



In The Supreme Court of Bermuda

DIVORCE JURISDICTION

2024: No. 116

BETWEEN:

D

Applicant

- and -

J

Respondent

RULING

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

Appearances: **Georgia Marshall of Marshall Diel & Myers Limited, for the Respondent**

Adam Richards of Richards Limited, for the Applicant

Date of Hearing: 9 December 2025

Date Draft Ruling Circulated: 10 December 2025

Date of Ruling: 11 December 2025

INDEX

*Interim Defined Care Application; Pending Ruling of Application for Leave to Remove the
Children from the Jurisdiction; Welfare of the Children the Paramount Consideration*

RULING of Assistant Justice Alexandra Wheatley

INTRODUCTION

1. The Court heard the Mother's application for leave to remove the parties' two children aged 9 and 5 years old respectively, from Bermuda to reside permanently with her in the United States (**the LTR Application**) over the course of ten days in September and October 2025. The LTR Application is opposed by the Father. I have not yet issued my ruling on the LTR Application (**the LTR Ruling**).
2. In the interim, and with the Christmas holidays approaching, the Mother filed an application on 2 December 2025 (**Christmas Holiday Care Application**) seeking the Court's determination of the children's care arrangements for the forthcoming holiday period. Counsel's request was for the matter to be listed *ex-parte*, on notice to the Father. The Mother filed an affidavit sworn on 2 December 2025 in support of the Christmas Holiday Care Application. On 3 December 2025, I confirmed that I had considered the Christmas Holiday Care Application on the papers and made the following orders:
 - (i) The Christmas Holiday Care Application is adjourned to an *inter-partes* hearing.
 - (ii) The Applicant shall have until close of business on 5 December to file an affidavit in response to the Respondent's Affidavit sworn on 2 December 2025.
 - (iii) No further affidavits shall be filed thereafter.
 - (iv) The *inter partes* hearing shall be listed on 8 December 2025 at 9:30 a.m. for a ½ day.
3. In contrast, the Father's proposals for the Christmas Holiday is as follows:
 - (i) The Mother shall have care of the children in Bermuda from 12

December 2025 collecting the children from school and she shall return the children to school on the 17 December 2025. The Father shall collect the children from school at the end of the day when they shall return to his care.

- (ii) The children shall be in the care of the Father from 17 December until 2 p.m. on Christmas Day in Bermuda.
- (iii) The Mother shall have care of the children from 2 p.m. on Christmas Day until 12 noon on 4 January 2026. She shall have leave to travel with the children from Bermuda during these dates to the United States.
- (iv) The Father shall collect the children from a neutral location, in an agreed location in the United States at 12 noon on 4 January 2026 and facilitate their return to Bermuda when they shall return to his care pending the LTR Ruling.

THE PARTIES' POSITIONS

The Mother

- 4. The Mother states that, following the conclusion of the hearing of the LTR Application in October 2025, she made the painful decision to return to New York, where she has lived nearly her entire life and where her personal support, career prospects, and mental health needs are centred. She explains that she gave notice to her landlord in Bermuda and repatriated on 6 November 2025. Her attorneys promptly informed the Father's attorneys of her relocation and proposed interim care arrangements intended to preserve stability for the children until the LTR Ruling is delivered.
- 5. Central to her position is that she put forward a clear, practical proposal for shared care from November through Christmas, including equal division of the Christmas holidays. Her proposal provided that the children would spend Christmas with her in New York and return to Bermuda for New Year and the eldest child's birthday with the Father. She emphasises that her proposal took account of the children's welfare, the financial strain of continued litigation, and, critically, the declining health of her elderly father. She says that her elderly father who suffered a stroke a few months prior makes this Christmas potentially the last opportunity for meaningful time between him and the children.
- 6. The Mother asserts that the Father refused to engage constructively, agreeing only in principle to sharing Christmas but declining to specify dates or confirm whether she may take the children to New York. She considers his stance disingenuous because, although he

claims to be willing to share the holiday, he insists that no arrangements be made until the LTR Ruling is issued. She points out that the LTR Ruling may not come before Christmas and that the Father has not offered any alternative proposal.

7. She says this refusal to define arrangements has caused significant uncertainty for her, her family and the children. With time running short and no meaningful negotiations forthcoming, the Mother contends that an urgent application became unavoidable. She seeks orders in the terms of the Christmas Holiday Care Application which are as follows:
 - (i) The Mother shall have care of the children for the period 12 to 27 December 2025.
 - (ii) The Mother will collect the children from school on 12 December and has leave to travel with the children to the United States for the period 17 to 27 December.
 - (iii) The Children will then return to Bermuda on 27 December and have their care for the remainder of the Christmas Holiday break and for the eldest child's birthday. Alternatively, the Mother would have no difficulty with the Father collecting the children in the United States as he proposed but the handover date would remain as 27 December 2025.
 - (iv) On this basis, the Mother says that the Father can have the children for Christmas 2026.
8. The Mother says that the proposal made by the Father would ruin Christmas for the children as they would have to reside in the former matrimonial home (**FMH**) which she says is "*the contents of the house are now bare bones with only a kitchen table, King size bed and couch remaining*". Additionally, the sharing of Christmas Day in Bermuda would require the Mother to be away from her aging parents and by herself on Christmas Eve and would be required to travel on Christmas Day where there would only be one available flight for her and the children. She says that poor weather conditions could cause delays and even prevent their arrival in the United States.
9. Mrs Marshall also asked to be heard on the issue of costs when appropriate as the Mother is seeking that costs be awarded on an indemnity basis due to what she characterises as the Father's unreasonable and obstructive approach.

The Father

10. The Father's evidence is that he has consistently agreed in principle to the children spending Christmas with both parents and denies the Respondent's assertion that he "*steadfastly*

refused” to engage in discussions. He states that his position was motivated by a desire to avoid unnecessary legal fees while awaiting the imminent LTR Ruling which he believes would significantly affect holiday arrangements. He maintains that he had already confirmed willingness to share the vacation equally and had encouraged negotiations if the LTR Ruling had not been issued by the end of November.

11. He says the Mother’s evolving intentions to relocate to the United States required clarity and appropriate safeguards. He contends that he proactively facilitated access for the Mother in November and that delays in finalising a consent order were due to her insistence on unrelated financial clauses and her failure to respond promptly.
12. For the Christmas Holidays, the Father proposes an arrangement enabling each parent to spend part of Christmas Day with the children, emphasising the importance of this first post-separation holiday. He considers it fair that Christmas occur in Bermuda this year, as the children spent last year in New York.
13. The Father raises significant concerns that the Mother may not return the children if permitted to travel abroad, citing past conduct, inappropriate conversations with the children, and her expressed intent to litigate in New York. He therefore seeks protective undertakings ensuring the children’s return. It was confirmed by Mrs Marshall in her reply submissions that the Mother was willing to provide the requested undertaking, albeit it was not accepted as being a necessity.
14. He says that the Mother’s proposal is self-centered and her focused on her extended family rather than on the children and the impact it would have on them not having Christmas with their father. He raises the importance of both him and the Mother being seen as equals which he says would be undermined if the Mother’s proposal was accepted. He asks the Court to adopt his proposed schedule.
15. As it relates to the Mother being in Bermuda as anticipated in his proposal, the Father queries if the FMH is now “*bare bones*” how does the Mother plan to care for the children whilst they are in her care in Bermuda from 12 to 17 December? He highlights that the Mother asked (and it was agreed) that the former marital car would be available for her use when she was only island and the children were in her care up until 31 December and which is also the same date that the Mother chose to terminate lease on the FMH. In any event, the Father says that Christmas is not about “furniture” and material things; it’s about spending time with the children. He also says that he believes the Christmas Day travel would be quite exciting for the children given they would be in Bermuda in the morning and by the afternoon be in the United States where there may be snow and they would then see their extended family.

16. As it relates to costs, Mr Richards indicated that he does not see on what basis the Court could make any order for costs against either party as he asserted this is a child matter which would require one of the parties to have displayed “*reprehensible*” conduct for an adverse costs order to be made.

DISCUSSION

17. Both Counsel are familiar with the legal principles governing care and control determinations in matrimonial proceedings, namely that the Court’s paramount consideration is the best interests of the child. Accordingly, no legal submissions were advanced and that require further comment.
18. It is unfortunate the parties were unable to agree the position rather than having to come to the Court; however, I do understand that the jurisdictional separation between the parties now has created a new dynamic between them which could be extremely stressful.
19. I do agree with the Father that the children should have an opportunity to experience this first Christmas Day with both parents. The children are still young and undoubtedly Christmas is a very special and magical time for them. It is therefore likely that this first Christmas will have a lasting impression on them for quite some time. I agree that given this, the need for the parents to be seen as equals is essential in protecting the children’s emotional well-being.
20. However, I also appreciate the difficulties that might be experienced with travel that has the potential of causing undue stress on the children and indeed with the Mother as travelling with children no matter what the occasion can in itself be stressful.
21. I accept it is important that the children spend time with their extended family in the United States, particularly their maternal grandfather who is unwell. However, it is also critical that those relationships do not overshadow the children’s relationship with the Father.

CONCLUSION

22. Taking into consideration the parties’ respective positions as well as most importantly, applying these against what is in the best interests of the children, I make the following orders:
 - (i) The Mother shall have care of the children for the period 12 to 27 December 2025 as follows:

- (a) The Mother will collect the children from school on 12 December and have care of them in Bermuda until 17 December 2025.
 - (b) On 17 December 2025, the Mother shall have leave to travel with the children to the United States until 27 December 2025.
- (i) The Father shall have care of the children in the United States on Christmas Day by collecting them from the Mother at 11 a.m. returning them at 3 p.m. at an agreed neutral location. The Mother shall facilitate the return of the children to Bermuda on 27 December in the event that the Father is unable to collect them from the Mother at an agreed time location on 27 December. Thereafter, the Father shall have the care of the children for the remainder of the Christmas Holiday break and for the eldest child's birthday and until the distribution of pending the ruling of the court.
 - (ii) During all times when the children are in the care of one parent, the other parent shall have video contact with the eldest child as requested by her, up to ½ hour per day. In addition, the other parent shall have regular ½ hour zoom calls with both children every other day so as to ensure that the younger child has contact with that parent.
- 23. There shall also be provision for the Mother to provide an undertaking regarding not filing any court proceedings in the United States, recognizing that Bermuda has jurisdiction of these proceedings. Similarly, there shall be a provision that neither party shall not displaying any alienating behaviour of the other parent towards the children and shall not discuss these proceedings in any way with them.
- 24. To limit any possible further contention between the parties surrounding this application, I have attached at **Appendix A** the wording which shall be utilized in the final order submitted for signature. To persevere anonymity, the said appendix shall not be included in the published version of this ruling.
- 25. As it relates to costs, albeit that Mrs Marshall wished to further address me on costs, this is not necessary. I gave a recent decision in the case of *Wife v Husband* (Costs Ruling) [2025] SC (Bda) 91 div. where I agreed with Mrs Marshall's position it is well established that in family cases the starting point is that there is no order as to costs. Any diversion from this requires the presence of very limited circumstances which would cause the Court to depart from this starting point. The main factor to be considered in making an adverse costs order in family cases is the litigation conduct of the parties which must meet the threshold of being "reprehensible". I do not accept that either party's litigation conduct meets this threshold.

Each party shall, therefore, bear her and his own costs in relation to this matter. Having said this, if Mrs Marshall still wishes to argue this point further, submissions must be filed within 7 days from the date hereof for my consideration. Mr Richards shall have a right to file submissions in reply within 7 days of receipt of Mrs Marshall's submissions if he so chooses.

26. Finally, for the avoidance of doubt, this decision in no way reflects the decision in the LTR Ruling as that decision is still pending. I will say that the LTR Ruling will not interfere with this decision as I recognize this would cause unnecessary stress and frustration for all.

DATED this 11th day of December 2025



ALEXANDRA WHEATLEY
ASSISTANT JUSTICE OF THE SUPREME COURT