



In The Supreme Court of Bermuda

DIVORCE JURISDICTION

2023: No. 51

BETWEEN:

Mother

Applicant

and

Father

Respondent

RULING

Date of Hearing: 20 October 2025

Date of Ruling: 20 April 2026

Appearances: The Applicant, In person
Vaughn Caines, Forensica Legal, for the Respondent

RULING of Hon. Cratonia Thompson, Acting Puisne Judge

INTRODUCTION

1. This is an application by the Applicant (hereinafter referred to as ‘the **Mother**’) dated 25 August 2025 (the **Mother’s Application**) seeking *inter alia* the following relief:

- (1) Sole custody, care and control of the two (2) children of the family (the **Children**) be granted to the Mother.

- (2) A Declaratory Order that the Respondent (hereinafter referred to as the **Father**) is unfit to have custody of the Children.
 - (3) An Order requiring mediation between the parties to be carried out via resources at the Department of Child & Family Services (**DCFS**) in order to mediate access, counseling for the Father and the Children in respect of a reintegration plan and eventually access by way of supervised visits.
 - (4) Costs of the Mother's Application be awarded to the Mother.
2. Although the Father opposes the Mother's Application, the Father accepts that he has not had access with the Children and that their relationship is strained as a result. It is the Father's case that his strained relationship with the Children is due to alienating behaviors by the Mother. In the circumstances, the Father accepts that a reintegration plan is appropriate in the circumstances, provided that plan ultimately results in the parties sharing custody of the Children. Accordingly, the Father seeks the following relief:
- (1) An order dismissing the Mother's Application;
 - (2) An immediate assessment of the parties by a qualified expert;
 - (3) Supervised reunification therapy without delay;
 - (4) Appointment of a *Guardian ad Litem* (**Litigation Guardian**) for the Children;
 - (5) A direction that the Mother cease all alienating behaviors;
 - (6) An award of compensatory parenting time to the Father for three (3) years of lost contact;
 - (7) A graduated path to shared custody; and
 - (8) A costs award to the Father on an indemnity basis.

REVELANT FACTUAL AND PROCEDURAL BACKGROUND

3. The Mother filed her application for a divorce in May 2023. Upon the making of the conditional order for divorce, it was ordered that the Children remain in the interim sole custody and sole care and control to the Mother, with access adjourned to Chambers. The conditional order for divorce was made final in July 2024.
4. The Mother applied for ancillary relief by way of a Notice of Application for Ancillary Relief dated 11 May 2023 (the **Ancillary Relief Application**) in which she sought an order for periodical payments for the Children and a property adjustment order in relation to the former matrimonial home (**FMH**).
5. The Ruling in respect of the Ancillary Relief Application was handed down on 28 October 2024 (the **Ancillary Relief Ruling**). The Mother was awarded a property adjustment order in relation to the FMH and monthly periodical payments in the sum of \$500 for each child of the family, i.e. a total of \$1,000 per month) until each child reaches the age of 18 years old, or until further order of the Court.

6. On 28 January 2025, the Father filed an application to set-aside or vary the Ancillary Relief Ruling (the **Set-Aside Application**). The Ruling in respect of the Set-Aside Application was handed down on 19 December 2025. The Set-Aside Application was dismissed. As a result, the property adjustment order granted to the Mother in respect of the FMH remains in effect. In addition, in the absence of any further order of the Court, the Father has a continuing obligation to pay child maintenance in respect of the Children in the sum of \$1,000 per month.
7. The Mother's Application is supported by an affidavit sworn by the Mother dated 21 August 2025 (the **Mother's First Affidavit**). The Father swore his responsive affidavit on 22 September 2025 (the **Father's Affidavit**). The Mother then filed a subsequent affidavit in reply on 14 October 2025 (the **Mother's Second Affidavit**).
8. On 17 October 2025, the parties filed their written submissions setting out their respective positions. At the hearing, the parties agreed to tender their affidavits as examination in chief. It was further agreed that neither party would be cross-examined.

THE LAW

9. The Court's jurisdiction to grant orders in relation to custody and care and control, including a declaratory order that a parent is unfit to have custody, is derived from Section 46 of the Matrimonial Causes Act 1974 (the **MCA**), which provides as follows:

Orders for custody and education of children in cases of divorce, etc., and for custody in cases of neglect

46 (1) *The court may make such order as it thinks fit for the custody and education of any child of the family who is under the age of eighteen—*

- (a) *in any proceedings for divorce, nullity of marriage or judicial separation, before or on granting an order or at any time thereafter (whether, in the case of a divorce order or a nullity of marriage order, before or after the order is made final);*
 - (b) *where any such proceedings are dismissed after the beginning of the trial, either forthwith or within a reasonable period after the dismissal, and in any case in which the court has power by virtue of this subsection to make an order in respect of a child it may instead, if it thinks fit, direct that proper proceedings be taken for placing the child under the protection of the court.*
- (2) *Where the court makes an order under section 31, the court shall also have to make such order as it thinks fit with respect to the custody of any child of the family who is for the time being under the age of eighteen; but the power conferred by this subsection and any order made in exercise of that power shall have effect only as respects any period when an order is in force under that section and the child is under that age.*
 - (3) *Where the court grants or makes a divorce order final or grants a judicial separation order, it may include in the order a declaration that*

either party to the marriage in question is unfit to have custody of the children of the family.

- (4) *Where a divorce order or judicial separation order contains such a declaration as is mentioned in subsection (3), then, if the party to whom the declaration relates is a parent of any child of the family, that party shall not, on the death of the other parent, be entitled as of right to the custody or guardianship of that child.*

10. In the UK, there is a statutory obligation set out in section 1 of the UK Children Act 1989 (the **UK Act**) that requires the child’s welfare to be “*the court’s paramount consideration*”. This is mirrored in the Bermuda Children’s Act 1998 at Section 6, which provides that “*the welfare of the child shall be the paramount consideration*”.

11. Section 1 (3) of the UK Act also provides a ‘welfare checklist’, which sets out the factors the court is to consider, with the minor’s welfare being paramount. Whilst Bermuda does not have a statutory welfare checklist (as in UK), in the case of *Father v Mother (Interim Access)* [2024] SC (Bda) 41 civ. (10 September 2024) Wheatley, AJ confirmed that the UK Welfare Checklist is used as a guide in Bermuda cases¹. Therefore, when considering what is in the best interests of the Children, I must have regard to the following welfare factors:

- (1) the ascertainable wishes and feelings of the child concerned (considered in the light of his age and understanding);
- (2) his physical, emotional and educational needs;
- (3) the likely effect on him of any change in his circumstances;
- (4) his age, sex, background and any characteristics of his which the court considers relevant;
- (5) any harm which he has suffered or is at risk of suffering;
- (6) how capable each of his parents, and any other person in relation to whom the court considers the question to be relevant, is of meeting his needs.

12. There is no dispute that the above legal principles govern the Mother’s Application.

THE MOTHER’S POSITION

Welfare Considerations (Custody Care and Control)

13. The Mother takes the view that it is in the best of interests of the Children that sole custody care and control be granted to her. Referring to the UK Welfare Checklist, the Mother argued that the Court should consider *all* factors set out therein, but that I should have regard to the following factors in particular:

¹ *Father v Mother (Interim Access)* [2024] SC (Bda) 41 civ. (10 September 2024); paras 19, 20 and 24

- (1) Any harm the Children have suffered or are at risk of suffering; and
- (2) How capable the parties are in meeting the Children's needs.

Harm Suffered by the Children and/or Risk of Future Harm

14. It is the Mother's case that the Children have suffered harm in the form of physical and emotional abuse as a result of the Father's "*religious zealotry*", and that this harm will continue if the Mother's Application is not granted, or if the Father is allowed unsupervised access with the Children. In support of this position, the Mother referred to proceedings in the Magistrates' Court where she sought temporary protection orders against the Father.
15. The Mother highlighted that she has sought temporary protection orders against the Father on four (4) occasions, where the Mother and the Children were named as parties. The Mother made specific reference to an *ex parte* Domestic Violence Protection Order (DVPO) that was granted against the Father in October 2022. The order was extended to allow the Mother's application to be heard on an *inter partes* basis. Following the trial, which involved the parties giving *viva voce* evidence, the Magistrates' Court delivered its decision in April 2023. It was found that the Father had used domestic violence against the Mother and the Children in the form of physical and psychological abuse.
16. The Mother acknowledged that although the DVPO was extended, the matter was ultimately settled when the parties entered a Consent Order regarding a plan for the Father's reintegration with the Children in December 2023. The Mother also acknowledged that no DVPO was in place throughout 2024 but identified that she applied for her fourth DVPO in January 2025 when the Father's behaviors escalated again. It was noted that the trial in relation to this DVPO was only part-heard, and at the time of this hearing was yet to be completed.
17. In any event, the Mother argued that the granting of each DVPO, and the findings that the Father had used domestic violence against the Children and the Mother, plainly indicates that the Children have suffered harm caused by the Father, and that there is a risk of future harm. The Mother argued that those claims are further evidenced by the Children's refusal to see the Father.

The Parties' Ability to Meet the Children's Needs

18. As to the Father's ability to meet the Children's needs, the Mother argued that the Father is unable to provide the Children with a stable environment. The Father, by his own admission, is of no fixed abode and is therefore unable to house the Children. In addition, the Father is now unemployed and has not complied with the Court's order for child maintenance. The Mother argued that these factors clearly demonstrate that the Father is not in any position to meet the needs of the Children.

19. In contrast, the Mother submitted that she is employed and has a stable, thriving career. It was also submitted that the Mother has been managing well as a single parent and has been the sole care provider of the Children for over three (3) years. The Mother noted that the Children are excelling both academically and in their extra-curricular pursuits since she has been their sole carer. Therefore, it is the Mother's case that she has proven her ability to meet the Children's needs and that the Children are thriving in her sole care.

Other Factors

20. The Mother referred to certain 'other factors' that I should consider when determining the Mother's Application. Those factors relate to the Mother's ongoing concerns regarding the following behaviors displayed by the Father:

- (1) Physical and emotional abuse;
- (2) Alcohol and substance abuse;
- (3) Mental health issues;
- (4) Failure to comply with Court Orders, including those executed by consent;
- (5) Failure to attend previous invites for counseling.

21. The Mother submitted that her claims of physical and emotional abuse have been heavily documented in court proceedings and corroborated by findings in the Magistrates' Court.

22. The Mother argued that her concerns regarding the Father's alcohol abuse and his mental health issues have been documented as well. It was noted that the Father's alcohol use was an ongoing concern throughout the parties' marriage, and that since the marriage came to an end the Father is also self-medicating with marijuana. As to his mental health issues, the Mother referred to public appearances by the Father. The Mother argued these appearances speak to a decline in the Father's mental health. The Mother also shared that it is her belief the Father's employment was terminated due to mental illness.

23. The Mother also submitted that the Father has failed to comply with Court orders and reiterated that the Father is in breach of court orders to pay child maintenance. Additionally, the Mother argued that the Father has refused to attend counselling sessions with two (2) agencies since 2022.

24. The Mother is of the view that the above not only supports her application for sole custody care and control but also supports her claim that the Father is unfit to have custody of the Children. The Mother is of the view that she cannot reasonably co-parent with the Father in a shared custody arrangement due to the Father's parenting style. In this respect, the Mother referred to the Father's use of corporal punishment and his religious beliefs.

25. Accordingly, the Mother invited the Court to exercise the discretion allowed under section 46 (3) of the MCA and declare the Father unfit to have custody of the Children. The Mother

is seeking this declaration to ensure that in the event of her premature passing the Children, who are still young, would be suitably cared for.

Proposals for Re-integration (Access)

26. Notwithstanding the Mother's application for sole custody care and control and a declaration that the Father is unfit, the Mother has requested that the Court sanction a 'Reintegration Plan' to facilitate access to the Children by the Father. To facilitate a successful reintegration plan, the Mother invited the Court to order the following:
 - (1) A full psychological assessment of the Father;
 - (2) A Social Inquiry Report (**SIR**);
 - (3) Mediation, in order to devise a reasonable and phased access plan;
 - (4) Counseling for the Children to assess their readiness for reintegration, and to prepare the Children for reintegration;
 - (5) Counseling with the Respondent and the Children (to be facilitated by DCFS);
 - (6) Supervised visitation at the Coalition for the Protection of Children (managed through DCFS to ensure consistency);
 - (7) Co-parenting classes with DCFS or the Family Centre;
 - (8) Any such order as deemed necessary by the Court.

27. The Mother submitted that any plan to reintegrate the Father's access with the Children can be implemented even if she is granted sole custody, care and control and a declaration that the Father is unfit to have custody of the Children. It was argued that resolving the Mother's Application in her favor would allow the Children to focus on healing and rebuilding their relationship with their Father, as the legal position on custody, care and control would be clearly defined.

28. Notably, while the Mother expressed a willingness to implement a reintegration plan to facilitate the Father's access with the Children, it was highlighted by the Mother that prior reintegration plans have not been successful. It is the Mother's case that the Father is to blame for this as he has refused to attend joint counselling sessions with the Children, has discontinued arranged access (such as video calling) and has otherwise shown that he is not committed to reintegration.

29. The Mother then argued that the only chance for reintegration to be a success, is for the Court to closely monitor any reintegration plan. It was also argued that any reintegration plan would require the assistance of appropriate professional bodies, such as DCFS and/or the Coalition for the Protection of Children, who would provide an environment where supervised visitation could occur.

THE FATHER'S POSITION

Parental Alienation

30. The Father takes the view that the Mother has followed a deliberate pattern of parental alienation, which has culminated in the filing of the Mother's Application. In support of his claim of parental alienation, the Father referred to the case of Father v Mother [2025] SC (Bda) 72.
31. The Father highlighted that the Court in Father and Mother recognized that parental alienation is an emotional harm, wherein one parent systematically undermines the child's relationship with the other parent. The Father then argued that the evidence filed by the Mother confirms that the systematic parental alienation complained of in Father v Mother is present in these proceedings. To demonstrate this the Father submitted that the Mother made the following admissions in her affidavit evidence:
- (1) She intends to permanently exclude the Father from the Children's lives;
 - (2) She once trusted the Father with sole responsibility of the Children;
 - (3) Her claims of religious zealotry are based on religious differences, which do not amount to child abuse;
 - (4) Her claims regarding the Father's alcohol and drug abuse and mental health issues are unsubstantiated;
 - (5) Her concerns regarding the Children's welfare are based on their feelings rather than factual evidence;
 - (6) She has set impossible pre-conditions meant to prohibit the Father's access;
 - (7) She has sabotaged the Father's contact with the Children;
 - (8) There is a correlation between the timing of the Mother's Application and the Father's financial contributions to the Children.

Intent to Permanently Exclude

32. The Father argued that the Mother's affidavit evidence reveals an intent to permanently exclude the Father from the lives of the Children. The Father noted that the Mother states expressly that coparenting would not be suitable. Further, the Mother admitted to setting out in her Will suitable persons to take custody of the Children *instead* of the Father.
33. The Father also noted that the Mother's Will includes a stipulation that visitation with the Father would be *proscribed*. The Father argued that these admissions demonstrate that the Mother's Application is not about child protection but rather is an attempt to permanently exclude the Father from the lives of the Children, even beyond her lifetime.

Pre-Separation Trust

34. The Father highlighted that the Mother also confirmed in her evidence that she once entrusted the Father with overnight care and sole responsibility of the Children. The Father argued that the Mother never raised issues with his ability to care for the Children in his sole capacity until after the parties separated and their 15-year marriage ultimately came to an end.

Religious Differences versus Child Abuse

35. The Father then argued that the Mother's claims of "*religious zealotry*" reveal a dispute between the parties on religious practice and parenting philosophy, rather than a valid concern of child abuse and/or safety. The Father submitted that the Mother has determined that his religious beliefs, which she described as "*dogmatic*" "*Old Testament doctrine*", are unacceptable simply on the basis that his beliefs differ from her own.

Unsubstantiated Claims of Drug and Alcohol/Substance Abuse and Mental Health Issues

36. The Father argued that the Mother's affidavit evidence also reveals that her allegations of drug and alcohol abuse and the instability of his mental health are unsubstantiated. The Father argued that there are no witness statements, no police reports, or other documentary evidence to corroborate the Mother's claims of drug and alcohol abuse, and there has been no professional diagnosis regarding his mental health.

Children's Feelings versus Factual Evidence of Harm

37. The Father referred to the Mother's comments regarding the Children's feelings towards him and argued that that their 'anxiety' is based on feelings rather than evidence of actual harm. The Father submitted that the Mother validates their rejection, rather than seeking to repair their relationship with their Father.

Impossible Pre-Conditions to Access

38. The Father also argued that the Mother has insisted on impossible pre-conditions in order to allow access to the Children, which include that the Father must:
- (1) Provide concrete evidence regarding his mental stability;
 - (2) Submit to psychological testing;
 - (3) Provide an explanation regarding the termination of his employment;
 - (4) Provide proof that his pets are legitimate service animals; and
 - (5) Submit to drug testing.

39. The Father submitted that these demands by the Mother create a moving target that ensures that reunification with the Children will never occur.

Sabotage of Reunification

40. The Father argued that the Mother admits to sabotaging the Father's contact with the Children and then blames the Father for not contacting the Children; behavior he reiterates demonstrates parental alienation.

Timing of the Mother's Application and DVPO Proceedings

41. The Father also submitted that the timing of the Mother's Application, as well as each application made by the Mother for temporary protection orders in the Magistrates' Court correlates with the timing of enforcement proceedings against the Father in respect of child maintenance. The Father argued that this pattern further supports his claims of parental alienation.
42. Taking the above into consideration, the Father then submitted that the Court should have regard to Guidance from the Family Justice Council on responding to a child's unexplained reluctance, resistance or refusal to spend time with a parent and allegations of alienating behavior (the **Guidance**). It is noted that the aim of the Guidance is to:

"...inform the courts and professionals in the wider family justice system as to how allegations of Alienating Behaviors should be considered and responded to; recognizing that they are allegations that can arise at different points in the litigation journey and are likely to be made alongside allegations of other harmful behavior including domestic abuse or other forms of child abuse."

43. Notably, the Guidance acknowledges that where found, the harm of alienating behaviors to a child *"can be significant and enduring, akin to other forms of emotional/psychological child abuse"*. Accordingly, it is the Father's case that the Mother is subjecting the Children to emotional or psychological abuse by exhibiting the alienating behaviors complained of above. He argued that the real risk of harm to the Children should the Court grant the Mother's Application concerns the following:

- (1) Loss of their Father without cause;
- (2) Loss of extended paternal family relationships;
- (3) The psychological damage of parental alienation;
- (4) The Children being used as a weapon in their Mother's campaign;
- (5) The burden of divided loyalty;
- (6) Future relationship and trust issues.

44. The Father submitted that research shows children need both their parents unless there is actual abuse. The Father reiterated that he has not subjected the Children to any abuse.

Whether the Father is ‘fit’ to share custody

45. As to the Father’s fitness to have custody of the Children, the Father averred the following in response to the Mother’s claims that he is not fit to have custody of the Children:
- (1) He has maintained stable employment, with security clearance;
 - (2) He has suitable housing with rooms maintained for the Children;
 - (3) He has no criminal record for violence or abuse (although it is accepted that there have been DVPO breaches);
 - (4) There have been no adverse child protection findings against the Father;
 - (5) He has the support of an extended family network;
 - (6) He is willing to undergo any court-ordered evaluations or programs.
46. Unsurprisingly, the Mother refuted the Father’s submissions. The Mother’s Second Affidavit contains her detailed responses to the assertions above, which I have considered. I have not set out the Mother’s responses in full in this Ruling as her responses essentially mirror the claims set out previously above.
47. In summary, the Mother avers that the Father has not maintained stable employment and does not have suitable housing. It was also stated that the Father *does* have a criminal record, as he admitted to willful damage of property. Most importantly, the Mother reiterated that there *are* adverse child protection findings against the Father in the Magistrates’ Court.

Proposals for Re-integration (Access leading to Shared Custody)

48. While the Father takes the view that the Mother’s claims are unsubstantiated, the Father agrees that a Court-sanctioned reintegration plan is appropriate in all the circumstances. Although the Father labeled the conditions sought by the Mother as “*impossible*” the Father submitted that he is prepared to do the following to facilitate the successful implementation of a Court-sanctioned reintegration plan:
- (1) Submit to and complete a Court-ordered psychological evaluation;
 - (2) Submit to drug and alcohol testing;
 - (3) Attend any prescribed counseling sessions or programs;
 - (4) Participate in co-parenting classes; and
 - (5) Engage with all Court-appointed professionals.
49. The Father then proposed the following graduated approach to access:
- (1) Phase 1 (Months 1-2): Therapeutic supervised visits
 - (2) Phase 2 (Months 3-4): Community-based supervised visits
 - (3) Phase 3 (Months 5-6): Unsupervised day visits

- (4) Phase 4 (Months 7-8): Overnight visits
- (5) Phase 5 (Months (9+): Shared custody

50. It was submitted that each phase should be subject to professional review before progressing to the next phase, and that the following immediate orders are required in order to adopt the proposed graduated approach:

- (1) A prohibition on alienating statements to the Children;
- (2) Requirement that the Mother facilitate and encourage the Father-child relationships;
- (3) Requirement that the Mother allow and facilitate contact with appropriate extended paternal family;
- (4) An assessment of the Mother's willingness/capacity to support reunification;
- (5) Clear consequence for non-compliance.

51. The Father argued that the Mother's Application presents a choice: the Court can either endorse the systematic parental alienation perpetrated by the Mother, which is based solely on unsubstantiated allegations timed to financial proceedings, or recognize the Mother's manipulation and protect the Children's right to *both* parents. The Father invited the Court to choose the latter by dismissing the Mother's Application and making the orders sought by the Father instead.

APPLYING THE FACTS TO THE LAW

52. The Conditional Order for Divorce awarded *interim* custody, care and control of the Children to the Mother, with access adjourned to Chambers. The Mother's Application seeks an order for *sole* custody, care and control, and a declaration that the Father is unfit to have custody of the Children.

53. The law requires that I determine the Mother's Application having regard to the welfare of the Children, which is to be prioritized above all other considerations. Further, I am required to consider the guiding factors set out in the Welfare Checklist.

54. To support her application, the Mother highlighted 2 factors set out in the Welfare Checklist that in her view require the Court to resolve her application in her favor: (i) whether the Children have suffered harm or are at risk of future harm; and (ii) whether the Father is able to provide for the Children's needs.

55. As to the harm suffered and the risk of future harm, the Mother relied on the granting of temporary protection orders against the Father in the Magistrates' Court. The Mother argued the issuance of these orders clearly demonstrate that the Children have suffered harm and/or are at risk of future harm in the form of physical and/or emotional abuse. The

Mother also detailed her concerns regarding the Father's alcohol and substance abuse, and the Father's mental health in support of her concern that there is a risk of future harm.

56. Although the Father accepted that temporary protection orders have been made against him, the Father argued that there is no cogent evidence that he physically abused the Children, that he abuses alcohol and/or substances, or that he has mental health issues. In this regard, it is noted that the evidence before the Court in support of the Mother's claims is limited to the Mother's affidavit evidence. Neither the Father nor the Mother were examined or cross examined at the hearing of the Mother's Application.
57. It is acknowledged that appended to the Mother's Second Affidavit is a copy of a decision in the Magistrates' Court where it was found that the Father had used domestic violence against the Children and the Mother in October 2022. That said, the Mother admitted that the matter was ultimately resolved by consent with the parties' agreeing to reintegrate access in December 2023. I accept that the Mother applied for another DVPO in January 2025, however it is noted that there were no temporary orders in place in 2024 or at this hearing.
58. It is also noted that the Father opposes the Mother's Application on the basis that the Mother in her affidavit evidence confirms a systematic pattern of parental alienation, which Guidance from the UK identifies is akin to child abuse. The Father has requested that the Court recognize and confirm the pattern of parental alienation by the Mother and make an order directing the Mother cease such alienating behaviors.
59. As to the abuse allegations raised by the Mother, I have considered the Mother's request that the Court order the production of an SIR. I agree that the production of an SIR would be appropriate in the circumstances and note that such evidence has been used to assist the court in determining applications for custody care and control, particularly where there are allegations of abuse. I have also considered the Father's willingness to submit to any court-ordered evaluations and assessments. As the Mother has alleged that the Father abuses alcohol and/or substances, I consider it appropriate that the Father submits to a BARC Assessment, with such results to be provided to the Court and to the parties.
60. In the absence of such evidence, I do not accept that the Court has before it sufficient evidence to make adverse findings of fact against the Father or the Mother in respect of the allegations of abuse that have been made. Although the Magistrates' Court made adverse findings against the Father in 2023, it is noted that the temporary protection order that was implemented as a result was later resolved by the parties by consent, with the parties agreeing to a reintegration plan to facilitate the Father's access to the Children.
61. As to whether or not the Father is able to meet the needs of the Children, the Mother highlighted that the Father is of no fixed abode and is unemployed. The Father admitted that his employment was terminated but argued that he has lodged an appeal that has not

yet been determined. Although the Father may have appealed his termination, he is not able to provide a stable environment for the Children without a residence. In the event the Court ordered access, it appears the Father is prepared to rely on the support of extended family (the Children's paternal grandparents) to meet the housing needs of his Children, however I do not regard this as sufficient or in their best interest.

62. Further, without employment, the Father cannot meet the financial needs of the Children. The Father's inability to meet the Children's financial needs is also proven in that the Father is in breach of orders in respect of the Children's maintenance. The Father was ordered to pay to the Mother the total sum of \$1,000 per month for the Children. The Father's wages were garnished to ensure payment was received, however now that the Father is unemployed, he is in arrears.
63. I agree with the Mother that this demonstrates that the Father is not able to meet the needs of the Children. I accept that the Mother, who is employed and continues to reside in the FMH, is able meet the needs of the Children. Further, I accept that the Mother has been required to meet the needs of the Children with little to no financial contributions from the Father since the parties separated and ultimately divorced.
64. Other factors that I am to consider include the ascertainable wishes and feelings of the Children. At present, evidence of the Children's wishes and feelings are not sufficiently before the Court. In this regard, the Father has requested the appointment of a Litigation Guardian. It is acknowledged that the evidence a Litigation Guardian would be of assistance to the Court in determining the wishes and feelings of the Children.
65. Additionally, I am to consider the Children's physical, emotional and educational needs, the likely effect on the Children of any change in their circumstances, their respective ages, sex, background, etc., and any other characteristics I consider relevant.
66. It is noted that the parties have acknowledged that the Mother has had custody care and control of the Children for a sustained period, and that the Father has had no access to the Children. I take the view that an abrupt change to these arrangements would be detrimental to the wellbeing of the Children. I am also mindful that the Children are both under the age of 12, that the Children are enrolled in private schooling and extra-curricular activities, and that their schooling and extra-curricular activities are facilitated solely by the Mother.
67. I consider the parties' proposals to reintegrate the Father into the Children's lives relevant in the determination of the Mother's Application. The parties' proposals to reintegrate demonstrate that the parties accept that it would be beneficial to the Children to have a meaningful relationship with both parents. While the scope and extent of the parties' proposed plans to reintegrate differ, the parties agree that any reintegration plan should be sanctioned by the Court and involve the intervention of persons or institutions with the

relevant professional knowledge and skills to effectively facilitate the reintegration plan with the best interests of the Children in mind.

68. The Mother has set out certain conditions that the Father should comply with before reintegration can occur. The Father has agreed to comply with any conditions the Court considers appropriate in the circumstances of this particular case. The Father has proposed a phased approach to access. In both cases, the goal is for the Father's access to the Children to be reinstated on a gradual basis, and for that graduated access to be closely monitored by the Court and any relevant professional body.
69. The Mother submitted that granting her request for sole custody care and control of the Children and a declaration that the Father is unfit to have custody would not hinder the progression of any Court-sanctioned reintegration plan. In fact, it was submitted that the granting of her request would assist the implementation of a reintegration plan by finally resolving the issue of custody care and control and allowing the Children to heal. Notably, the Father accepts that a phased approach to access would be in the best interests of the Children, however the final phase of the reintegration plan proposed by the Father ends with the parties sharing custody of the Children.
70. Although the Mother has made out her case as it relates to her application for *sole care and control* of the Children, I do not accept her submission that granting her request for *sole custody* and a declaration that the Father is *unfit to have custody* would not hinder the implementation and progression of a reintegration plan. In my view, the making of an order in such terms, particularly at this stage where there is insufficient evidence before the Court to support that order, would negatively impact any Court-sanctioned reintegration plan.

CONCLUSION

71. In reaching this decision, I have considered the evidence before the Court, which includes only the parties' affidavit evidence, as well as the submissions made by the parties. I am mindful of the requirement to prioritize the Children's welfare above all other considerations. In exercising my discretion, I have applied the guiding factors set out in the UK Welfare Checklist.

Custody

72. I have determined that the Court does not yet have before it sufficient evidence to support granting the Mother's request for sole custody of the Children, or to declare the Father unfit to have custody. In order for the Court to comfortably make an order in those terms, I take the view that there must be adverse findings against the Father to justify the making of that order.

73. In the circumstances, I find that the best interests of the Children require that the Mother's Application for sole custody and a declaration that the Father is unfit to have custody of the Children be adjourned until the Court and the parties are in receipt of the following:

- (1) An SIR;
- (2) A report from a Litigation Guardian;
- (3) BARC Assessment.

74. Whilst the Court and the parties await the completion of the abovementioned reports and assessments, the Children shall remain in the interim sole custody of the Mother. In retaining interim sole custody, the Mother shall be at liberty to make decisions regarding the Children's education, healthcare and religion, unilaterally. For the avoidance of doubt, this means that the Father's consent is not required for the Mother to obtain medical care for the Children, to enroll the Children in school or extra-curricular activities, or to travel with the Children, so long as such travel is not deemed permanent.

Care and Control

75. Notwithstanding my findings above, I am firmly of the view that the Father has not demonstrated that he is able to provide for the Children's needs. Additionally, having regard to their ages, and their physical, emotional and educational needs, I take the view that a change to the Children's care and control arrangements would not be in their best interests. In the circumstances, sole care and control of the Children shall be awarded to the Mother.

76. As to the Father's access to the Children, such access shall be in accordance with a recommended, Court-sanctioned reintegration plan, if deemed appropriate. It is noted that, realistically, a reintegration plan cannot be established, considered to be appropriate, or implemented until the Court and the parties are in receipt of an SIR and a report from a Litigation Guardian. Therefore, the Court directs that the SIR and the Litigation Guardian's report shall be completed on an expedited basis. In addition, the matter is to be listed for mention no later than one month from the date of this Ruling. The CASW and Litigation Guardian shall attend on the mention date to advise the Court and the parties of the anticipated timeline to produce the reports, and the Court shall set directions, as required, to facilitate the timely production of the reports.

77. It is noted that the parties have requested that the Court make additional orders aimed at successfully implementing a Court-sanctioned reintegration plan. In that respect, while the Court and parties await the production of the SIR and report from a Litigation Guardian, the parties and the Children are strongly encouraged to engage in the following:

- (1) Individual counseling and/or therapeutic services;

- (2) Individual parenting and/or co-parenting classes, whether with DCFS, the Family Centre, or another reputable entity.
78. The Court will reconsider making variations to the custody, care and control, and access arrangements upon the receipt of reports and/or recommendations from the CASW or Litigation Guardian.
79. For completeness, it is noted that the Court's order in respect of maintenance for the Children remains in place. The Father is reminded that he is obligated to pay to the Mother the sum of \$1,000 per month in maintenance for the Children. As the Father's wages can no longer be garnished, the Father is directed to make such payments to the Collecting Office of the Magistrates' Court on the last working day of each month.
80. The issue of costs shall be reserved.

DATED this 20th day of **April 2026**



HON. MRS. CRATONIA THOMPSON
ACTING PUISNE JUDGE