



Civil Appeal No. 10 of 2026

**IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE SUPREME COURT OF BERMUDA SITTING IN ITS
DIVORCE JURISDICTION
BEFORE THE HON. ACTING JUSTICE ALEXANDRA WHEATLEY
CASE NUMBER 2024: No. 26**

Dame Lois Browne-Evans Building
Hamilton, Bermuda HM 12

Date: 24 September 2026

Before:

**THE PRESIDENT, JUSTICE OF APPEAL IAN KAWALEY
JUSTICE OF APPEAL RT HON DAME ELIZABETH GLOSTER
-and-
JUSTICE OF APPEAL RT HON SIR JULIAN FLAUX**

Between:

MM

Appellant

- and -

KM

Respondent

Appearances: Mr Adam Richards of Richards Limited on behalf of the Appellant
Mrs Georgia Marshall of Marshall Diel & Myers Limited on behalf of
the Respondent

Heard: On the papers
Date of Decision: 24 July 2026
Draft reasons circulated: 4 September 2026
Reasons delivered: 24 September 2026
(remotely)

REASONS FOR HOLIDAY ACCESS ORDER

KAWALEY, P

Introductory

1. On 19 June 2026, we set aside the Order and findings dated 2 February 2026 and further findings of 20 April 2026 made by Wheatley AJ (the “Judge”) and indicated that we would give reasons explaining the extent and scope of our decision later. The 2 February 2026 Order (the “2 February Order”) most significantly (for present purposes) placed the child in the sole, interim custody, care and control of the Mother and limited the Father’s access to supervised remote access via audio or video calls. Our 19 June 2026 Order, anticipating the need to give “Consequential Directions”, appointed a litigation guardian to report to this Court on an expedited basis on the impact on the Child of the existing interim custodial arrangements.
2. On Tuesday 14 July 2026, the Court received the Litigation Guardian’s Report which indicated that the main welfare risk to the Child was exposure to litigation conflict between her parents who were both otherwise entirely capable of protecting her welfare. On Wednesday 15 July 2026, the Mother’s counsel wrote to the Court seeking urgent guidance in relation her client’s plans for the summer holiday period, which were based on the interim sole custody, care and control status quo then in force (notwithstanding the fact that the 19 June 2026 Order made it clear that those arrangements were, at the very least, potentially liable to be set aside). Travel with the Mother was scheduled for Sunday 26 July 2026. On Friday 17 July 2026, the following directions were communicated to the parties by the Court:

“The Court’s provisional view is that one consequential direction which should be made forthwith is that the original custody and access arrangements (which were in place before being modified by paragraphs 3-8 and 10 of the 26 February 2026 Fact Finding Order), should be restored forthwith.

The Mother’s counsel is at liberty, if so advised, to file brief written submissions explaining why the proposed direction should not be made by close of business on Tuesday 21 July 2026. Should such submissions be tendered, the Court will

consider whether it would be assisted by responsive submissions from the Father's counsel."

3. While Holiday Access was not explicitly mentioned in this communication, the parties were put on notice more than a week before the scheduled overseas travel was due to take place that the Court's provisional view was that the joint care and control arrangements "*should be restored forthwith*". On Tuesday 21 July 2026, the Mother's counsel filed submissions vigorously contesting the Court's provisional views, in part on the basis that the overseas travel plans had been in place for some time (notwithstanding the fact that the Court had decided a month earlier that the 2 February Order was to be set aside). However, the Mother also proposed expanded access in Bermuda for the Father in the second and last week, respectively, of August. This prompted the Court to invite the Father's counsel on Wednesday 22 July 2026 to file responsive submissions on the matter of Holiday Access by close of business on Thursday 23 July 2026. This deadline was implicitly fixed so that the Court could resolve the Holiday Access issue the following day before the scheduled holiday travel. The Father's Submissions were received by the Court at 2.33pm and promptly forwarded to the panel at 2.50pm (or 6.50pm in the time zone which each panel member was located in).
4. At 1.27 pm on Friday 24 July 2026, the President directed by email that a draft Order be forwarded to the parties¹ in the following terms (the "Holiday Access Order"):

"1.The child will be in the care of the Appellant from 25 July to 8 August 2026. The Appellant shall be permitted to travel to Atlanta with the child during this time subject to the Appellant signing the following undertaking to the Court:

'The Appellant hereby undertakes:

- (a) Not to issue any proceedings in the United States of America concerning the welfare of the child [...] whilst she is in his care; and*
- (b) To collect the child from and to return her to the Respondent in Bermuda at the conclusion of any period when the child is in the care of the Appellant*

2.The child will be in the care of the Respondent from 8 August to 5 September 2026 (a period of 4 weeks encompassing the travel to Greece and the start of the school term).

3.From 5 September the Appellant shall have care of the child for 2 weeks in Bermuda, the Appellant to make his own arrangements for suitable accommodation, unless the Respondent expressly agrees that the Appellant and the child may reside at her property, where previously care took place.

4.The Court will provide in its judgment (which will be handed down shortly and in any event before 5 September) and in its consequential order for the care arrangements which are to apply.

¹ Due to an administrative oversight, the draft Order was not actually received by the parties until 10.02 am on Monday 27 July 2026. The President apologizes to the parties and to counsel for the inconvenience that this delayed communication in a time-sensitive situation must have caused.

5. This Order is subject to the following Penal Notice:

'You may be held to be in contempt of Court and imprisoned or fined, or your assets may be seized if you break the promises that you have given to the Court. I understand the undertakings that I have given and that if I break any of the promises I have given to the Court, I may be sent to prison for contempt of Court.'

6. Upon receipt of this Order the Appellant is to sign it acknowledging his receipt of the above Penal Notice."

5. These are the reasons for the Holiday Access Order which can in all the circumstances be briefly stated.

Reasons

6. The logical consequence of the 19 June 2026 Order allowing the appeal against the impugned Supreme Court Order and findings upon which the interim custodial arrangements were based would themselves be set aside. That Order foreshadowed:

- (a) the making of Consequential Directions (paragraph 3a.); and provided
- (b) *"A litigation guardian shall be appointed for the child forthwith who shall prepare and provide a report on an expedited basis to advise this Court on:*
 - i. the impact on the child of the current arrangements in relation to (a) the limited access of the Appellant and (b) the sole care and control of the child by the Respondent;*
 - ii. the child's current expressed wishes, feelings and views in relation to the current access and sole care and control arrangements;*

in so doing, the Litigation Guardian shall ensure that she/he ascertains such impact and the child's expressed wishes, feelings and views without any parental input." (3b.)

7. The current custodial arrangements referred to in the Report were based on the perceived harm to the Child from a continuation of the previous, established shared custody and care and control arrangements based on allegations first raised by the Mother against the Father after he applied to permanently remove the Child from the jurisdiction in his primary care. They were based on findings which we found on 19 June 2026 were not validly made in legal terms. Ordinarily, a parent is not deprived of pre-existing access to a child without the Court receiving the benefit of independent professional guidance on the welfare of the child. The Report (1) explicitly finds that the greatest risk to the Child's welfare *"is not her relationship with either parent"*, and (2) further records the Child's *"disappointment"* about the then current restrictions on access with the Father.

8. There was in these circumstances no reason not to follow the natural course of restoring the preexisting custodial arrangements having decided on 19 June 2026 that the 2 February Order and related findings upon which the impugned arrangements were based should be set aside.

Summary

9. The Holiday Access Order was made for these reasons.

Gloster JA

10. I agree.

Flaux JA

11. I also agree.