

**EASTERN CARIBBEAN SUPREME COURT
ANTIGUA AND BARBUDA**

IN THE HIGH COURT OF JUSTICE

**CLAIM NO. ANUHMT2023/0139
BETWEEN:**

M.D.L

Petitioner

and

B.O.W.L

Respondent

Appearances:

Mr. Peyton Knight for the Petitioner
Ms Joanne Messiah for the Respondent

2024: May 14th
June 17th

JUDGMENT

- [1] **BYER, J.:** Bearing in mind that as with all matters involving a family, the children who are children of the union which has come to an end, never have a say as to whether they should be part and parcel of the acrimony and public access to their personal, private and most times, hurtful details of their lives. This court has therefore taken the decision, as it has in other judgments where young children are involved to anonymize both the parties and the children involved in the matter. I will be referring to the children of the marriage as AYL and AAL while the petitioner and the respondent will be referred to as the mother and the father respectively and wish to state that in doing so there is no disrespect intended or meant to the parties.
- [2] When this court considers this matter, it was clear to the court at trial that this was not a matter that should have gone to trial. It was clear to the court that the breakdown of this marriage and the lack of being able to appropriately discuss the implications for the children of the change in status quo, emanated from the new found and deservedly so, independence of the mother and the father's intractable retention of his role as father and provider for the family.

- [3] It appeared to the court that having entrenched themselves in those two positions, a relatively simple matter of access and maintenance resulted in a full blown trial. This was so when even at the completion of the case for both sides, when this court gave the parties an option to move forward and end this phase of these proceedings it was clear that compromise was not the word of the day.
- [4] Be that as it may, this court heard and saw the evidence being given by the mother, her friend in support of her application and the father.

Background

- [5] The application filed by the mother was encapsulated in the Notice of Application for ancillary relief filed on the 28th September 2023 and sought the following relief :
- i) that the parties shall have joint custody of the children AYL and AAL who shall reside with the mother and the father shall have liberal access to the said children
 - ii) that the father shall pay the sum of \$1600.00 per month for the maintenance of the two children
 - iii) the father shall also pay 50% of all expenses for the children for educational, medical and health insurance.
- [6] The father in his affidavit in response accepted joint custody but sought the court to make an order that the child AAL (a male) should reside with him with liberal access to his mother, while AYL who was away at school could continue to reside with the mother.
- [7] The father made no offer as to maintenance but suggested that since he was seeking AAL to live with him, that the mother should contribute \$500.00 towards his upkeep or in the alternative, he would be wholly responsible for AAL while the mother would be wholly responsible for AYL save and except her university expenses which he would continue to pay.
- [8] It was therefore the very narrow issue of access and maintenance that remains for this court to make its final determination and bearing in mind to a large extent, that it is only in relation to AAL, who is still a minor.

Access to AAL

- [9] When this court considers opposing views of both parties, this court is left without a scintilla of doubt that these parents love AAL and AYL fiercely and unconditionally.
- [10] It seemed to however be lost on both parties, that by making the application (on the part of the mother) and the opposition thereto (by the father) that they lost sight of the fundamental issue, that they are the adults in the situation and that whatever their personal feelings, they have to parent these children until they die. A point this court finds seems to get lost in the finger pointing and posturing that can be made by adults.
- [11] Indeed this court is heartened by the parties decision to agree to joint custody and this court hopes that they understand that by so agreeing, it means that they must work together in coming to all the big decisions regarding the children. It therefore means that regardless of who the children live with, that the lines of communication must always remain open and that they find a way to do so regardless of their personal feelings towards each other.
- [12] Access on the other hand however is of a more limited scope in this court's mind, and relates to how and in what manner the non resident parent has an opportunity to interact with the child and further whether there is any reason why one should be preferred over another.
- [14] In this regard it was clear to the court that even though the father maintained his desire to have AAL live with him at trial, in this court's mind that desire was in no way grounded in his belief that the mother was ineffectual as a parent or would or could place AAL in harms way. In fact in his evidence in chief, the basis for his desire was stated thusly " since the birth of our two children, we have always had strong bond reinforced over time. Our son and I have developed an exceptional and enviable close father-son bond and I believe that our physical separation and eventual divorce will have an adverse impact on him. He spends most of his time with me when he is not in school ... Further given that he is a male child and given societal challenges facing boys, I am of the considered opinion that I am better equipped to teach him how to manage the transition from boyhood to teenager and eventual manhood which will cement his confidence as he goes through his various developmental stages of life." ¹
- [15] At trial and under cross examination, this court was however presented with a different view as to the extent of this bond. The court heard inter alia that he had not ever taken him to the doctor, that he had not spoken to his current teacher about his progress in school, that he only occasionally attended PTA meetings and that he did not go to church with him or his church activities . However by the time

¹ Affidavit of the father filed 2/11/2023 at paragraph 21

submissions were made by counsel on behalf of the father, it appeared the father's position had shifted and now sought to have shared access with the mother to allow him an equal opportunity to interact with AAL as envisioned by the provisions of the Divorce Act.²

- [16] The mother did not address the court on the issue of the possibility of shared access although this was a matter raised by the court at the conclusion of the trial, which was an unfortunate position to take on her behalf.
- [17] Be that as it may, it is in the considered opinion of this court that there are no list of factors which can be placed in a table of pros or cons in relation to these parents. In fact as this court has stated previously in a different way, there is no doubt in my mind that any order with regard to access that both parents have an important part to play. This court is more than satisfied that having asked itself the pertinent question as to whether there was any cogent reason why the children and in particular AAL should be denied an opportunity of access to either parent,³ I have come to the inescapable conclusion that there is none.
- [18] It is therefore clear and what this court appreciates is that both the mother and the father bring individual strengths to the upbringing of this child and where one is less than confident the other can pick up the slack, therefore in this court's mind the interest of this child would be best served if AAL's time is split between the parents.
- [19] This court therefore orders that the mother and father shall have joint custody of AAL and access to the said child shall be effected as follows:
- a) AAL shall reside with the mother from Thursday after school to Monday morning when she shall be responsible for taking him to school.
 - b) AAL shall reside with the father from Monday after school until Thursday morning when he shall be responsible for taking him to school
 - c) This arrangement shall be flexible in approach depending on if either parent shall have an activity with AAL that will take place during the period that they reside at the other parent
 - d) The mother and father shall share the day of AAL's birthday as agreed between the parties and the mother shall be entitled to have AAL for mother's day and her birthday and the father shall be entitled to have AAL for father's day and his birthday.
 - e) During the school vacations namely Summer, Christmas and Easter, AAL shall spend the time in the following manner:
 - i) Summer vacations- AAL shall spend the first 2 weeks and the penultimate week of the summer vacation with the father

² Divorce Act 1997 No 10 of 1997 Section 14(10)

³ **Re H(Minors) (Access)** (1992) 1 FLR 148

- ii) Christmas vacations- AAL shall spend at least one week(7 days) of that vacation with the father to be determined as to which days by the parties (whether consecutively or disjunctively)
- iii) Easter vacations – AAL shall spend at least one week (7 days) of that vacation with the father to be determined as to which days by the parties (whether consecutively or disjunctively)

Maintenance payments

- [20] As it relates to the payment of maintenance, the father's proposition is as laid out at paragraph 7 herein, however it is clearly understood by this court that this was certainly founded on the basis that the father desired the uninterrupted residence of AAL with him.
- [21] The court having not given effect to that desire is mandated to make an order reflective of these shared access arrangements as given.
- [22] As this court heard the evidence of both parties, it was clear to the court that the father had included expenses which were no longer part of his monthly budget or were not his responsibility at all. ⁴ Further, although the mother led credible arguments to the father's assets to include properties that he claimed to have been his mother's, this court was not placed in the position to make a determination as to the extent of any of the father's interest in the properties at Parham and Independence Avenue or the accounts at CIBC⁵ from documents presented to the court.
- [23] What was however clear to the court was that the father, apart from his salary from working with the family business which he admitted in re examination was twice that of the mother's, also had additional income from his personal rental properties and certainly access to the bank accounts which he may or may not have been operating on behalf of his mother. In fact by his own admission, it is clear that his mother has for many years subsidized the family income and this court accepts that this arrangement is ongoing as the favourite of his mother, a successful businesswoman in her own right, from all accounts.
- [24] The court is therefore satisfied that the father can in fact pay the sum of \$1600.00 per month for the maintenance of the children plus meeting the university expenses of AYL.

⁴ In his financial statement at page 38 of the Trial bundle filed on the 2/11/2023 sums stated for hire purchase of \$4800.00 per year and the university tuition and fees for Alicia were admitted were no longer applicable and had been covered by a scholarship respectively.

⁵ Pages 58,59,65 and 66 of the Trial bundle filed on the 2/11/2023

- [25] However it would be manifestly unfair to ask the father to pay this entire amount when AAL is with him at least 3 ½ days in any week. For those 3 ½ days a week I therefore order that a deduction be made to the sum as claimed by the mother in the sum of \$250.00.
- [26] The father is therefore ordered to pay the sum of \$1350.00 per month for the maintenance of the children of the marriage to be paid into an account in the name of the mother as designated by the mother for that purpose. The portion of this said sum in relation to the AYL shall terminate on her completion of her tertiary education.
- [27] The father shall also be responsible for paying 50% of the medical and educational expenses save and except – the mother shall continue to be responsible to pay for the tuition fees of the said AAL (while he remains in private school) and the father shall be responsible for all university related expenses of AYL as they become due and owing in relation to tuition and accommodation.

Order of the court:

1. Joint custody to the mother and the father with access as set out above at paragraph 19 namely:

- a) AAL shall reside with the mother from Thursday after school to Monday morning when she shall be responsible for taking him to school.
- b) AAL shall reside with the father from Monday after school until Thursday morning when he shall be responsible for taking him to school
- c) This arrangement shall be flexible in approach depending on if either parent shall have an activity with AAL that will take place during the period that they reside at the other parent
- d) The mother and father shall share the day of AAL's birthday as agreed between the parties and the mother shall be entitled to have AAL for mother's day and her birthday and the father shall be entitled to have AAL for father's day and his birthday.
- e) During the school vacations namely Summer, Christmas and Easter, AAL shall spend the time in the following manner:
 - i) Summer vacations- AAL shall spend the first 2 weeks and the penultimate week of the summer vacation with the father
 - ii) Christmas vacations- AAL shall spend at least one week (7 days) of that vacation with the father to be determined as to which days by the parties (whether consecutively or disjunctively)

iii) Easter vacations – AAL shall spend at least one week (7 days) of that vacation with the father to be determined as to which days by the parties (whether consecutively or disjunctively)

2. That the father shall pay to the mother the sum of \$1350.00 per month for the maintenance of the children of the marriage as set out at paragraph 26 above.
3. That the father shall also be responsible for 50% of the medical and educational expenses of the said children save and except that the mother shall be solely responsible for the payment of the tuition fees of the said AAL and while the father shall be solely responsible for the university expenses and fees of AYL.
4. Each party to bear their own costs

P. Nicola Byer
High Court Judge



By The Court

Registrar