

THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
Civil Division

COMMONWEALTH OF DOMINICA

Claim No. DOMHCV2024/0172

BETWEEN:

HUBERT DORIAN PRINCE Claimant

-and-

MERLENE DOLOR 1st Defendant
AUGUSTINE DOLOR 2nd Defendant

Before the Honourable Justice Zainab Jawara Alami

Appearances:

Mrs. Singoalla Blomqvist-Williams, Counsel for the Claimant
Mr. David Bruney, Counsel for the Defendants

2024: September 25 (Oral Submission)
October 4

DECISION

- [1] **JAWARA ALAMI. J:** By a Fixed Date claim form the Applicant Hubert Dorian Prince formerly of Tarish Pit, in the Parish of St. George in the Commonwealth of Dominica and now a resident of Christiansted, St. Croix U.S. applies to the Court for an order from this Honourable Court that; **The temporary guardianship order granted on the 23rd May, 2017 to Merlene Dolor and Augustine Dolor be revoked and that the Applicant be granted full guardianship of the minor child Ariann Kasey Miracle Prince**

The Facts and The Evidence

- [2] The facts as gleaned from the affidavit in support of the application are that, the applicant Hubert Dorian Prince who resides in St. Croix U.S. Virgin Islands is the father of Ariann Kasey Miracle Prince eight (8) years old born on the 16th April 2016 and Juan Nicholas Rodriguez Prince age nine (9) years old, born on the 26th September, 2014.
- [3] The mother of the child in question, Kasey Sylvester died on 25th May 2016. The children have resided with their father since 8th March 2021 and hold green cards which permits them to reside in the United States of America. The Applicant avers that when he left Dominica in 2017 to take up residence in St. Croix, he left the children in the care and custody of their maternal grand aunt Merlene Dolor and Augustine Dolor who were appointed temporary guardians to Ariann Kasey

Miracle Prince. The children eventually migrated to St. Croix to be with him on 8th of March 2021.

- [4] It is also averred that on 14th June 2024 the Applicant brought the two children to spend the summer holidays with their relatives and Ariann Kasey Miracle Prince requested that she spend time with her grand-aunt and her brother Juan Nicholas Rodriguez Prince went to visit his godmother Hazel Benjamin in Canefield East and returned to St. Croix on the 19th June, 2024 but kept in touch with the children.
- [5] It is further averred that on the 9th of August 2024 the Applicant returned to Dominica to take the children back to St. Croix at the end of summer to go back to school on 20th August, 2024 but was informed by the 1st Respondent that she has the authority to keep the child in her care and refused to deliver the child to the Applicant. Accordingly, the Applicant has filed an application to revoke the temporary guardianship order made in 2017 under section 7 of the Guardianship of Infants Act, Chap. 37:04.
- [6] The Defendants vehemently opposing this application have also filed an affidavit in opposition to the order sought on the basis that they are concerned about the child's mental and physical well-being, upon being informed by the child of the abuse she suffered at the hands of her father and his wife (her step-mother).
- [7] The Respondents claim that Ariann is an alleged victim of emotional and physical abuse and that the Applicant, her father was the alleged perpetrator. The 1ST Respondent avers that Ariann reported to her that she had lost a front tooth after her father had given her a beating while holding her upside down by one leg and then threw her on the ground where she hit her mouth, and the tooth was knocked out.
- [8] She avers that when Ariann arrived, in Dominica she observed that she had lost a front tooth and she appeared frail, depressed and unhappy and as a result of Ariann's claim and her observation, she decided not to have Ariann return to St. Croix making this decision based on the temporary Guardianship Order which was not revoked.
- [9] The 1st Respondent also avers that Ariann had informed her that whenever she is naughty her father and step-mother would beat her regularly with a heavy leather belt and make her lift a very heavy wooden board over her head for a long time which causes her immense pain and discomfort.
- [10] She further avers that the child had informed her that her stepmother would hit her to the mouth which caused her mouth to bleed and her lips became purple and at one time that after she messed her pants her step-mother beat her across her back with a wire hanger. Following such said beating the said Stepmother forced Ariann's mouth open and poured hot pepper sauce into her mouth causing intense burning and pain.
- [11] The 1st Respondent states that Ariann and her brother would remain alone until their sister came to feed them, and that Ariann would often be left at home alone unsupervised with her brother as the Applicant and step mother would work late.
- [12] This Court having also spoken to the child in chambers was informed of similar facts by the child who expressed the wish to live with the Defendants who provide her with better meals and care, among other things. This Hon.Court having heard from Counsel and spoken to the child in

Chambers, directed the Acting Director of the Social Services Department to conduct an investigation into the child's claims of abuse.

[13] **Child Care and Protection Report**

The Report of Director of Social Services dated September 24, 2024 found that:

- ***“Ariann was subject to neglect and emotional abuse from a very tender age. Her deceased mother was an alleged victim of domestic violence.***
- ***Ariann says that she is very happy residing with Mr. Merlene Dolor and Mr. Augustine Dolor whom she refers to as mummy and papa. She said that she felt safe and loved being in the care of her mummy and papa and would like to continue residing with them.***
- ***Ariann is currently enrolled at the St. Lukes Primary School at Point Mitchel. She is also on the enrollment list at the Lew Muckle Elementary School in St. Croix.***
- ***Arian was described as a child who is strong wiled and likes ot get her way. She gets angry when she is not allowed to do what she wants. Ariann was also described as one who tells untruths.***
- ***Ariann seemingly hallucinates.***
- ***Ariann's father is of the view that he is the best suited ot raise his daughter”.***
[emphasis mine]

- [14] The conclusions of the director based on the assessments, was that ***“it is evident that there is a need for some level of intervention in the care and protection of Ariann Kasey Miracle Prince. During the discourse with Ariann and interviews with other parties there appears to be some level of child abuse, which has negatively impacted aspects of her psychosocial life. Taking into consideration all views expressed and information obtained, there si an urgent need to address the issue of abuse. Intervention is an urgent need which should be addressed in whichever jurisdiction Ariann is to reside”.*** [emphasis mine]

The Issue for Determination

- [15] Having heard the arguments from both side and having heard from the child herself, the issue falling for determination is simply; whether the temporary guardianship order granted to the Respondents should be revoked?

The Law

- [16] In determining this sole issue on the question of guardianship of the child, due regard must be given to the law in this area and the **Children (Care and Adoption) Act, Act 2 of 2023¹** is authoritative on this point, in particular section 3 which mandates that the welfare or best interest of the child must be given paramount importance in the Court's consideration. Section (3)(1) (a) of the Act, determining the primary purpose of the Act is to provide ***“the care and protection of a child from abuse and neglect in a manner that ensures that the best interests of the child are given paramount consideration”.*** (emphasis mine)

¹ Hereinafter referred to as “the Act”

- [17] In the English case of **J v C**², the House of Lords in giving meaning to the words “shall regard the welfare of the infant as the first and paramount consideration”, had this to say:

“It seems to me that they must mean more than that the child's welfare is to be treated as the top item in a list of items relevant to the matter in question. I think they connote a process whereby, when all the relevant facts, relationships, claims and wishes of parents, risks, choices and other circumstances are taken into account and weighed, the course to be followed will be that which is most in the interests of the child's welfare as that term has now to be understood. That is the first consideration because it is of first importance and the paramount consideration because it rules upon or determines the course to be followed.”
[emphasis mine]

- [18] In determining what is in the best interests of a child, section 3(2) of the Act directs the Court to “have regard to all relevant considerations” including the following which is not the exhaustive list:

“the safety of the child; the physical, mental and emotional needs of the child, and the appropriate care or treatment required to meet those needs; the physical, mental, emotional or psychological development of the child; the safety of the child; the physical, mental and emotional needs of the child, and the appropriate care or treatment required to meet those needs; the physical, mental, emotional or psychological development of the child; the child's age, maturity, level of understanding, gender, background and family relationships and other characteristics of the child where this is considered to be relevant”.

- [19] The most salient of the foregoing factors will be considered in turn as follows;

- i. *The safety of the child; the physical, mental and emotional needs of the child, and the appropriate care or treatment required to meet those needs; the physical, mental, emotional or psychological development of the child;*

Evident from the report of the Director in the interview of the Applicant is the fact that the safety of the child is not assured whilst in the custody of the Applicant. I say so because, the applicant upon his admission, physically beats the child and one time caused her front teeth to be knocked out and failed to seek dental care for the child. Ms. Hazel Benjamin mentioned in the Director's report, made certain allegations pointing to behavior of domestic abuse by the Applicant to the mother of the child whilst she was pregnant with the child, an allegation not denied by the Applicant.

- [20] It has also emerged from the report, the affidavit of the Respondent as well as the child's statement to the court, that the child and her siblings are left with no or little adult supervision at home after school. The Child's stepmother confirms that she works two jobs and comes home at 10pm, the Applicant also works two jobs and it will be safe to conclude that it is more likely than not that the child and her brother are indeed home alone most times and if not, alone they are in the care of their 14-year-old step sister who makes them do all the chores in the house.

- [21] Evident also from the report is the fact that the child describes her home in St. Croix “**as lava land.**” connoting an unhappy place and describes her home in Pointe Michel as “**candy land**”, a happy home, where she is given her favorite foods, she is loved, and she feels safe and happy.

² [1970] AC 668

- [22] The above circumstances clearly confirm that the safety of the child in the care of her father is in question and premised on the foregoing, it is safe to conclude that Ariann is far from safe in her father's home and has suffered psychological trauma whilst living with her father.

ii. *The views of the child*

As earlier posited, **The Act** has clearly set out the principles by which the court should be guided and this included **Section 4 (b)** which stipulates that;

"If a child is able to form his or her own views on a matter concerning his or her safety, welfare or well-being, he or she shall be given an opportunity to express those views freely, and those views are to be given due weight in accordance with the developmental capacity of the child and the circumstances."

- [23] In this case instant, Ariann although a child of 8 years old, has given her candid views on certain areas pertaining to her welfare. This includes her place of abode and where she wants to continue to reside. During her interview by the Director of Social Welfare, ***"She claimed that her home in St. Croix is not a happy place, she said that her father regularly beats her, and she is heartbroken. Ariann also said that her meals were not always tasty and sometimes she would go without eating as a result. She went on to say that after school her parents came home late and she and her brother Juan would have to stay with their adopted sister Ziniah, would have them do all the house chores and if they did not, she would beat and pinch them. In tears Ariann begged that she is not to be returned to St. Croix. Ariann described her home at Point Mitchel as candy land. She explained that the home is a happy home, she is given her favorite foods, she is loved, and she feels safe and happy. She went on to say that she loves Bella the family pet dog and enjoys her company. Ariann also begged that she remain at Point Mitchel with her mummy and papa"***.

- [24] Similar sentiments were expressed to the Court and a sense of being hungry and unhappy in St Croix was perceived. The court also observed that there is genuine love between the child and the Respondent's and concluded that the child was happy at her current location.

iii. *The physical, mental and emotional needs of the child, and the appropriate care or treatment required to meet those needs; the physical, mental, emotional or psychological development of the child; the need to provide a secure place for the child and the development of. Appositive relationship as a member of a family;*

The child here is at the tender age of 8 years and like all children needs to be nurtured both physically and emotionally. The report of the Director and the psychologist clearly indicate that Ariann has learning difficulties, and has suffered emotional and psychological trauma which must be given the foremost consideration and remedied for the child to truly thrive. The report of the Psychologist also observes the child as exhibiting behaviors such as avoidance of eye contact, fidgeting, showing signs of anxiety, using a coping mechanism through false cheer, indicating "a pattern of superficial rationalization as a defense mechanism against emotional trauma".

- [25] The Respondents appear to be a stable couple that are retired and have the necessary time to spend with Ariann to achieve her goals and life milestones and to see her through overcoming her trauma causing her some psychological challenges.
- [26] Based on the foregoing analysis, the evidence before this court and in particular, the reports of the Director of Social Welfare and the Psychologist I am of the considered view that the issue falling for determination is resolved in favour of the Respondents and the Application to revoke the Temporary Guardianship Order is refused. The best interest and the need for the protection of the child clearly lie with the Respondents in this matter.
- [27] I do not propose to terminate the parental rights of the father; in fact, I wish to stress the fact that it is imperative that the father must be a part of Arian's life. To this end, the Applicant shall support the child financially and is at liberty to visit the child under close supervision whenever he is in Dominica.

ORDER

As a consequence, thereof, it is hereby ordered as follows:

- (i) Legal custody of the child Ariann Kasey Miracle Prince is granted to the Respondents.
- (ii) The Applicant shall have supervised access to the said child whenever he visits Dominica

This is the decision of the court. The Applicant is reminded of his right to appeal.

HON. JUSTICE Z. JAWARA-ALAMI

High Court Judge

BY THE COURT

REGISTRAR