[2021] JMCA App 35

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CIVIL APPEAL NO 2021CV00094

BETWEEN	**CW**	**APPLICANT**
AND	**AW**	**RESPONDENT**

Conrad George and Andre Sheckleford instructed by Hart Muirhead Fatta for the applicant

Kevin Williams instructed by Grant, Stewart Phillips & Co for the respondent

22 and 23 December 2021

IN CHAMBERS

BROOKS P

[1] Mr CW has filed an appeal against an order by a judge of the Supreme Court, delivered on 20 September 2021, in which the learned judge granted sole custody, care and control of Mr CW's four-year-old son (referred to as 'C' or 'the child'), to Mrs AW, who is C's mother. The learned judge also granted Mrs CW permission to emigrate to England with the child. The parties were once married, but the marriage was short-lived and they have since divorced. Mr CW has now applied for a stay of execution of the learned judge's order, and an injunction restraining the removal of the child from Jamaica, pending the hearing of the appeal. The names of the parties and of the child have been withheld in order to conceal C's identity and protect his privacy.

[2] Mr CW contends that although the learned judge did grant him supervised access to C, that access would be of little practical benefit if C is in a faraway land. On the contrary, Mrs AW is only in Jamaica because she was married to Mr CW. She is employed in Jamaica, but her parents are in England. She plans to live with them when

she returns there. It is also said that her support system, such as friends and other family members are in England. While she is in Jamaica, she is dependent on Mr CW.

[3] The personal strains on both sides are plain, and the task at this stage is to determine which of the parties would suffer more irremediable harm arising from a ruling for or against the application.

The background to the appeal

[4] Mrs AW (then a single woman) met Mr CW while she was on a visit to Jamaica. They became romantically involved and eventually married. The parties divorced in 2020, after less than four years of marriage, and while C was still an infant. The marriage ended in acrimony and, unfortunately, that situation persists.

[5] Even before the divorce was finalised, Mrs AW applied for the orders for sole custody and other consequential orders. Mr CW contested the application. The respective parties filed numerous affidavits. The learned judge also had the benefit of psychologists' reports and a probation officer's report. After considering the application and the material provided, the learned judge made the following orders:

> "1. [Mrs AW] is granted sole custody, care and control of the child [C]...
>
> 2. [Mrs AW], is permitted to emigrate to England with the child at any date after January 2, 2022.
>
> 3. [Mr CW] is granted supervised access to [C] while he remains in Jamaica every Friday between the hours of 2:00pm and 6:00pm and every Saturday and Sunday between the hours of 9:00 am and 4:00pm. There shall be no overnight visits.
>
> 4. [Mrs AW] is to employ a nanny from a reputable agency for the purpose of these visits within fourteen days of this order, and the cost of these services is to be borne solely by [Mr CW], failing which [Mr CW] is permitted to employ a nanny from a reputable agency and the cost of such services is to be borne solely by [Mr CW].

5. [Mr CW] is to pick up [C] at a location arranged by [Mrs AW] to facilitate these visits.

6. [Mr CW] is granted supervised access to [C] while in England for a period of two hours per day at the end of each school day during the school term for no more than a period of two weeks during any school term and [Mr CW] shall give two weeks written notice of his planned visits.

7. [Mrs AW's parents] are permitted to act as supervisors for these visits. In the event that they are unable or unwilling to do so a Nanny or other suitable person is to be employed by [Mrs AW] for this purpose and the cost of such services shall be borne by both parties equally.

8. [Mr CW] is granted supervised access on half of all summer holidays and every other Easter and Christmas break commencing February 2022 and these visits are to be supervised by a Nanny or any other suitable person employed by [Mrs AW] and the cost of such services shall be borne by both parties equally.

9. [Mr CW] is to pay to [Mrs AW] the sum of Eighty Thousand Dollars for maintenance for [C] commencing the 30th of September 2021 in addition to half medical and optical expenses and half educational expenses.

10. [Mrs AW] shall provide through her attorneys the relevant bank account details to facilitate the maintenance payments.

11. Liberty to apply.

12. [Mrs AW's] attorney-at-law shall prepare[,] file and serve this order."

[6] Mr CW's grounds of appeal state:

"a. the learned trial judge misdirected herself on the evidence of the expert witnesses on the question of unsupervised access;

b. the learned trial judge misdirected herself on the evidence of the expert witnesses on the question of [Mr CW's] parenting skills;

c. the learned judge misdirected herself on the meaning and effect of a 'no contest' plea in the state of Florida, and placed inordinate emphasis on the said misconstruction;
d. the learned judge misdirected herself in treating the 'no contest' plea in Florida as dispositive of the questions of domestic abuse raised by [Mrs AW];
e. the learned judge misdirected herself by failing to pay any weight, or sufficient weight, on the fact that several domestic abuse charges she raised against [Mr CW] were not pursued in Florida;
f. the learned judge failed to pay due regard for the contemplated circumstances under which the relevant child will be residing, should [Mrs AW] relocate to England with the said child;
g. the learned judge failed manifestly to have regard to evidence of [Mr CW's] finances and employment status, and the consequent unworkability of the order with respect to [visitation];
h. the learned trial judge erred in failing properly to consider and/or interpret the evidence before her;
i. the learned judge failed manifestly in properly exercising her discretion by misdirecting herself on the evidence, and coming to demonstrably wrong and aberrant conclusions."

The application for stay of execution and injunction

[7] Mr CW's present application asks for the following orders:

"1. a stay of the orders made in the Supreme Court by [the learned judge] on the 20th day of September 2021 ('the Order');

2. further an injunction restraining [Mrs AW] from relocating to England with the minor child [C], or causing or procuring that the said child be transported outside of the jurisdiction, without the consent of [Mr CW], until the determination of the appeal herein;

3. cost to [Mr CW];

4. such further or other relief as the court deems fit."

[8] Mr George, on behalf of Mr CW, pointed out that although the notice of application is worded broadly and seeks a stay of the entire order made by the learned

judge, and an injunction to prevent C from leaving the jurisdiction, the focus of the application is order number 2, which allows Mrs AW to emigrate with the child.

[9] The approach to the application will follow the, now established, route for applications for stays of execution. In this particular case the method to be used mirrors closely the principles to be applied in assessing applications for injunctions. The steps involved are:

a. determining whether there is some merit in the appeal;
b. determining whether damages will be an adequate remedy;
c. determining, in the event that damages are not an adequate remedy, whether there is a risk of irremediable harm to the child (whose welfare is the primary focus), or to one party or the other, depending on the order made.

[10] This approach is intended to conform with the guidance given by Phillips LJ in in **Combi (Singapore) Pte Limited v Ramnath Sriram and Sun Limited** [1997] EWCA 2164 ('**Combi**'). The learned judge, on this approach, expressed himself thus:

> "In my judgment the proper approach must be to make that order which best accords with the interest of justice. **If there is a risk that irremediable harm may be caused to the plaintiff if a stay is ordered but no similar detriment to the defendant if it is not, then a stay should not normally be ordered**. Equally, if there is a risk that irremediable harm may be caused to the defendant if a stay is not ordered but no similar detriment to the plaintiff if a stay is ordered, then a stay should normally be ordered. **This assumes of course that the court concludes that there may be some merit in the appeal. If it does not then no stay of execution should be ordered**. But where there is a risk of harm to one party or another, whichever order is made, the court has to balance the alternatives in order to decide which of them is less likely to produce injustice...." (Emphasis supplied)

That guidance has been approved by a number of cases in this jurisdiction, including **Symbiote Investments Limited v Minister of Science and Technology and another** [2019] JMCA App 8 (at paragraphs [42]-[43]).

Whether the appeal has any merit

[11] In considering the issue of the merits of the appeal, the following issues, which are raised by the grounds of appeal, have been identified:

a. Whether the learned judge misdirected herself on the experts' evidence (grounds a and b);
b. Whether the learned judge misdirected herself on the domestic abuse proceedings in Florida (grounds c, d and e);
c. Whether the learned judge sufficiently considered the living conditions of C if he relocates to England (ground f);
d. Whether the learned judge considered Mr CW's financial ability and the feasibility of visiting C in England (ground g);
e. Whether the learned judge properly considered the evidence that was before her (grounds h and i).

Whether the learned judge misdirected herself on the experts' evidence (grounds a and b)

[12] Mr George submitted that Mr CW's appeal has some prospect of success. He contended that the learned judge arrived at findings that were contrary to the evidence, including the expert evidence. He argued that the learned judge misunderstood the experts' reports when she ruled that the expert evidence:

a. recommended that Mr CW should only have supervised access to C; and
b. indicated that Mr CW did not have the requisite parental skills for unsupervised access to C.

[13] He also argued that the learned judge erred when she found that based on the previous court orders, Mr CW was only granted supervised access to C. Mr George submitted that the experts recommended partial supervised and partial unsupervised

access to C. He referred to Dr Morgan's reports dated 28 July 2020 and 20 September 2020. He also added that Dr Daley's report expressed that the need for supervision was as a result of Mr CW's home environment, not his parenting skills. He averred that previous judges granted Mr CW unsupervised access to C.

[14] Mr Wiliams, on behalf of Mrs AW, argued that the appeal does not have a real prospect of success. Mr Williams further argued that the learned judge's ruling was consistent with Dr Daley's report dated 19 April 2021, which recommended that a nanny be present at all times during Mr CW's visit with C. Mr Williams added that, during the trial, Dr Daley indicated that Mr CW needed to develop parental skills before he can have daily care and control of C. Mr Williams highlighted that the learned judge found that Mr CW did not participate in these classes and Mr CW did not challenge this finding.

[15] It is critical to the result of this application to note that there is no contest that Mrs AW is a suitable parent for the child, who has spent his entire life with her as his primary caregiver. The learned judge said, in this regard, at paragraph [18] of her judgment:

> "By his own evidence [Mr CW] has indicated that there is no great concern with [Mrs AW] maintaining care and control of [C]. There is also no evidence before the court that [C] is not receiving quality care, neither is there any evidence that he has been mistreated by his mother. The overall opinion of the experts is that she is a good parent and that the child is well adjusted and doing well in school."

[16] On the contrary, the learned judge found that Mr CW should only have supervised access to C. She said at paragraph [19]:

> "The same cannot be said about [Mr CW]. Although the experts concluded that he loved his son, the recommendation at this time is that he is to continue to have only supervised access to him until he completes parental counselling courses. Following which he will be reassessed. At this time therefore, he is not in a position to have daily care and control of [C]. The two appointed court experts agreed on that issue and I have accepted their evidence in that regard."

[17] There is support for Mr George's complaint. Dr Morgan, one of the psychologists, initially recommended that Mr CW's access to the child be supervised. In her third (of four) report, dated 20 July 2020, Dr Morgan recommended, in part, that Mr CW should be "gradually given the chance to become the father that he wishes to be". To that end, Dr Morgan recommended that Mr CW could be allowed some unsupervised access while maintaining some unsupervised access. In her last report, dated 25 September 2020, Dr Morgan said, at point number 4 of her recommendations:

> "That as of December 1, 2020, upon my approval, Mr CW be allowed to have unsupervised access to his son from Saturday at 9am to Sunday evening at 6pm [sic]."

There is no evidence that Dr Morgan ever gave the approval, which she established as a precondition to unsupervised access. It cannot be denied, however, that some unsupervised access was already recommended.

[18] The other psychologist, Dr Daley, also recommended that Mr CW be allowed to have access to C, but that a nanny should be present at all times.

[19] The learned judge was, therefore, in error in stating that the psychologists had stated that there should only be supervised access. It is, however, not fatal to her analysis or conclusion. There is another aspect to paragraph [19] of the learned judge's judgment. Neither psychologist recommended that Mr CW could have daily care and control of C. Mr CW was recommended to have counselling for certain issues. It was open to the learned judge to extrapolate from the reports that the experts did not find him a suitable candidate for daily care and control. The learned judge's error is not fatal to the ultimate result in this case. There is no obvious miscarriage of justice exposed by these grounds.

<u>Whether the learned judge misdirected herself on the domestic abuse proceedings in Florida (grounds c, d and e)</u>

[20] A major issue between the parties is a complaint that Mrs AW made in Florida, in the United States of America, against Mr CW. She alleged that he physically abused her. The complaint was investigated by the Broward County Sherrif's Office and placed

before the county court as case of domestic violence. It is said that Mr CW pleaded "no contest" to the charges. The documentation shows that he was placed on probation. The probation order states in part:

> "It is ordered and adjudged that the ADJUDICATION OF GUILT IS HEREBY WITHELD and that you [Mr CW] are hereby placed on probation for a period of 12 month(s) under the supervision of the Seventeenth Judicial Circuit, Broward Sherriff's Office Probation Division." (Uppercase text as in original)

[21] Mr George argued that the learned judge improperly considered Mr CW's plea of *nolo contendere*, that is, no contest, in proceedings in Florida, as a finding of guilt. The error, he contended, is because the *nolo contendere* is not a guilty plea or a judicial order by the court. Instead, he advanced, it is a deal reached between the parties, when a defendant does not wish to incur the cost of a trial. That deal, learned counsel submitted, cannot be used to determine a person's culpability. Additionally, Mr George argued that the learned judge did not appreciate that Mrs CW withdrew many of the domestic abuse charges she brought against Mr CW in Florida. Mr George relied on **Dines and others v Director of Public Prosecutions** [2020] EWCA Crim 552 for his submissions on the "no contest" point.

[22] The complaints in this regard have no merit. As Mr Williams correctly pointed out, there is nothing in the learned judge's judgment to suggest that she used the plea of no contest to determine that Mr CW committed acts of domestic violence. It is true that the learned judge placed great stress on the issue of domestic violence in the relationship between these parties and that she found that it can be a contributing factor in determining the best interests of the child, but nowhere does she make a finding in respect of the incidents in Florida. She relied, instead, on events which occurred after that incident. She said, in part, at paragraph [29]:

> "…I observed [Mrs AW] as she gave her evidence and I found her to be a truthful witness. I accepted her evidence that [Mr CW] had been [physically] and mentally abusive towards [sic] her subsequent to the incident in 2017 [in Florida]. I find and accept on a balance of probabilities that [Mrs AW] has been a victim of domestic violence at the hands of [Mr CW]."

[23] These grounds have no merit. There is consequently no need to examine the case that Mr George cited.

<u>Whether the learned judge sufficiently considered the living conditions of C if he is relocated to England (ground f)</u>

[24] Mr George submitted that the learned judge contemplated C's welfare as a secondary consideration. He argued that the learned judge did not take into consideration Mr CW's offer of an apartment in Saint Andrew for Mrs AW and C to live while in Jamaica. He contended that the concerns Mrs AW has with the apartment (an inadequate boundary wall) can be easily resolved. That accommodation, he submitted, is a better option than sharing a one-bedroom apartment with her parents in East Croydon, London, which is social housing.

[25] Learned counsel also stressed that Mrs AW has not secured employment in England, but is employed in Jamaica, and benefits from a maintenance order in Jamaica and the support of family members in Jamaica, from both his side and hers. He submitted that Mrs AW has family and friends in Jamaica. Mr George also submitted that C's welfare would be better served if he remained in Jamaica.

[26] Mr Williams stated that the learned judge compared the accommodation in Jamaica with the one in England, based on the size. Learned counsel argued that the authorities have shown the modesty of accommodation is not a determinative factor in deciding custody, care and control of a child. He argued that there are other relevant factors which are used to determine what is in the best interest of a child. Counsel cited **Forsythe v Jones** (unreported), Court of Appeal, Jamaica, Supreme Court Civil Appeal No 49/1999, judgment delivered 6 April 2001 ('**Forsythe v Jones**'). Learned counsel also added that there was no evidence that the best interests of the child would not be attained if he lives in Croydon.

[27] It is true that the learned judge gave short shrift to the complaint about the accommodation that Mrs AW proposed for the child. In this regard she said at paragraph [56] of the judgment:

> "[Mrs AW's] evidence is that if the application is granted she will reside with her mother and father at their one-bedroom

> flat in Croydon. She has never visited them there before, however, it is a good neighbourhood and quite safe and secure. The objection of Counsel [for Mr CW at that time] is the size of the apartment. While living in Jamaica she resides in a room in the home of her Aunt. She and [C] share that room together. What then is the difference? I cannot find any."

[28] It may be that Mr CW's complaint was restricted to the size of the accommodation but the learned judge was not constrained by the precision of the complaint, in considering the accommodation for the child. The fact that there would be four people living in a one-bedroomed flat, is a reason for pause. It may be more an issue for Mrs AW, as an adult, but her comfort and mental attitude, as the learned judge correctly identified in another context, are relevant factors in determining C's best interest.

[29] The issue is, however, not determinative of the award of custody, care and control and the location of the child's residence. The point was made in **Forsythe v Jones**, where P Harrison JA (as he then was) quoted from the judgment of Smith JA (as he then was) in **Stanley Clarke v Madge Carey** (1971) 18 WIR 70 at page 79:

> "It would be very unfortunate indeed if the idea was put out in Jamaica that a well-to-do father can take away and deprive the mother of an illegitimate child of the custody of her child merely because he is financially better off than she is and able better to provide for the child's material welfare. A child's physical comfort is, however, an important consideration when deciding what is in the child's best interest. **A child can be made comfortable in a poor home though he might be more comfortable in a rich one. And if the comfortable poor home is his mother's (in the case of an illegitimate child) it would be difficult, if not impossible, to justify an order removing him to a rich home**." (Emphasis supplied)

[30] Even if the learned judge erred in this regard, the error would not have been fatal to her overall finding of where C's best interest lay.

Whether the learned judge considered Mr CW's financial ability and the feasibility of visiting C in England (ground g)

[31] Mr George submitted that the learned judge failed to consider that the costs to Mr CW to visit C in England would be a significant increase in the cost of access to C, and Mr CW does not have the resources to meet that expense. Additionally, learned counsel argued that Mr CW is employed to someone else and so would not have sufficient vacation time to undertake the access periods that the learned judge had ordered.

[32] This expense, learned counsel stressed, would adversely impact the relationship between Mr CW and C. This situation, counsel contended, is made worse by the fact that Mrs AW does not allow Mr CW to speak to C on the telephone.

[33] Mr Williams asserted that the learned judge took Mr CW's finances into account and made orders permitting him to visit C in England. Learned counsel argued that the contention that it would be difficult for Mr CW to get leave to travel to England was not evidence that was placed before the court below. Learned counsel advanced that Mr CW's evidence in the court below was that he was employed, had savings and was prepared to give an undertaking as to damages. He argued that there was no evidence that Mr CW could not visit C in England. Learned counsel suggested that Mr CW could utilise technology to communicate with C.

[34] Mr Williams invited the court to consider that Mrs AW's relocation to England was in her best interest and, accordingly, was in the best interests of the relevant child. He referred the court to **BP v RP** (unreported), Court of Appeal, Jamaica, Supreme Court Civil Appeal No 51/2008, judgment delivered 30 July 2009.

[35] Mr Williams' submissions are unrealistic. There is no assertion of Mr CW being wealthy and, therefore, the order must necessarily limit his access to C if Mrs AW were to relocate to England. Order 6, made by the learned judge, is not likely to be often used. It is noted however, that whereas order 6 speaks to access in England, there is no such restriction in order 8.

Whether the learned judge properly considered the evidence that was before her (grounds h and i)

[36] These were general grounds in which Mr George argued that the learned judge did not properly consider the evidence and did not properly exercise her discretion. On the other hand, Mr Williams urged this court to accept that the learned judge considered all the evidence before her and exercised her discretion appropriately.

[37] The submissions added nothing to the other arguments and no focussed discussion of these grounds is necessary.

[38] The net result is that in the absence of merits, there is no basis to consider the risk of injustice, but even in that regard, the issues are in Mrs AW's favour. In the event that I am wrong on this analysis, I will consider the risk of injustice.

Risk of injustice

[39] Mr George submitted that greater injustice would be caused if the stay is not granted. He contended that if C leaves the jurisdiction, it would render the appeal nugatory as the relationship between Mr CW and C would be destroyed. He added that communication by telephone has not been useful.

[40] Mr Williams, however, argued that the balance lay in favour of the refusal of the stay and no injunction should be granted. Mr Williams indicated that his client is prepared to give an undertaking that C will return to Jamaica if the appeal is eventually allowed, failing which, the matter can be treated as an abduction under the Hague Convention, to which Jamaica is a signatory.

[41] Damages could not provide adequate compensation in this case, for either side. The need to bond with one's child and the benefit that the child obtains from interacting with a loving, caring parent, who can act as a guide, mentor and role model, cannot be measured in money. Even if Mr Williams could afford to be taking frequent transatlantic trips to see C, he would not, if he succeeded on appeal, be able to recoup that expense from Mrs AW, who does not have those resources. Mrs AW could not be compensated in money for the inability to conduct her life in the country that she wishes to live and enjoy her social support.

[42] Although it would be an emotional strain for any party, who failed at this stage, it seems that the greater irremediable loss would be visited on Mrs AW, if the stay were granted. She would be forced to stay in a country where the evidence is that her best interest would be for her to be in another country. The reason for her being in Jamaica, namely the marriage, is no longer valid. The learned judge was quite correct in linking her comfort and emotional stability to C's best interest.

[43] Mr CW's loss will undoubtedly be significant. He will lose the bond of physical contact with C, and C will lose the guidance of his father in significant ways, which are not necessarily conveyed by instruction but by example. Order 8 does allow more time for bonding and, as mentioned before, the access is not restricted to England.

[44] The time factor involved is likely to be significant. It may well be that the appeal cannot be heard at all in 2022, given the court's calendar.

[45] It is noted that the court may make orders affecting a relevant child even if that child is outside of the court's jurisdiction (see **Harold Morrison v Noelia Seow** (unreported), Court of Appeal, Jamaica, Supreme Court Civil Appeal No 107/2001, judgment delivered 13 March 2003). In this regard, it was thought that the use of technology would be able to assist in giving some "access" to Mr CW. Learned counsel were asked to provide submissions on the methods by which this could be achieved.

[46] Mr Williams made suggestions as to possible access orders. He said:

> "(1) While the child is in the United Kingdom, and as an alternative to Order 6 of the trial Judge's Order, Mr. [CW] will have electronic access to the child on[:]
>
> (a) Mondays[;]
> (b) Wednesdays[;]
> (c) Fridays[;] and
> (d) Every other [Saturday]
>
> between 9a.m. and 12p.m. Jamaica time
>
> (2) If Mr. [CW] visits the United Kingdom – Order 6 would be in full effect.

(3) The electronic access at paragraph (1) above could be done by:

(a) Whatsapp call
(b) Zoom
(c) Google meet
(d) Facetime

The choice of methodology is entirely that of Mr. [CW] to decide.

4. The electronic access would be for a maximum period of two [(2)] hours on each occasion.

5. Mr. [CW] shall notify [Mrs AW's father] via whatsapp messenger thirty (30) minutes before the access period using number … – so that [Mrs AW's father] can ensure that the connection to the access methodology chosen on the particular day is established in all regards.

6. During the time that the child remains in Jamaica up to January 2022 Mr. [CW] will deliver the cell phone or a device to Mrs. [AW] upon the return on the child at the completion of his physical access and will ensure that that device is not locked with a password or that [Mrs AW] has the password."

[47] Mr George agreed with the proposal and both parties agreed that that proposal, along with other undertakings, would comprise undertakings given by Mrs AW to the court, as conditions for the court's orders. The orders were, however, not made with the consent of the parties. The further undertakings that Mrs AW gave are as follows:

"1. the respondent, until the determination of the appeal herein, will have attorneys instructed in this matter. Such attorneys to accept service on her behalf of any documents or proceedings relating to this matter;

2. immediately to notify the court and the attorneys for the time being of the applicant of any change of attorney;

3. subject to any order of the court to the contrary, the respondent waives any right of personal service of and document or proceeding in relation to this matter."

Conclusion

[48] Based on all the above, the application for a stay of execution of the judgment handed down in the Supreme Court on 20 September 2021, and for an injunction to prevent Mrs AW from leaving the island with C, is refused. Costs shall be costs in the appeal.

Order

Upon the respondent giving the following undertakings:

1. While the child is in the United Kingdom, and as an alternative to Order 6 of the trial Judge's Order, the applicant will have electronic access to the child on:

(a) Mondays;
(b) Wednesdays;
(c) Fridays; and
(d) Every other Saturday

between 9:00 am and 12:00 pm Jamaica time

2. If the applicant visits the United Kingdom – Order 6 would be in full effect.

3. The electronic access at paragraph 1 above could be done by:

(a) Whatsapp call;
(b) Zoom;
(c) Google meet;
(d) Facetime.

The choice of methodology is entirely that of the applicant to decide.

4. The electronic access would be for a maximum period of two hours on each occasion.

5. The applicant shall notify the respondent's father via whatsapp messenger 30 minutes before the access period using number … – so that the respondent's father can ensure that the connection to the access methodology chosen on the particular day is established in all regards.

6. During the time that the child remains in Jamaica up to January 2022 the applicant will deliver the cell phone or a device to the respondent upon the return of the child at the completion of his physical access and will ensure that that device is not locked with a password or that the respondent has the password.

7. The respondent, until the determination of the appeal herein, will have attorneys instructed in this matter. Such attorneys to accept service on her behalf of any documents or proceedings relating to this matter.

8. Immediately to notify the court and the attorneys for the time being of the applicant of any change of attorney.

9. Subject to any order of the court to the contrary, the respondent waives any right of personal service of and document or proceeding in relation to this matter.

The orders of the court are:

1. The application for stay of execution of the judgment handed down in the Supreme Court on 20 September 2021 in this matter, and for an injunction to prevent the respondent from leaving the island with the relevant child, is refused.

2. Costs of the application shall be costs in the appeal.