

**EASTERN CARIBBEAN SUPREME COURT
ANTIGUA AND BARBUDA**

IN THE HIGH COURT OF JUSTICE

CLAIM NO. ANUHCV2023/0285

BETWEEN:

[1] D.J	First Applicant
[2] D.J on Behalf of JJ (the child)	Second Applicant
and	
S.A	Respondent

Appearances:

Ms. M McDougal for the First and Second Applicants

Ms. S Bradshaw for the Respondent

2024: January 24th

February 13th

March 26th

JUDGMENT

[1] **Byer J:** In order for this court to once again protect the vulnerable individual in this matter, the minor child, this court has taken the unilateral decision that the names of the parties are to be anonymised. As such, the parties will be the applicant and respondent respectively and the child will be referred to as J.

[2] There are two extant applications before this court. The first applicant initiated proceedings by filing an application seeking sole custody of the second applicant herein. This application was filed in court on 1st August 2023 and included the following documents:

- (1) Fixed date claim form and an urgent affidavit in support of same;
- (2) Certificate of urgency; and
- (3) Notice of application for interim relief and an affidavit in support of same.

- [3] On 6th November 2023, both the respondent and her mother filed affidavits in response to the application. Further, on 17th November 2023, the respondent filed an application for Financial Relief accompanied by an affidavit in support. Subsequently, the first applicant filed an affidavit in response to the application on 9th January 2024 to which the respondent replied on 22nd January 2024.
- [4] In a determination of the applications, the court was also assisted through a Social Inquiry Report prepared by the welfare officer, Mrs Jenyssa Findlay-Smith, BSc, dated 13th December 2023.
- [5] Prior to the hearing of the substantive applications, this court considered the application for interim relief and made an interim order on 7th November 2023 for access to the applicant as follows:

“In the interim, the applicant shall have access to the child from Sundays at 10 am to Wednesday mornings when he shall deliver the child to school. The respondent shall have the child on Wednesdays when she shall collect the child after school and until Sundays at 10:00 am when she is to deliver the child to the applicant’s home. For the avoidance of doubt, the respondent is not to be in any way restrained from attending the school of the minor child for the purposes of collecting him after school.”

Background

- [6] The first applicant, a former member of parliament, served as a parliamentary representative and government minister for nine years in Antigua and Barbuda. The respondent, aged 29, has been employed as an immigration officer in Antigua and Barbuda for the past seven years.
- [7] The first applicant and the respondent are the biological parents of the second applicant, hereinafter referred to as "J". They entered into a relationship, as this court understands it, around the year 2014, which resulted in the birth of J on August 27, 2015, in the United States of America. J is the third child of the first applicant, who has a total of four (4) children, and the first child of the respondent, who has three (3) children.
- [8] The undisputed facts in this matter are that both parents were present for the birth of J. However, despite both parents being present at the birth, the first applicant initially refused to put his name on J’s registration of the birth certificate to identify himself as J’s father. This decision the court accepts was influenced by his political campaigning and marital status at the time. The first applicant later added his name to J’s birth certificate when J was three years old. Despite this, however, this court garnered, owing to the same reasons, the first applicant distanced himself from J during his formative years.
- [9] After his birth, J resided with the respondent and her mother, his maternal grandmother, in Paynter’s West, St. George, Antigua until the age of six (6). During this period, the first applicant only provided

monetary support to J, without actively fostering a father-son relationship or publicly acknowledging him as his child.

- [10] As this court understands it, the parties had later entered into an informal arrangement where J would occasionally stay with the first Applicant, and since the court orders, J has been spending four days per week with him. On other occasions, J would stay with his maternal grandmother.
- [11] As it concerns J's schooling, J attends Sea View Academy, a private school, where he is reported to be performing well. The first applicant provided financial assistance to the respondent by making payments for J's education fees and would occasionally provide \$1000.00 to cover J's food. While the first applicant covers the tuition fees, the respondent bears the cost of J's additional school expenses, such as purchasing his school uniforms.
- [12] The respondent's financial stability, including his pension from two terms as a government minister, enabled him to fulfil these financial obligations. However on occasions for varied personal reasons withheld the sum of money paid over to J. It is noteworthy, that the first applicant asserts his financial stability and ability to provide for J, owing to his good pension for having served two terms as a minister of government¹.
- [13] Additionally, despite providing financial support in the form of food and tuition fees, the first applicant has neglected to cover J's medical and incidental expenses. As it concerns J's health, it is the evidence before this court that J suffers from asthma and has a condition called hypospadias.
- [14] After the birth of J, the respondent engaged in a relationship with a man hereinafter referred to as "JJ" of whom she bore her last child. Owing to this relationship, the respondent moved from her mother's house in Paynters to live with JJ in Grays Farm Antigua. This court has come to understand that JJ is presently incarcerated, and the respondent now resides by herself in Green Bay in a two-bedroom apartment which is a village close to Grays Farm Antigua. However, the respondent continues to maintain a romantic relationship with JJ, whom she visits and stays at his house from time to time even now during his incarceration.
- [15] The first applicant lives in Scotts Hill, Saint John, Antigua with his wife in what he describes as a 'spacious three-bedroom, two-bath home located in a respectable neighbourhood'. The first applicant has expressed concerns about J's well-being, believing that J is now exposed to criminal activities and faces danger due to the choice of the respondent's partner and his recent incarceration. The first applicant presents these concerns as his true motive for seeking sole custody in this matter.
- [16] On the other hand, whilst challenging the application for sole custody, the respondent alleges financial struggle in predominantly providing for J. She alleged that the first applicant has stopped fulfilling their

¹ See paragraph 2 of Urgent affidavit in support filed 1st August 2023.

informal agreement of providing financial support for J since December 2022. This cessation of financial assistance is cited as the reason motivating her application for financial relief in this matter.

[17] This court conducted the hearing of this matter on 24th January 2024 when the welfare officer, Ms Findlay-Smith appeared in person for further questions by the parties and dealt with the application for financial relief; and on the 13th of February 2024 when the applicant, the respondent and the respondent's mother all gave evidence in the matter and were cross-examined on the application for custody.

[18] It was therefore clear to the court that two things were required to be considered in the case at bar. Firstly, the two applications are to be considered independently on the basis that at the trial of the matter on the 24th of January 2024, the applicant was not in a position to proceed with his application. However, the respondent was, and the court allowed the application for financial relief to be heard. Secondly, it was clear to the court that a large measure of this determination would be based not so much on what the parties said but also on how they said it and their demeanour on the stand as they gave their evidence in essence their credibility. In this case, non-verbal cues were as much a part of the case, as what was said by the parties.

[19] That being said, on the application for custody and access, the applicant was the sole witness in support of his application, while the respondent and her mother gave evidence in opposition to the application. On the application for financial relief, the applicant and the respondent were the sole witnesses respectively.

[20] In this court's mind, therefore, the sole issue on the application for custody and access filed by the applicant was: **Is the applicant entitled to sole custody of the child J?**

[21] On the application for financial relief, the sole issue which is contingent on the findings above is: **What if any financial relief is the Respondent entitled to?**

[22] In considering these issues the court was assisted by comprehensive submissions by both sides and the court wishes to go on record to thank counsel for their assistance in this regard.

The Applicant's submissions

[23] Counsel for the applicant argued that it is trite law that in matters of custody, the welfare of the child is paramount, and where that child's welfare is affected, the court shall consider all factors when deciding custody and care of the child. This, counsel asserts, is best safeguarded in granting custody to the applicant. Counsel averred that having heard the testimonies of all witnesses, there are several factors which arose in this case, including concerns about environment and safety, parental conduct, immorality, domestic violence, stability, and education. Counsel embarked on addressing these matters in turn.

[24] As it concerned '**environment and safety**', counsel contended that the living conditions at the respondent's residence in Green Bay posed a substantial risk to J's well-being. Counsel asserted that J's safety is compromised by the abusive behaviour of the respondent's boyfriend, JJ, towards her within the

household. Furthermore, counsel argued that Green Bay's notoriety for violence and criminal activities exacerbates concerns about J's safety. Counsel thus submitted that this concern was exemplified and proven by JJ's imprisonment for gun-related offences.

- [25] It was counsel's argument that despite the respondent's attempts to portray JJ as a law-abiding and respected man in his community, his recent conviction stood in direct contradiction to those assertions. Counsel stated further that this recent conviction, along with the respondent's continued association with him, raises serious concerns about J's safety, well-being, and the potential long-term impact on his moral development. Counsel contended that the respondent's assertion of active involvement in her community is contradicted by her apparent lack of awareness of the seriousness of the crime and potential reprisal killings happening within her neighbourhood, thus proffering that the weight of her evidence on the state of affairs regarding violence in the community should be afforded little credibility.
- [26] Counsel argued further that the respondent's portrayal of JJ as a father figure and role model to her children, including the 2nd applicant, raised concerns. Despite engaging in activities with J, such as taking him to school, dining out and playing with him, JJ's prior arrest for possession of an illegal firearm on his person suggests habitual involvement in illegal activities, and continuous possession of the said illegal firearm, particularly due to potential gang-related reprisals posing a constant danger. Therefore, it was argued that J should never be allowed in JJ's presence.
- [27] As it concerned '**parental conduct**', counsel contended that the respondent's lack of objection to JJ's possession of an illegal firearm implied her condonation of his illegal conduct. Counsel submitted that the respondent only sought to placate the situation when questioned by the court about their relationship in light of his illegal activities when she stated that she would be prepared to end the same if he did not remain on the straight and narrow. Counsel contended that the respondent's reliance on her being part of the arm of law enforcement as an immigration officer was in direct contradiction to her continued attempt to paint a picture of JJ's good character despite evidence suggesting otherwise.
- [28] Counsel submitted that the respondent's portrayal of providing a stable and safe environment for her children by relocating to Perry Bay should be rejected by this court, as on her evidence the respondent admits to still living in Green Bay at JJ's residence. Counsel submitted that the partially furnished Perry Bay home suggested that it was in fact only temporary, and her testimony of alternating between the two homes adds to the creation of instability for J. This, counsel argued further, indicated tolerance towards JJ's illegal activities and raised doubts about her assurances given to this court of making adjustments for the children's sake in case of any re-arrest by JJ.
- [29] Counsel submitted further that the respondent's preference for a less restrictive parenting style compared to that of the father was also indicative of a lack of necessary structure for a child's upbringing as

demonstrated in the authority of *May v May*², where the father's stricter approach towards education was favoured. Counsel argued that the respondent's testimony regarding J occasionally missing school due to her preferred parenting style further bolsters this assertion. Additionally, counsel argued that the admission by the respondent's mother that Green Bay is a violent community underscored the danger to the second applicant's life and upbringing. Despite the respondent's relocation to Perry Bay in an attempt to avoid these dangers, counsel submitted that this relocation is temporary and still in close proximity to the dangers of Green Bay.

- [30] Regarding '**stability and structure**', counsel contended that the respondent's arrangement of living between two homes signified her lack of stability, leading to instability in J's life. Counsel stated that J's custody arrangement of spending varying days with each parent and his grandmother is detrimental to his identity and lacks structure. In fact, Counsel contended that this was recognised by Mrs Findlay, the Welfare officer, who supported the contention that the applicant was the more suitable custodial parent, citing his ability to offer a stable and structured home environment which was ultimately beneficial for J.
- [31] As it relates to '**immorality and discipline**', counsel contended that the respondent's response to an incident involving J and another student at school, in which she advised him not to speak to a particular teacher was clearly reflective of the respondent's problematic approach to handling situations that encouraged rudeness while undermining authority, which was merely a continuation of the respondent's attitude to her own personal choices. Drawing from the precedent set in *Forsythe v Jones*³, where custody was denied due to the immoral use of marijuana, counsel argued that the respondent's current home environment is detrimental to J's upbringing.
- [32] Regarding '**education and health**', counsel argued that the court must consider J's education and health. Counsel averred that J's school records showed he performed well at Seaview Academic Foundation, but the 1st applicant contends that the respondent's unstructured lifestyle hinders J's potential to excel further. Counsel argued that any concerns about J's education raised by the respondent are questionable given her past endorsement of the same school. Furthermore, the 1st applicant has demonstrated a strong commitment to J's education by predominantly providing additional tutoring, evidencing his keen interest in his educational development. As it relates to J's health, counsel contended that J's weight, categorized as obese, poses the most significant health concern, despite him having a non-urgent condition called 'hypospadias' which the 1st applicant has taken a great interest and has consulted medical professionals to assist in managing his condition and his weight as a concerned father must.
- [33] Counsel submitted that if the court is minded to consider the tender age doctrine in its determination, J's young age, intelligence and maturity warrant consideration. Counsel asked the court to consider J's

² [1986] 1 FLR 325.

³ [2001] 4 JJC 0610

expressed preference for his father's parenting, enjoyment of activities with him and familiarity with his father's residence owing to his frequent visits over the past four years suggesting an ability to adapt to living with his father.

- [34] Counsel posited that the evidence unequivocally established the 1st Applicant as the more suitable custodian for J, offering a stable, safe, and structured environment conducive to his well-being, moral development, and academic success. In contrast, the respondent's home life lacks stability, exposed and continues to expose J to potential danger, and undermines discipline. Moreover, the respondent's questionable judgment and dismissive attitude towards illegal activities, coupled with a history of domestic violence, raise serious concerns about her ability to prioritize J's welfare. Therefore, granting custody to the 1st Applicant aligns with J's best interests, ensuring his healthy development and future success.

The Respondent's submissions.

- [35] Counsel stated that there are two extant applications before this court, an application for sole custody by the 1st Applicant and an application for financial support by the respondent herein.
- [36] As it concerned the matter of custody, counsel submitted that custody cases have been commonly referred to as "...*anxious case[s]*," as established in the precedent of ***L v L (Custody of a child)***⁴. Counsel argued that it is mandatory that the courts, when considering matters of custody, the welfare of the child is of paramount importance as the court derives its authority from its inherent jurisdiction as *parens patriae*. Counsel submitted further that child-centred disputes are longstanding and often contentious, echoing the ancient debate underscored by King Solomon's judgment which emphasized the two most important principles, the best interest of the child test; and the parental rights doctrine. Counsel argued that the former applies when the parents of a child compete for custody.
- [37] Further to her argument, counsel stated that assessing and determining the best interests of a child by necessity involves evaluating and balancing various factors, as outlined in the ***UN Convention on the Rights of the Child***. Counsel stated that assessing the best interests of a child meant evaluating and balancing "*all the elements necessary to make a decision in a specific situation for a specific individual child or group of children*". These included the child's views and aspirations, identity, care, protection, well-being, family environment, social contacts, vulnerabilities, skills, rights, and specific needs.
- [38] In turning to the facts of the case, counsel contended that the 1st Applicant's portrayal of having primary care of J contradicts evidence provided by the Respondent and her mother, who assert that he has always lived with the Respondent. Counsel argued that the Respondent's affidavit outlines the child's living arrangement, and was supported by unwavering testimony from herself and her mother which should be deemed credible by the Court.

⁴ [1981] 2 FLR 48 per Denning MR.

- [39] Counsel went on and submitted that conversely, the 1st Applicant's evidence suggesting an abusive relationship and exposure to violence lacked substantiation and relied on hearsay or uncorroborated claims, which should be dismissed. Additionally, counsel averred that the 1st Applicant's demeanour during cross-examination was much to be desired as he was aggressive and evasive, with conflicting statements regarding the reasons for his absence from J's birth certificate to the breakdown of his relationship with the Respondent.
- [40] Counsel argued that significant differences exist between the parties regarding parenting styles, involvement in the child's education, and attention to the child's well-being. Counsel contended that the incident of the child being choked at school was downplayed by the 1st Applicant, who resisted the Respondent's right to make inquiries of the school. Counsel argued that concerns were raised about the 1st Applicant's lack of attentiveness to J's personal hygiene, attire, and general health. The 1st Applicant, under cross-examination, demonstrated a lack of knowledge regarding his son's basic needs by his inability to provide basic information about J which included his shoe size or the year of his birth. Counsel submitted that the 1st Applicant's behaviour portrayed him as unreasonable, unreliable, and indifferent to J's welfare as a whole.
- [41] Counsel stated that the 1st Applicant and the Respondent maintain a highly acrimonious relationship, impeding communication on matters concerning the child. Counsel recounted for the court the intensity of discord which was evident when the Applicant expressed a desire to prevent the Respondent from visiting the school, demonstrating his disdain during testimony of the Respondent and her rights. It was counsel's contention that in instances where the parents are acrimonious, the granting of joint custody would not be in the best interest of the child. To lend support to her argument, counsel relied on the authority of **Judy Crum-Ewing v Courtney Crum-Ewing**⁵ where Justice Errol L. Thomas in paragraphs 25 to 32 applied the learning from *Foster v Foster*⁶ by noting that the granting of joint custody would not be in the best interest of the child where there is a communication issue between the parties. Counsel submitted that the evidence in the case at bar is one in which sole custody to the Respondent is therefore more appropriate. The cases of **Knight v Knight**⁷, **La Borde v La Borde**⁸, and **Merchant v Willimas**⁹ were applied.
- [42] Concerning the issue of financial support, counsel did very little to assist the court in this regard. Counsel cited a large portion of the Maintenance of and Access to Children Act¹⁰ with perceived relevant sections

⁵ Claim No. ANUHMT2007/0127

⁶ (1977) FLC 90-281

⁷ SVGHMT2018/0123

⁸ SVGHMT2018/0064

⁹ NEVHCV 2009/0085

¹⁰ No.1 of 2008

being the interpretation section of “child”, “maintenance”, “maintenance order”, and “parent” which is not in dispute before this court. Counsel cited **section 3** which asserts the obligation for parents or guardians to provide financial support for their children. Counsel further cited **sections 5 and 6** which outline the procedures for court orders concerning the best interests of a child, including considerations of relevant factors, engagement of knowledgeable individuals or agencies, and the necessary documentation for applications, ensuring orders made are in the child's best interest and addressing various aspects such as maintenance, access, and custody.

- [43] Counsel argued further that the court is mandated to consider **section 8** factors in its determination on this issue by taking into account various factors including the child's financial requirement, educational requirements, the standard of living, and the financial obligations of both parents while ascertaining the child's entitlement to maintenance, the respondent's ability to provide it, and ensure that the child's needs will be adequately met.¹¹
- [44] Counsel asserted that there was a minimal challenge to the Respondent's application and affidavit evidence for maintenance and that with the concomitant failure of the 1st Applicant to provide adequate documentation for his income and expenses and his lack of disclosure regarding his freelance work all constituted material non-disclosure, requiring the court to draw adverse inferences against him. In light of the aforementioned, counsel, therefore, entreated the court that the respondent was entitled to her claim for financial relief in favour of J and that the court should make an order in the sum as prayed.

The evidence

The Applicant

- [45] The entirety of the evidence and in particular the evidence in chief of the applicant was that he was the better parent to obtain sole custody of J.
- [46] He sought to suggest to the court that not only was he more financially stable and able to provide for J, but that in any event J lived with him as his primary residence and had done so for most of his life. The applicant also relied heavily on what he considered the inappropriate social life of the respondent whose significant other is a convicted criminal and physically abusive. The applicant also stated that the area where the respondent lives is known for violence, and he feared that J is being exposed to an unsafe environment living with his mother.
- [47] However, following from the entirety of the evidence of the Applicant, the court finds on a balance of probabilities that the Applicant had been largely disinterested and distant in his role as a father for the majority of J's life. He displayed a notable lack of knowledge about fundamental aspects of J's life, such

¹¹ Section 9

as his year of birth, clothing size, or even shoe size. The applicant's interest in his child appeared to be sparked only after an incident involving law enforcement, during which he was charged, and J was removed from his care while visiting. Further, it was established to the satisfaction of this court that J had not resided with the applicant for substantial periods of his life, but had frequent visits and interactions with him and his family regularly.

- [48] Interestingly too, the crux of the applicant's case rested on unsubstantiated allegations, largely based on supposition rather than concrete evidence. These included claims regarding the perceived danger of the neighbourhood, alleged abuse suffered by the respondent from her partner, and concerns about the quality of role models present in the environment where J resided.
- [49] Furthermore, it became apparent to this court that the applicant sought to assume primary decision-making authority to the exclusion of the respondent, despite his denials to the contrary. His desire for control was evident, and he openly admitted to the court that he became agitated when he felt his directives were not followed. Additionally, it was noted that the applicant demonstrated a lack of respect for the respondent's role as the mother of his child.

The Respondent

- [50] The respondent on the other hand made it clear that the applicant never wanted anything to do with J and in fact, when he was born refused to put his name on his birth certificate until he was 3 years old. As such, J has never lived with the Applicant, he only visits him and has lived with her and her mother until he was 6 years old.
- [51] As far as the respondent is concerned, this application by the applicant is driven by impure motives as she failed to vote for the applicant in the last election, a fact which he is still to accept and allow to be left in the past. The respondent therefore suggested to the court that the applicant has never loved J and has no ability to show him care or love but rather is harsh and unfeeling. The respondent denied that the home environment in which J lives and contact with her significant other is dangerous and that in fact, her partner treats J more like a son than does the applicant.
- [52] Following the entirety of the evidence of the respondent, the court finds on a balance of probabilities, that the respondent fiercely loves her son J and wants the best for him, but still makes choices for her personal happiness. She has attempted to establish some independence from JJ; however, she is still very much in a relationship with him even though he is presently incarcerated.
- [53] Further, the court finds that the respondent believes that JJ is more of a father to J than the applicant while accepting that she would not want J to emulate what he sees from JJ. The respondent is very protective of J to the point that she allows her emotions to lead her as opposed to her logic and reasoning. The court notes that J lives with her and visits the applicant according to the schedule set by the court.

The Respondent's mother.

- [54] The gist of the evidence of this witness was by and large meant to refute the allegations made by the applicant indicating that she had supported his application for sole custody.
- [55] While this court must indicate that it was clear that this witness pulled no punches when it came to giving her evidence, it was also clear that she made a concerted effort to say as little as possible about her daughter, the respondent, and her living conditions to portray them not just in a negative light but a realistic light. This court cannot fault this witness for doing so but at the end of the day, the evidence elicited was of little weight, this court being satisfied that she could not be considered independent and unbiased.
- [56] The social worker who conducted the Social Inquiry Report ¹² also gave evidence in the matter but this court will deal with her findings and her evidence at the trial of the matter later on in this judgment.

Is the applicant entitled to sole custody of J?

Court's considerations and analysis

- [57] The starting point for this court on this application must, therefore, be: what is custody and how does the court navigate that thorny issue where the parents of the minor child are so diametrically opposed to each other's position?
- [58] In the case of **Gopee v Gopee**¹³, Basdeo Persad-Maharaj J made this observation: "Courts do not operate on any rights of either parent to custody but on the right of the child or the children to be placed in an environment most conducive to their welfare. The court ought to make an order in the best interest of the children involved. In other words, this court must consider what is best for the benefit of the child and not the benefit of the parents. I intend to bear this in mind as a golden thread which runs through the case." (my emphasis added).
- [59] So that "golden thread", as so eloquently stated, must be what is in the best interest of the child, and the right to look after a child must be more than the provision of a home. It must, therefore, involve "the rights and duties associated with bringing up the child at present and in the future."¹⁴ Of course, the court must always bear in mind that there are "...very few generalizations which are really useful. Everything turns on a nice appreciation of the detailed facts with regard to the people involved and their situation – the grown-ups – and above all the relationships of the [child] involved with those grownups."¹⁵
- [60] Therefore, what is clear is that the desires of the parents as to what they want are of limited utility to the court in making this determination. As I made note of elsewhere when this court made an order regarding

¹² Page 28-43 of the Trial Bundle filed 23/1/2024

¹³ (unreported) 2 March 1993 HC, T & T (No.19 of 1991)

¹⁴ Lystra Koldilinye "The Judicial Approach to Child Custody Issues in the Commonwealth Caribbean" 219 at 220

¹⁵ **B v B (Custody of children)** (1985) FLR 184 per Cummings – Bruce LJ

custody of a child, I stated then, and I will repeat myself here, that it is with some disappointment that neither of these parties spoke to what J may or may not have wanted. It was all about what they (and in particular, the applicant who came across as the authority on that) would want to see and how they would want to approach the question of custody.

- [61] However, this court is of the considered opinion that that posture does not help the child. As such, this court is mandated to regard the welfare of the child as the first and paramount consideration and "...shall not take into consideration whether from any other point of view the claim of the father or any right at common law possessed by the father in respect of such custody, upbringingis superior to that of the mother or the claim of the mother is superior to that of the father."¹⁶
- [62] Thus, in undertaking this exercise, the court must be mindful not so much of the wishes of the parents but more so as to which parent can meet the needs of the child at this particular point in time and who is able to foster the relationship with the non – custodial parent to ensure that the child has contact with both parents.
- [63] In the case at bar, the court must therefore consider whether one of two options in relation to custody is applicable in all the circumstances, that is whether there should be sole custody to the applicant or the respondent (although she did not specifically seek such an order) or joint custody to them both.
- [64] In this regard, it was therefore with interest that the court noted what was said by the social worker, Mrs Findlay-Smith, in her report and in answer to questions at court. In her report, Mrs Findlay-Smith made it clear that the relationship that existed between J and the applicant in his formative years was far from the "typical, healthy father-son relationship"¹⁷. She also failed to substantiate any findings in support of the contentions by the applicant about the respondent and in fact, made the statement that rather than having one parent having dominion over the other she saw that it was more beneficial to have an effective co-parenting arrangement. However, on cross-examination by counsel for the respondent, Mrs Findlay Smith made it clear that as far as she is concerned her report was incomplete as she had failed to have any follow-up visits with J to establish his feelings in relation to his parents. Her recommendation was, however, at the end of the day that there be joint custody of J.
- [65] In this court's mind, this recommendation did not, however, consider the very "openly dysfunctional relationship"¹⁸ between the applicant and the respondent, "...a joint order for custody with care and control to one parent only is an order which should only be made where there is a reasonable prospect that the parties will cooperate." The court, in making such a decision, must be satisfied that the parents can, in fact, work together to ensure the success of the arrangement ¹⁹. Therefore, the court must see that there

¹⁶ Guardianship of Infants Act Cap 197 of the Laws of Antigua and Barbuda section 3

¹⁷ Page 13 of the Social Inquiry Report at page 41 of the TB filed 23/1/2024

¹⁸ Page 13 of the Social Inquiry Report at page 41 of the TB filed 23/1/2024.

¹⁹ **Kruger v Kruger** 25 O.R (2d) 673

is an understanding between the parties on two essential matters: “ i) *each of them accepts that the other is a fit parent to have custody of the [child] on the shared basis to be arranged and ii) each of them is persuaded that he or she can cooperate with the other and that the other in turn can co-operate with him or her on the basis to be arranged.*”²⁰

- [66] In this court’s mind, it is clear, that the applicant is far from accepting that the respondent is a fit parent and has categorically stated that she is not. It is clear, that the age gap of 33 years between the applicant and the respondent informs by and large his attitude towards the respondent of being dismissive and condescending. The manner in which the applicant gave his evidence, and the allegations he insisted on repeating ad nauseum to the court and in submissions makes it pellucid to this court that there would be no cooperation between the applicant and the respondent. The court is satisfied in its own mind that the attempt by the applicant to persuade the court that if he had sole custody it would not result in him attempting to alienate the child from the respondent was merely lip service and not a sincere or genuine willingness to work with the respondent.
- [67] To this court’s mind, any order for joint custody would be doomed to failure, even if this court were to offer co-parenting classes to the parties. This court is of the considered opinion that there would be no genuine effort on the part of the applicant to make any such assistance work to his benefit, which signals a most dismal picture that will emerge as this child gets older.
- [68] Therefore, the only option must be sole custody and the court must consider this most carefully, as it effectively would mean that the other parent is on the periphery of decision-making and upbringing.
- [69] In that regard, this court has already indicated that it did not accept that the applicant was in fact the main custodial parent, as he had wanted the court to believe. Lack of knowledge of basic information about J was an immediate red flag for the court, while it was clear that the respondent was the parent who has taken and takes an active part in the life of J. This was more clearly demonstrated in the “incident” of her attendance at J’s school after he was involved in a fight on the school grounds, a fact of which the applicant was not even aware until after the respondent’s reported reaction and attendance.
- [70] Be that as it may, this court must, however, be wary in making a sweeping determination as to the issue of custody when the issue of the quality of persons who are in the life of the respondent must be considered. This court has already determined that as much as the respondent loves and protects her child fiercely, her happiness and her personal life are also important to her, a fact the court cannot find fault with, but which has been made heavy weather of by the applicant and the foundation of the application for sole custody in his favour. This is so, although this court has found that most of the allegations against the respondent were based on hearsay and unsubstantiated evidence.

²⁰ Ibid

- [71] It is not disputed that, at present, the respondent maintains a relationship with a convicted person, who is serving time at His Majesty's Prison. It is someone who the respondent has made clear she is in love with and intends to stay with, although we were not made aware as to the time that JJ will be incarcerated.
- [72] In this court's mind, this decision of the respondent to insist on this relationship, which is of more importance to the court than the area she lives in (also another issue raised by the applicant), indicates a certain element of irresponsibility and immaturity on the part of the respondent which "indicated an indifference to popular opinion in a relatively small community."²¹ However, this court does not accept that this lack of maturity or even responsibility equates to the respondent being a danger to J as appeared to have been suggested by the applicant.
- [73] On the flip side, when this court considers the applicant, it is clear, that he may be financially able to offer J everything that he may now need and may need in the future materially. However, this court is not satisfied that he can offer him the nurturing and emotionally supportive environment that J needs as well if he is to grow up to be a well-rounded adult.
- [74] It was of note to the court that the wife of the applicant did not appear in court or appear to support his application save by the comments contained in the report of Mrs Findlay Smith, and there was no indication that those comments had in fact been made in the absence of the applicant or whether before or after she(the social worker) had spoken to the applicant. The statements of apparent support were therefore of little assistance to the court. Thus, the only person that the court heard, and saw was the applicant, and as this court has already stated, this applicant did not impress this court with his demeanour or candour. Indeed, the court formed the opinion that the applicant "is a person of an autocratic, possessive, domineering and inflexible (and I may say ruthless) disposition"²² who must get his own way.
- [75] Although this court must accept that each parent is entitled to have their own parenting style, this court was not of the opinion that the Applicant would be the right fit for J a "shy and unsure"²³ child.
- [76] Of course, this court understands that a "[child] has the inalienable right to know and have the love of each parent"²⁴, but in the case at bar having determined that joint custody is not an option in all the circumstances, the court is also of the opinion that the applicant's claim for sole custody on the bases as proffered is not warranted and his application stands dismissed.
- [77] Having also accepted on a balance of probabilities that the child J lives with the respondent and that the court is satisfied that she will do nothing to harm her child or put him in harm's way, this court orders, for the further avoidance of doubt and in keeping with its mandate to deal with all matters completely as they

²¹ **Quesnel v Quesnel** TT 1979 HC 84 per Brathwaite J

²² *Ibid*

²³ Social Inquiry Report at page 9 at page 37 of the TB filed 23/1/2024.

²⁴ **Touche Mclean v Annisha Mclean** BVIHMT2011/0052 per Joseph – Olivetti J at para 21

appear before it, sole custody is awarded to the respondent with access to the father as to be determined by this court in the following manner.

[78] The said applicant shall have the child J every week from Sunday morning at 10 am to Wednesday morning. The child J is to be collected from the home of the respondent's mother given the applicant's edict that the respondent is not welcome at his residence. The child will be collected from his school on Wednesday afternoon by the respondent. The respondent is not to be barred from entering the school premises to collect the child or to attend parenting issues.

[79] The respondent will ensure that the applicant is kept up to date on all matters affecting the security, health, and well-being of the child J during his minority.

[80] In light of this order, the court must now go on to consider the application for financial relief made by the respondent.

The Financial relief application

Court's consideration and analysis

[81] The respondent's application alleged that the applicant, since in or around 2021, had been giving her a fixed amount to cover the grocery items needed for J. This, she alleged, was \$1000.00, and she purported to substantiate this with an exhibit showing payments from an unknown source of \$1000.00 into an account at the Community First Co-operative Credit Union in the name of J. ²⁵ The respondent further contended that the applicant had made those payments regularly up until the filing of the application before the court, but that he did make a payment in December 2023 of \$1000.00 and as such also included a claim of arrears of payments for a period of 11 months and the continuation of the said sum of \$1000.00 together with an equal contribution to medical and educational expenses.

[82] Unfortunately, from the evidence led, this court is not in a position to agree that there is a sum owed in arrears from the applicant, as the court is not satisfied, on a balance of probabilities, that the parties had any such agreement. What the court does, however, accept is that the applicant did make payments to the respondent but used the payment as a means to control the narrative of his support ²⁶ and in some way as punishment for the respondent when she did not do what he wanted/expected. ²⁷

[83] Be that as it may, this court does not find that the respondent has made out the case for the arrears of payment in the sum of \$11,000.00 and that portion of the application is dismissed.

²⁵ Page 28- 30 TB filed 22/1/2024.

²⁶ Whatsapp chat where the applicant stated that he would not pay until he spoke to the respondent, that he would pay the respondent even if the child lived with him and admission to sending funds for J pages 23,25 and 27 TB filed 22/1/2024.

²⁷ For instance, when she did not iron uniforms deductions would be made- uncontested evidence of the respondent in an affidavit filed 6/11/2023 paragraph 23

[84] In relation to the claim by the respondent that the applicant pays the sum of \$1000.00 per month, this court, in assessing the evidence of the applicant in terms of his means and ability to pay the said sum, bears the following dicta in mind from the case of **Foster v Foster**²⁸. “It is commonly the case....a judge says less than he would otherwise might about the credit of parties and any adverse impression he may have formed of them. He is aware that the parties have to maintain a relationship into the future because ...they remain parents of their [child]. Where there is a lot of bitterness, strong comments about the character of the parties when expressed in a judicial decision can often be used as ammunition in any continuation of the parental war.” Thus, although this court, on a balance of probabilities, accepts that the applicant was less than forthright in relation to his income, expenses and worth, all this court will indicate is that it is entitled to draw adverse inferences against him as to his non-disclosure.²⁹

[85] I accept that the applicant earns an income way in excess of what he has claimed and that he is comfortably in a position to pay the sum of \$1000.00 per month to the maintenance of J and he is to commence those payments to be made to the account at Community First Co-operative Credit Union in the name of the child from the 30th April 2024 and continue until the child has completed tertiary education if he is so engaged full time or has attained the age of 23 whichever one is later.

[86] Additionally, the applicant is to pay 50% of the medical and educational expenses of J by way of reimbursement to be made within 4 days of the presentation of receipts of such payment by the respondent. All such payments are also to be made to the account of the child at the Community First Co-Operative Credit Union.

[87] By the applicant’s own admission, he is responsible for the payment of the fees for J at his present school and he shall continue to be so responsible once J remains at the school. If he is moved from the school during his primary school years, the applicant and the respondent shall be equally responsible for any fees payable to that school.

[88] The court is well aware that this judgment will not be the magic wand to make all things better between these parties, however, it sincerely hopes that as more time passes reason will prevail and maturity of mind (not age) will assist these two parties as they raise J.

The order of the court is therefore as follows:

1. The application filed by the applicant on 1st August 2023 is dismissed with costs to the respondent on an unvalued claim.

²⁸ (1977) FLC 90-281

²⁹ **Dora Scatliffe v Irvine Fletcher Scatliffe** BVIHMT2008/0047; **Denley Vanterpool v Rosane Vanterpool** Civil Suit 29/1999 (BVI Hct) ; **Payne v Payne** [1968] 1 ALL ER 1113

2. Pursuant to Section 20 of the Eastern Caribbean Supreme Court Act Cap 142 of the Laws of Antigua and Barbuda, sole custody is awarded to the respondent with access to the applicant as follows: Sunday 10 am to Wednesday morning. The said child is to be collected from the home of the maternal grandmother at Paynters Antigua.
3. The respondent shall be at liberty to collect the child from school from Wednesday afternoon and is not to be restrained from attending the school of the child.
4. The application of the respondent is granted in part. The claim for the arrears of payments is dismissed. The applicant is to pay the sum of \$1000.00 per month for the maintenance of the said minor child commencing 30th April 2024 until he shall complete full-time tertiary education or turn 23 whichever one is later.
5. The applicant is also to pay the sum equal to 50% of the cost of the medical and educational expenses.
6. The applicant is also to pay the sum due for school fees for the said child while he remains in the present school and 50% of any fees due for any other school during his primary education.
7. The respondent having been partially successful on her application is to be paid costs in the sum of \$1500.00

Nicola Byer
High Court Judge

By the Court

Registrar