care and control of the minor child.

[27] The Applicant/Husband submitted that the appropriate forum for hearing this matter is the jurisdiction in which the child is habitual resident and in determining a child's habitual residence, the key consideration is the child's residence immediately before the wrongful removal or retention. In support of this submission counsel for the Applicant/Husband referred to the case of Re S (A minor) (Abduction) (1991) 2 FLR 1CA.

- [28] Based on the learning of *Downer v Downer BB 2008 HC 9*, Counsel for the Applicant/Husband equated habitual residence with ordinary residence and submitted that a person's habitual residence may change from time to time once a settled purpose is shown to stay in a new country.
- [29] Additionally, it was submitted that although Jamaica is the original residence of the Respondent/Wife, she voluntarily adopted Barbados as her home and resided here with the minor child and the Applicant/Husband as a family unit. Thus at the material time she demonstrated settled intention to stay in Barbados to raise a family with the Applicant/Husband. He added that the Respondent/Wife not only settled but developed such a strong connection to Barbados that she decided to remain a resident here despite the breakdown of her marriage.
- [30] The Applicant/Husband submitted that the court may on the principles of the doctrine of *forum non conveniens* exercise its discretion to stay the matter if it finds that Barbados is not the appropriate forum to hear the matter. However the Applicant/Husband noted that in so doing, the court must be satisfied that when the case is tried in a different forum it will be in the interest of all the parties and to the ends of justice.

[31] The Applicant/Husband submitted that all the parties involved have strong connections to Barbados and therefore this court is the appropriate forum to determine the matter.

The Respondent/Wife's Submissions

[32] Counsel for the Respondent/Wife submitted that the minor child in question is not the subject of any order in relation to custody or access either in Barbados or overseas. Thus if the court determines that it is necessary to exercise its jurisdiction on the basis that there is reason to believe that the welfare of the child is in jeopardy, it must be cognizant that the making of any such order is contingent on an overseas custody order already being in place. He added that legislation does not support the making of such an Order without more.

[33] Counsel asserted that the child's habitual residence is critically important if the court decides to exercise its discretion to hear the matter.

[34] Like his counterpart, counsel noted that there is no difference between the concept of ordinary residence and habitual residence. He added that whether a person is habitually resident in a particular country is a question of fact to be decided on the circumstances of the particular case.

- [35] Counsel for the Respondent/Wife further stated that before a person can be habitually resident in a country he must be resident there, however, habitual residency does not require a person to be physically present in the country at all times.
- [36] Counsel noted that the requisite period in determining habitual residency is not fixed. He added that there must be a degree of settled intention or purpose – the longer the period of residence, the easier it is to show a settled intention.
- [37] Counsel submitted that the child is neither habitually resident in Barbados nor was present in Barbados when the current application was made and therefore this court does not have jurisdiction to hear the matter.

Issue

- [38] Whether the High Court has jurisdiction to hear the Applicant/Husband's application under the circumstances?

The Law

- [39] **Section 19** of the Family Law Act, Cap 214 outlines the general jurisdiction of the High Court. It provides

“19 (1) The High Court has jurisdiction in

- (a) Matrimonial causes instituted or continued under this Act;
- (b) Matters concerning

- (i) The adoption of children,
or
 - (ii) The guardianship, custody
or maintenance of children;
and
 - (c) Matters in respect of which
jurisdiction is conferred on it by any
other enactment.
- (2) Subject to such restrictions and conditions, (if any) as are contained in the rules, the jurisdiction of the High Court may be exercised in relation to persons or things outside Barbados.”

[40] It must be noted that in the instance case the minor child is absent from the jurisdiction, but based on the above, the Act is applicable in circumstances such as those in the instant case.

[41] **Section 20** addresses the institution of proceedings under the said Act and stipulates that

- “20 (1) Subject to the Part, a person may institute
- (a) a matrimonial cause under this act in the High Court; or
 - (b) a matrimonial cause under this Act, not being proceedings for principal relief in the court of summary jurisdiction
- ...
- (2) Proceedings within paragraph (a) to (l) and (k) of the definition of “matrimonial cause” in section 2 (1) other than proceedings for a decree of dissolution of marriage, may be instructed under the Act; if

- (a) either party to the proceedings is a citizen of Barbados at the date on which the proceedings are instituted in the court;
- (b) either party to the proceedings is present in Barbados at the date; or
- (c) the proceedings relate to a child of the parties and the child is present in Barbados at that date.”

[42] In the case at hand, the Applicant/Husband is a Barbadian citizen and both himself and the Respondent/Wife were in Barbados when the current proceedings were instituted even though the minor child was absent from the jurisdiction as stated previously.

[43] The terms “matrimonial cause” is defined in **section 2(1)** of the Act to mean any of a number of type of proceedings and includes

“(d) proceedings between the parties to a marriage in respect of

- (i) the maintenance of one of the parties to a marriage, or
- (ii) the custody, guardianship or maintenance of, or access to a child of the marriage;

...

(l) proceedings between the parties to a marriage for an order or injunction in circumstances arising out of the martial relationship...”

[44] In addition to statutory jurisdiction, the court may also exercise its inherent jurisdiction as “*parens patriae*” as provided by the Supreme Court of Judicature Act, Cap 117A of the Laws of Barbados. The term “*parens patriae*” was discussed in the Jamaican case of *Richards v. Richards JM 2008 SC 93*, where the court had to determine whether it had jurisdiction to hear the matter in circumstances where the Applicant/Mother had taken the child out of the jurisdiction.

[45] **Brook J** alluded to the learning in *Harbin v Harbin [1957] 1 All E.R. 379* where the children’s father had kidnapped them and taken them out of the court’s jurisdiction. Sachs, J. had this to say at page 383:

“Whatever then might in due course prove to be the appropriate order as regards the custody and care and control of these children, on the evidence before me there is nothing that should deflect the court from its normal practice of restoring, so far as it can, the position to what it was before the husband kidnapped these children. When one is dealing with a person or persons of the resources of this particular husband...it makes no difference whether the children happen to be in a different country from their mother...”

[46] **Sachs J.** also recognized the case of *Hope v. Hope (1854) 4 DC G.M.&G.328, 43 AER 534* as “the leading authority on the inherent jurisdiction of the High Court to deal with the custody of any child who is a British subject...” In that case **Lord Cransworth** in explaining the basis for the jurisdiction noted the following at page 344 – 345:

“The jurisdiction of this court which is entrusted to the holder of the Great Seal as the representative of the Crown, with regard to the custody of infants rests upon this ground, that it is the interest of the state and of the sovereign that children should be properly brought up and educated; and according to the principle of our law, the sovereign as “*parens patriae*”, is bound to look to the maintenance and education (as far as it has the means of judging) of all his subjects.... But a more difficult point has been raised, namely, putting aside the question as to the place of birth, how can the jurisdiction be exercised in the case of an infant who at the time the jurisdiction is asked is not within the jurisdiction of the court? This is a more plausible objection than the one based on the mere place of birth, but it is not of a material nature, as bearing upon the existence of the jurisdiction. It may be that the child is placed under such circumstances that the jurisdiction of the court cannot be exercised over it because no order I might issue could be enforced; but in that case there is not a want of jurisdiction, but a want of the power of enforcing it... therefore it is putting the matter on a wrong footing to say, because the child is out of the jurisdiction, that the court has no jurisdiction.”

- [47] Therefore after applying the principles expoused in *Hope v. Hope*, the court in *Richard v. Richards* concluded that it had jurisdiction to hear the matter on the basis that the child in question is a Jamaican citizen and therefore subject to the inherent jurisdiction of the court notwithstanding that the child was born in the United States and at the time of the proceedings resided there.
- [48] Applying this learning to the instant, case, it is clear that the minor child being the offspring of a Barbadian parent, his father, is a citizen of Barbados and therefore subject to the inherent jurisdiction of this

court, despite the fact that he was born in Jamaica and currently resides there.

[49] Jurisdiction to hear a matter may be founded in the court of the place of the child's ordinary residence, as well as the court of the place where the child is physically present. In the case of *Neilsen v. Neilsen* [1971] 1 O.R. 541 – 557 **Galligan J.** concluded that the child's ordinary residence" is the last place in which the child resided with his parents and that ordinary residence cannot be changed by the surreptitious removal of the child from the place of ordinary residence.

[50] In the Canadian case of *Re Allison v. Allison* 1979 CanL11 1623 (ON SC) the court refused to accept domicile as a test of jurisdiction but rather, preferred the test of ordinary resident. In support thereof, the court referred to the case of *Re P (G.E.) (An Infant)* [1965] 1 Ch. 568 where the court dealt with the question as to what is ordinary residence of a child of tender age. This case involved a child ordinarily resident in England but taken to Israel by his father without the consent of his mother. The Court of Appeal held that since the child's ordinary place of residence was England, notwithstanding the fact that he had been taken from the country the court had jurisdiction over him.

[51] At page 585 – 586 **Lord Denning** stated the following:

“I hold therefore that the Court of Chancery has jurisdiction to make an order for the custody, education and maintenance of an alien child who is ordinarily resident in this country, even though the child is for the time being absent from this country or taken out of it. But then we are faced with the question, what is the ordinary residence of a child of tender years who cannot decide for himself where to live, let us say under the age of 16? So long as the father and mother are living together in the matrimonial home, the child’s ordinary residence is the home – and it is still his ordinary residence, even while he is away at boarding school. It is his base, from whence he goes out and to which he returns. When father and mother are at variance and living separate and apart and by arrangement the child resides in the house of one of them – then that home is his ordinary residence, even though the other parent has access and the child goes to see him from time to time. I do not see that a child’s ordinary residence, so found, can be changed by kidnapping him and taking him from his home, even if one of his parents is the kidnapper. Quite generally, I do not think a child’s ordinary residence can be changed by one parent without the consent of the other. It will not be changed until the parent, who is left at home, childless, acquiesces in the change, or delays so long in bringing proceedings that he or she must be taken to acquiesce.”

[52] Based on the learning in *Neilsen v. Neilsen (supra)* the court found Ontario Canada to be the children’s place of ordinary residence and as such it had jurisdiction to hear the matter. It did not matter whether the mother took the children unintentionally to Arkansas – the court was of the view that she could not change the children’s residence without the father’s consent.

[53] It would seem that in the instance case jurisdiction does exist founded on ordinary residence. It must be noted that when the child was removed from the jurisdiction it was with the father's consent and they were no proceedings instituted by either of the parents. Whether the consent was obtained genuinely or through trickery or deception is unclear, but what is certain from the father's evidence is that it was not his intention for the child to remain outside of the jurisdiction indefinitely or permanently and therefore he did not consent to the child's change of residence.

[54] In Halsbury's Law of England/Conflict of Laws Volume 19 (2011) the term "habitual residence" (of children) is referred to in the following manner:

"Habitual residence cannot be acquired through dependence. Under English law, the habitual residence of a child under 16 is generally determined by the parent or parents who bear the responsibility. Where the child and both parents are living together, the child shares the habitual residence of the parents and this cannot be changed without the consent of both parents or by a court order. The habitual residence of a child is not changed where both parents and the child move to a different country but only one parent acquires a new habitual residence. Where parents separate, the child's habitual residence will follow that of the primary carer with whom he relies. However, a person without parental rights cannot change a child's habitual residence simply by taking him to a different country. The habitual residence of a child may be changed without there being corresponding change in the parent's habitual residence, but a strong burden is placed upon the parent to establish

such a change. The question of habitual residence of a child is not always determinable by reference to the combined intention of the parties; it ultimately depends upon whether, in all the circumstances, it can properly and realistically be said that the child is habitually resident in a country.”

The court agrees with counsel for the parties that based on the learning there is no difference between the term “ordinary residence” and “habitual residence”.

Welfare of the Child

[55] **Section 8** of the Minors Act, Cap 215 outlines the principles upon which a court may determine the question of custody or upbringing of a child. The section stated:

“Where in any proceedings before the court, the custody or upbringing of a minor or the administration of any property belonging to or held on trust for a minor, or the application of the income thereof, is in question, the court, in deciding that question, shall regard the welfare of the minor as the first and paramount consideration and shall not take into consideration whether from any other point of view the claim of the father or any right at common law possessed by the father, in respect of such custody, upbringing, administration or application, is superior to that of the mother or the claim of the mother is superior to that of the father.”

[56] **Section 43 (1) (a)** of the Family Law Act also provides:

“43 (1) In proceedings in respect of the guardianship or custody of or access to children of a marriage or union;

(a) The court shall regard the welfare of the child as the first and paramount consideration.”

[57] The “welfare principle” was elucidated by **Lord MacDermott** in *J.V.C [1969] 1 All E.R. 779* where he stated:

“...it seems to me that they must mean more than that the child’s welfare is to be treated as the top item in a list of items relevant to the matter in question. I think they connote a process whereby, when all the relevant facts, relationships, claims and wishes of parents, risks, choices and other circumstances are taken into account and weighed, the course to be followed will be that which is most in the interest of the child’s welfare.... That is of first consideration because it is of first importance and the paramount consideration because it rules upon and determines the course to be followed.”

[58] In *Pierides v. Cole No. 37 of 2017 (unreported)* **Reifer J.** cited *Condon v. Condon BB 2007 HC 31* where **Goodridge J.** as she then was, addressed the issue of whether it was in the best interest/welfare of the minor child that he be returned to the UK as requested by the Applicant or be allowed to remain in Barbados.

[59] There, **Goodridge J.** opined that in determining this issue, the court shall have regard to the welfare of the minor as the first and paramount consideration and shall not take into account whether from any point of view that claim of the father is superior to that of the mother. The court also endorsed the statements of **Lord MacDermott** in *J V.C supra* as the applicable law in this jurisdiction.

[60] Similarly, the courts in Jamaica embrace the welfare principle. **Section 7** of their children (Guardianship and Custody) Act is in *pari materia* with **section 8** of our Minors Act. The manner in which the court should approach the question of jurisdiction was outlined by **Harrison JA** in *Forsythe v. Jones SCCA 49 of 1999* in the following terms:

“A court which is considering the custody of a child, mindful that its welfare is of paramount importance must consider the child’s happiness, its moral or religious upbringing, and social and educational influences, its psychological well-being and its physical and material surrounds, all of which goes towards the true welfare. These considerations, although the primary ones, must also be considered with the conduct of the parents, as influencing factors in the life of the child and its welfare.”

[61] In *Williamson v Williamson JM 2008 CA 58 (unreported)* the court in considering the better court to deal with the custody of the child in question stated that the doctrine of forum non conveniens may be a relevant consideration in the choice of a venue. This doctrine permits the court of the country in which the child is found to entertain jurisdiction, if the welfare of the child demands that that court is best suited to meet the ends of justice. However there are “cases in which the supreme interest of a child dictates that he or she shall be speedily returned to the country from which he or she was taken and that the court of that country determine the question of his or her custody and

upbringing and the doctrine of forum non conveniens is rendered inapplicable.”

[62] Thus in determining which court best suits the best interest of the child it goes without saying that “the welfare of the child is the primary and paramount consideration. It supersedes all other considerations.”

Disposal

[63] What then are the circumstances in this case?

- (a) The minor child has dual citizenship and is therefore a citizen of Barbados by descent and a citizen of Jamaica by birth.
- (b) He is currently residing in Jamaica and has been there for the past year.
- (c) He is three years old but was residing with both parents at the matrimonial home in Barbados before going to Jamaica in May 2016.
- (d) The Applicant/Husband on the 18 May, 2017 filed for custody, care and control of the minor child, amongst other things.
- (e) The Respondent/Wife was in Barbados on the 28th June, 2017 and appeared in court represented by counsel. At this time objection was raised with respect to the jurisdiction of this court to hear the application on the basis that the child was not within the jurisdiction.
- (f) There is no evidence as to what is the Respondent/Wife’s intentions – does she intend to remain in Barbados whilst the minor child remains

in Jamaica, or does she intend to return to Jamaica and take up residency there with the minor child.

[64] It would seem however that the marriage has broken down and that the parties are now separated and therefore a determination has to be made with respect to the custody, care and control of the minor child. Ideally it would be in the best interest of the minor child if his parents could attempt to amicably resolve this issue, however and understandably so there may be some level of mistrust between the parties at this stage. However it is hoped that with time the trust can be regained and that the relationship between the parties will improve for the benefit of the minor child.

[65] In the case under review it is clear that both Barbados and Jamaica have jurisdiction to deal with the issues presented here. The legal systems of both countries closely correspond and it is because of this fact that some difficulty arises in determining which of these jurisdictions is best suited for deciding the question of the custody of the minor child. If it is the intention of the Respondent/Wife to reside in Jamaica with the minor child then the appropriate forum for dealing with this matter would be Jamaica where the minor child is currently residing. If however it is the intention of the respondent/Wife to reside in Barbados, it would not be in the child's best interest to be left in Jamaica to be raised by someone other than his parents and the

appropriate forum would be Barbados to allow both parents to play an important part in his life and upbringing.

[66] The Respondent/Wife is therefore afforded the opportunity to file and serve an affidavit in response to the Applicant/Husband's affidavit within fourteen (14) days of the date of this Order addressing the issues raised above.

PAMELA A. BECKLES
Judge of the High Court