



In The Supreme Court of Bermuda

DIVORCE JURISDICTION

2023: No. 107

BETWEEN:

P

Applicant/Father

-and-

S

Respondent/Mother

SUMMER ACCESS RULING

Before: **Hon. Alexandra Wheatley, Acting Justice**

Appearances: **Aqueelah Simmons of Chancery Legal, for the Applicant**
Adam Richards of Richards, for the Respondent

Date of Hearing: **6 June 2025**

Date of Ruling: **13 June 2025**

Defined Access; Best Interests of the Child

RULING of Hon. Alexandra Wheatley, Acting Justice

INTRODUCTION

1. The parties were married on 28 December 2018 and divorced on 26 June 2024. There is one child of the family (who shall hereinafter be referred to as **L**) who is 7 years old. The Applicant (hereinafter referred to as **the Father**) filed an application for defined summer access to L on 30 April 2025 (**the Father's Access Application**) which was subsequently listed for hearing on 6 June 2025.

2. Father's Access Application seeks the following orders:
 - (a) That the Father be granted summer access with L from 10 July 2025 to 18 August 2025;
 - (b) That exchange for summer access take place in Québec, Canada; and
 - (c) Costs.
3. The Father filed an affidavit and exhibit sworn on 30 April 2025 (**the Father's Affidavit**) in support of the Father's Access Application. At the outset of the hearing, Mr Richards confirmed that the Mother did not wish to file an affidavit in response as long as it was accepted by Ms Simmons that the mother's evidence would stand as the correspondence exhibited to the Father's Affidavit. Ms Simmons confirmed that she had no objection to this request. Both parties also accepted that cross examination of the parties was not required.

PARTIES' POSITIONS

The Father

4. Ms Simmons advised the Court that an open proposal for the Father's Access Application had been sent to Counsel for the Mother the day prior, i.e. 5 June 2025 (**the Proposal**). In this correspondence the Father confirms his new position of narrowing the access period to between 18 July 2025 and 18 August 2025. Mr Richards subsequently raised that the proposal stated the same as the previous offer that had been made for the period 10 July to 18 August 2025. Ms Simmons confirmed that this was a typographical error and should have stated 18 July 2025. In the proposal Father also confirmed he would agree with the mother facilitating access subject to L remaining in Bermuda for the requested period, i.e. 18 July to 18 August, with uninterrupted access save for electronic access.
5. The Father has also confirmed that he has enrolled L in several summer camps in Bermuda during the period proposed.
6. To summarize, the Father believes his position is in L's best interest for the following reasons:
 - (a) L has limited physical access with the Father throughout the school year and so should have a greater period of the summer break with L; however, it was noted that his current proposal affords both parties with equal time for the summer.
 - (b) L will have the opportunity build his relationship with the Father as well as

with the wider paternal family.

- (c) L will have valuable experiences at the camps in Bermuda the Father has enrolled him in.

The Mother

- 7. The Mother's position is that she is agreeable for L to attend Bermuda for the purpose of access with the Father for the period 7 to 21 July, i.e. two weeks. This is proposed on the basis that the Mother will have access to L during this period in the same manner that was agreed for the Christmas 2024 access at paragraph 5 (f) of the consent order dated 28 October 2024 (**October Consent Order**).
- 8. To summarize, the Mother believes her position is in L's best interest for the following reasons:
 - (a) The access period provided for in the consent order dated 18 September 2024 at paragraph [x] to see L for the period 9 November to 17 November 2024 was not utilised by the Father;
 - (b) L has not had physical access with the Father since the conclusion of the Christmas access set out in the October consent order.
 - (c) L has been enrolled in camps in Canada for the entirety of L's summer break save for the 2 weeks proposed for L to be in Bermuda. These camps have already been paid in full since February 2025. L's camps provide L with routine and structure.
 - (d) It appears that the Father is motivated to control the movement of the Mother. For example, by proposing that she not return to Bermuda with L and that he will fly to Canada to collect L as well as return him at the end of the period. The Mother says this makes little sense when the cost to the Father would be far greater if he had to facilitate the access.

DISCUSSION

- 9. Both Counsel are well versed in the legal principle applied by the courts in making a determination in relation to the care and control of a child in matrimonial proceedings, that being that the Court must consider what is in the best interests of the child. Therefore, there were no legal arguments presented which must be commented on.
- 10. I agree with the Father that for L to only have two weeks of summer access with the Father is inadequate. I also agree with the Mother that an ideal scenario would have been that the Father exercised physical access with L (which would have been available to

him) at some point during the past six months.

11. However, the Mother's concerns can easily be addressed by affording her both physical and electronic access with L during the period which L is in Bermuda.

CONCLUSION

12. Taking into consideration the parties' respective positions as well as most importantly, considering is what is in the best interest of L, I make the following orders:
 - (a) The Father shall have access with L this summer in Bermuda for the period of 18 July to 18 August 2025 (**Summer Access Period**).
 - (b) Travel for the Summer Access Period shall be facilitated by the Mother accompanying L both to and from Bermuda.
 - (c) The Father shall be responsible for payment of both L and the Mother's flights for the Summer Access Period as well as the costs incurred for L's enrolment in the Bermuda summer camps.
 - (d) The Mother shall have access with L every third day from 4 p.m. to 7 p.m. unless otherwise agreed between the parties. The third day should be counted from the day following L's arrival in Bermuda.
 - (e) The facilitation of the access set out in paragraph (d) above, shall be in accordance with the paragraph f, v. of the October Consent Order.
 - (f) The Mother shall also have electronic access with L each Monday, Wednesday and Sunday of the Summer Access Period at 7 p.m. unless otherwise agreed by the parties.

Costs

13. The Father has asked that he be awarded costs given the number of proposals he made to resolve this matter which required him to reconsider and amend his initial proposal on three different occasions. I do accept that the Mother was the party who initiated discussions with the Father in respect of summer access with L as far back as February 2025.
14. The Father's initial proposal to have access for a twelve-week period over the summer, I do believe was excessive; however, the Mother's position that the Father only have two weeks of access with L over the summer break was unreasonable.

POSTSCRIPT

15. It is quite unfortunate that the parties were unable to resolve the Father's Access Application without the need of a court hearing. Both parties solidified plans for L for the summer period with the knowledge that a position regarding summer access had not been agreed. Ultimately, the continued litigation between the parties will most likely be to L's detriment. L will no doubt already be subject to the continuing tension between his parents and the parties will also have less funds to use for L's benefit due to ongoing legal costs. It is particularly unproductive when neither parent has raised any welfare issues. One, therefore, can only surmise that the continuing conflict between them is more due to the breakdown of the parents' relationship rather than putting their respective animosities aside and focusing on entirely what is in L's best interest. I believe that neither parent has the intention to cause harm or disappoint L. The parents should step back and bear in mind that L is just 7 years old now with a lifetime to follow. For L's benefit I hope that his parents' relationship can evolve to one of cooperation rather than conflict.

Dated this 13th day of June 2025



ALEXANDRA WHEATLEY
ACTING PUISNE JUDGE OF THE SUPREME COURT