

**EASTERN CARIBBEAN SUPREME COURT
TERRITORY OF ANTIGUA AND BARBUDA**

IN THE HIGH COURT OF JUSTICE

**CLAIM NO. ANUHMT2022/0053
BETWEEN:**

MAC

Petitioner

and

DGC

Respondent

Appearances:

Mr. Peyton Knight for the Petitioner

Mrs. Stacey-Ann Saunders-Osborne for the Respondent

2023: 14th June
20th September
17th October
18th October
2024: 19th January
29th January (*Re-issued*)

JUDGMENT

[1] **Byer, J.:** As this court in another place and with other parents noted, cases where the welfare of a child is concerned have come to be known as “an anxious case” as are all cases about the custody of a child or children.¹

[2] The case at bar concerns the future of not just the child of the marriage but inevitably the relationship as between the parents.

[3] In this judgment, I will therefore be referring to the minor child as MC, and I have anonymized the parties in the heading of the judgment for the purpose of keeping the identity of the said child hidden. The judgment with the parties’ names will only be published to the parties themselves and on the portal. Publication on the website will be the same with the use of initials. I will also refer to the parents as the mother and the

¹ L v L (Custody of a child) [1981] 2 FLR 48 per Denning MR

father and wish to state that in doing so there is no disrespect intended or meant to the parties.

Background

[4] The Parties were married on 12th August 2011. The marriage bore a child, namely MC, born on 20th March 2014. The Father petitioned the Court for a divorce on 14th June 2021.

[5] On 19th April 2022, the Father filed an Application for Ancillary Relief seeking joint custody and access of the minor child of the marriage, MC, with supervision, care, and control of the Child held by the Mother with the rights of visitation and responsibilities of the Applicant pursuant to **sections 13(2)** of the **Divorce Act of 1997** the Laws of Antigua and Barbuda. In that Application, the Husband's grounds were that:

- (1) The Applicant/Father is the lawful father of the child of the marriage, namely MC born on 20th March 2014.
- (2) The Mother is the lawful wife of the Applicant/ Father Petitioner and the mother of the child MC.
- (3) **Section 13(2)** of the **Divorce Act of 1997** stipulates that the Court cannot grant an Order for a divorce unless or until a Court of competent jurisdiction makes an order requiring one spouse to secure or pay to the other spouse, such lump sum or periodic sums, as the court thinks reasonable for the support of any spouse and children of marriage.
- (4) **Section 14(1)** A Court may, on application by either or both spouses or by any other person, make an order respecting the custody of or the access to, or the custody of and access to, any or all children of the marriage.
- (5) The Applicant/Father humbly applies for an order to be made concerning the Maintenance, Care, Custody, and Control of the minor child of the marriage before the petition for a divorce can be granted.

[6] The Applicant/ Father identified in the affidavit that his wife has made it difficult for him to see his daughter, and he has not spent any time with his daughter since December 2021.

[7] In his Affidavit, he asserted that the Mother was using their daughter as a pawn and was making his life miserable. He further stated that the Mother was making unrealistic demands related to his access to their daughter. The Father asserted that the Mother had even demanded that he could only visit or have access to his daughter at her home with the Mother's parent's supervision. He asserted further that he could therefore not be able to see their daughter if the Mother did not get her way. The Father viewed these actions as the Mother using their daughter as a means of controlling him.

[8] As a result of lack of access, the Father filed an Application of Urgency on 26th April 2022. In that application, the Father applied to the Court for an Order that:

- (1) The Applicant be granted temporary custody of the minor child, MC until the issue of custody is resolved;
- (2) That child MC be removed from the Custody of the Mother. That a member of the Police Force will accompany the Father to the Mother's premises in Scott's Hill, St. John's Antigua to collect the personal property of the minor child and ensure that she is placed in the custody of the Father;
- (3) The Father be granted primary care and control of the minor child, MC born on the 20th March 2021, until the issue of visitation and access is resolved; or alternatively
- (4) That the Father be permitted Liberal access to the minor child. Liberal access includes overnight access at the Father's residence; and
- (5) The Father shall have equal access to visitation with the minor child every weekend from Friday evening to Sunday evening, and during the vacation period, half of the time spent between both parents and on special occasions such as Father's Day and the Father's birthday; and on the child's birthday.

[9] In his Affidavit, the Father asserted that the Mother had been uncooperative and dismissive of his interest in his daughter's life and that he had exhausted all attempts to see his daughter.

[10] The Mother strongly objected to the Father's Application of Urgency and in response thereto she sought the following:

- (1) That the Mother shall have sole custody of the Child.
- (2) That the Father shall have scheduled visitation/access arrangements but that these arrangements do not include overnight visitation/access.
- (3) That the Father shall pay the Mother for maintenance and support of the Child in the sum of \$3,285.00 per month.

[11] The said Urgent Application came up for hearing on 9th June 2022. The Court granted the Applicant access to the child and ordered on an interim basis that:

- (1) The Father would be at liberty to collect the minor child, MC, from the Mother's home at Scott's Hill, St. John's Antigua, on Saturdays and Sundays at noon (12 p.m.) and return the child at six (6 p.m.);
- (2) The Father would be at liberty to collect the minor child, MC, from the school, "Kids Unlimited", on Mondays and, Wednesdays, at 2 pm and Fridays from 1 p.m. to take the child to her after-school activities and return the child to the Mother's home no later than 7:30 p.m. on those days;
- (3) This Order is to commence on 10th June 2022 and continue until the final determination of the Application; "

[12] This interim order has been operational for the last year and in large part allowed the Applicant/Father some access.

- [13] In support of her objections to the substantive application of the Father, on 21st June 2022, the Mother submitted an Affidavit in reply to the Affidavit in Support of the Application for Ancillary Relief filed, and on 21st July 2022 an Affidavit in Reply to the Affidavit in Support of the Application of Urgency. The Mother called as witnesses her mother, Major Molvie Graham, who filed an Affidavit on 20th July 2022, and Paul Ralph, former brother-in-law of the Mother, who filed an Affidavit on 20th July 2022.
- [14] In support of his Application, the Father submitted an Affidavit in Support of Ancillary Relief filed on 19th April 2022, an Affidavit in Support of Urgency filed on 26th April 2022, and an Affidavit in Response to an Affidavit in Reply to Application of Urgency filed on 30th March 2023. The Father called his mother, Joan Gage as a witness, who filed her Witness Statement on 2nd June 2023.
- [15] The court was also assisted through a Social Inquiry Report prepared by Dr. Melesha Gunning-Banhan dated 16th January 2023. Dr. Gunning-Banhan also appeared virtually at trial to answer questions by the parties and the court.
- [16] The hearing of this matter took place on 14th June 2023, 20th September 2023, 17th October 2023, and 18th October 2023. Both parties and their respective witnesses gave oral testimony and were extensively cross-examined.
- [17] Having considered the background and the evidence that was given at trial, it is clear to the court that the issues for the court's determination are as set out succinctly in the submissions of counsel for the Mother:
- (1) Whether or not the parties should have joint custody of the child as contended by the Petitioner or whether or not the Respondent should have sole custody of the child as contended by the Respondent?
 - (2) What should be the access /visitation arrangements for the Petitioner having conceded that the Respondent would retain the daily care and control of the minor child – whether with joint or sole custody?
 - (3) What should be the sum that the Petitioner should pay for the maintenance of the minor child?

Joint custody to the Father and the Mother or sole custody to the Mother

- [18] In considering this issue, the court must always have at the forefront of its mind that the determination of this question can only be answered by a determination as to what would be in the best interest of the particular child before the court and what it means with those words.
- [19] In order to undertake that exercise, it is therefore necessary to consider, what is indeed considered the best interest of the child. In the ***Journal of Law, Policy and the Family***

² this term was defined as ‘acts that provide the child with stability, protecting them from parental conflicts and preserving the primary relationships they have developed’. In making this assessment, at the end of the day, it, therefore, must mean that it cannot be undertaken from the perspective of the parent, but rather from the perspective of the child.

[20] In **Re O’hara**³ Holmes LJ reiterated that the court’s mandate emanates from the fact that “the Court of Chancery from time immemorial, has exercised another and distinguishable jurisdiction – a jurisdiction resting on the paternal authority of the Crown by virtue of which it can supersede the natural guardianship of a parent and can place a child in such custody as seems most calculated to promote its welfare.” Thus in making this decision, this court is therefore tasked with a heavy responsibility, which must be considered “Solomonic in its difficulty.”⁴

[21] In that difficulty, it therefore behooves this court to ensure that rather than having a blinkered approach to the matter it “... must do so on the widest possible basis.” I must take into account a wide range of subjects viz its moral, spiritual, social, educational, material and medical welfare; [in doing so] it will be useful to consider some of these together and my approach to the matter will be to consider the respective merits of each party with regard to each of them and decide the contest on what I think is the best thing to do on the interests and in the welfare of the child.”⁵

[22] In considering this approach it would be helpful for the court to appreciate the evidence that came from the parents of the child, the respective mothers of the parents and the clinical psychologist Dr. Meesha Gunning-Banhan.

Dr. Gunning Banhan

[23] Dr. Gunning-Banham was extensively cross-examined by counsel for the Father on the first day of the trial of this matter. In this court’s mind, Dr. Gunning-Banhan stuck to the recommendations that she had proffered in her very comprehensive report on this matter.

[24] The underlying scope of the cross-examination aimed at Dr. Gunning-Banhan went to her impartiality as to her knowledge of the Mother beforehand (a fact nowhere close to having been proven); her bias towards the Father in apparently not asking him the same depth of questions as she had the Mother (an allegation far from proven on the basis

² 2015 Vol 29 Issue 3 Dec at page 272 – “Positions taken by judges and custody experts on issues relating to the best interest of the children in custody disputes in Quebec”- Godburt, Parent and Saint- Jacques

³ [1900] IR 232 at 235

⁴ **Brixey v Lynas (No.1)** [1996] UKHL J0704-1

⁵ **Re Husbands** [1968] Law Reports of Guyana 227 per Crane J

that Dr. Gunning Banhan made it clear that it was the very same questions that were asked of both parties but that the Father provided less information than the Mother); and that she accepted information provided by the Mother on face value without clarifying their legitimacy or accuracy (matters concerning the health of MC and the “altercation “ between the Mother and the now partner of the Father).

[25] By and large, however, this court found that Dr. Gunning-Banhan was impartial and provided critical insight into the relationship dynamics as between the Mother, Father, and the minor child. In particular, this court accepts from her evidence and reports that religion is an important consideration for the Mother, that both parties need to be financially responsible for the minor child, and as such any activities that the minor child is involved in must be made after discussion as between the parents. Further, the relationship that exists between the parents has had an adverse effect on the minor child to the point that the minor child believes that the Father’s new partner is a danger to her and her mother.

[26] The result was that she recommended the status quo should remain as is, with MC remaining in the care of her Mother as the primary carer, that MC not be “exposed” to the Father’s new partner, that the parents undergo co-parenting counseling, and that the present sharing schedule remains in place. There was no recommendation as it related to custody save and except to say that there is very little chance for an order of joint custody being successful due to the animus that presented itself with the parents’ current relationship.

Mrs. Joan Gage

[27] Mrs. Gage is the paternal grandmother and although her evidence did not give the court much assistance as to the issues that had to be determined by the court, it did give the court some context of the relationship between the parties.

[28] Indeed it was Mrs. Gage who, although she tried to convince the court otherwise, had a difficulty with the Mother. It was clear that she did not approve of the Mother as an older woman who married her son “straight out of school”. It is this court’s determination that this characterization of the Mother has colored the manner in which she relates to the Mother. However, there is no doubt in this court’s mind that she deeply cares for her granddaughter, that she is supportive of more quality time as between the Father and the minor child, more quality time with the paternal family and the minor child, and that she personally was prepared to make whatever sacrifices needed to be made to allow for such interaction including, in her words, the giving up of her present employment.

[29] It was however not lost on this witness that to have a relationship with MC she must have a relationship with the Mother, a fact she acknowledged and agreed to foster.

Molvie Graham

- [30] This witness is the maternal grandmother of the minor child and it is clear that she has had an integral role to play in the life of the child as the child lives within her home.
- [31] Mrs. Graham is highly religious being a stalwart and long-standing member of the Salvation Army and it was clear that her Christian beliefs govern how she interacts with persons including her daughter. That being said, this court accepts that she is well-meaning and would want nothing but the best for her child and grandchild, and therefore on a balance of probabilities I accept that she would have done all that she could have done to ensure that her daughter's marriage worked, including any attempts to speak to the Father and giving unsolicited advice during the short tenure of the marriage although this is a fact she vehemently denies.
- [32] What this witness provided was insight into the closeness that MC and the Mother have with the Mother's family which has provided a stable and consistent support system for the entirety of the life of MC.
- [33] This court however noted that there was very little flexibility of approach in the manner in which this witness would have considered her role and function and it is this environment that would provide stability on the one hand and would also create rigid rules which do not always work where two diametrically opposed parties are trying to navigate a new normal where a child is involved.

Father

- [34] As the Father of the minor child, this court accepts that there has been a certain lack of consistent interest in the well-being of MC. This court accepts, that this has been in large measure due to his inability to effectively communicate with the Mother. But, this court also got a sense that he seems to have no intention to change what, in this court's mind, speaks volumes as to his lack of maturity.
- [35] Rather the entire tenor of his cross-examination, his examination in chief, and even the manner in which he presented himself to the court all appeared to lay blame on the Mother and what he considered her failings in the entire relationship and keeping him away from MC. However, under intense cross-examination, he did have to admit that there were times when he was contacted by the Mother which he ignored,⁶ that when

⁶ A glaring failing on his part which he tried to spin in his favour on re-examination when he said that when he was contacted by what's app by the Mother he would respond by

all was said and done he grudgingly admitted that MC's basic needs were being met by the Mother (although he, unfortunately, refused to accept that the Mother was a good mother) and that it would be nice to have some unity between himself and the Mother for the sake of MC.

[36] It was also very clear that at no time has the Father accepted responsibility for the breakdown of the marriage, communication with the Mother, or the lack of relationship with MC herself as noted by Dr. Gunning-Banhan. Indeed the entire tenor of his evidence on examination in chief, cross-examination, and re-examination, it was clear to this court that he did not consider Dr. Gunning-Banhan's conclusion about his present partner being a trigger for MC. He did not consider that he had done anything to damage his relationship with MC or that he must actively take any steps to do his part. In fact, despite asking for joint custody, in cross-examination, he clearly told this court that he understood that having joint custody would mean that both parties have an equal say in the decision-making regarding the child, yet he fully knew and understood that by blocking the Mother she would not have been able to contact him when critical decisions needed to be made and that in fact, joint custody would be a problem for him where there is no communication.

Mother

[37] The mother of MC presented as passionate about MC and her care and wellbeing but in this court's mind, also found herself being a micromanager of MC's life.

[38] What was indeed clear to the court, and what this court accepts from the evidence on a balance of probabilities was that the Mother expected the Father to mirror her parenting style and when it did or did not, she took great exception and then sought to dictate how and in what circumstances the Father has access to MC.

[39] The evidence was clear that the Mother has had difficulties as to where the Father takes MC, who she may be around, and even if plans change last minute that she should be informed of the same. It was very apparent to the court that the Mother does not trust the Father to care or look after MC, a concern that most Mothers' in her shoes may in fact foster, that no one can look after MC like she can. That control it appears to the court, despite her protestations is also directed towards the Father.

[40] In cross-examination, she made it clear that she did not want the Father to allow MC to interact with anyone other than him. It appeared she had an issue with the Father's sibling, his partner (she has a mother why does MC have to be around her), his parenting

telephonic means – which this court does not accept as having any merit in It when by his own admission he is made “miserable” by the Mother.

skills, and his living accommodation. In fact, once he did not measure up to her standard then it was not safe to have MC with him at all. This was also the basis of her objection to the Father having overnight visits with MC.

[41] The evidence of the Mother is that she has been in control of MC but that she never stopped the Father from seeing her or accessing her. It was however clear to this court that there were several actions taken by the Father, for instance having a birthday party at school on one occasion without the knowledge of the Mother, that his access became limited, and that she did in fact hold things against him like the altercation with his partner (he was the one who put her and MC at risk) or the altercation with his sister. Therefore, as much as the Mother says she wants MC to have a relationship with the Father, it is very clear to the court that that relationship must be when and how she says, which is almost impossible to determine since the lack of communication increases that difficulty exponentially.

Court's consideration and analysis

[42] Throughout this trial, the recurring theme has been, that as much as these parents say they love MC and show her and want more time, attention, and commitment, at no time did I hear either of them say or acknowledge what in fact may have been the feelings or views of MC⁷. Rather it appeared to the court that this “battle” over MC was all part of each parent trying to get one up on the other. A most unfortunate state of events, therefore leaving the ultimate decision in the hands of a judicial officer instead of between themselves.

[43] So having considered the wide approach of all the factors that were raised in the evidence of the parties before the court at trial, and more importantly, seeing the body language and the manner in which that evidence was given, this court accepts the following on a balance of probabilities:

- (1) that the breakdown in the relationship between the parties was clearly from major misunderstandings on basic ideals like child rearing, responsibilities, the importance of extended family and the role they were to play in the marriage and the family, and the age difference between the parties where the father felt consistently belittled or undermined by the mother.
- (2) that the breakdown between the parties has caused a great deal of anxiety for MC which to a large extent was due to her having been exposed to adult situations and interactions (the altercation with the Father's partner who is now

⁷ In fact, the Father made it clear that he did not accept any of Dr Gunning Banhan's findings in relation to how MC felt about anything and seemed to dismiss them out of hand as they being a true reflection of MC's feelings.

someone identified as a stressor for her; her father making her mother cry, reports that she is not to eat food from her paternal grandparents).

- (3) that the Father wants to have a more participatory role in the life of MC not on the Mother's terms and conditions but on his terms with no room for compromise.
- (4) that the reasons proffered by the Mother to limit the overnight visits of MC with the Father(his social life – fearful that he would not set boundaries with his friends and associates, how he interacts/speaks to MC – that he is unnecessarily harsh, and that he has a proclivity to pornography) are all matters, if true, that question the character of the man whom she married and had a child with and which have not been substantiated in the evidence;
- (5) that although the Mother made attempts to keep in touch with the Father when it came to MC she did so when and how she wanted, having shown little consideration for the realities of his time or his life (agreeing to access during the week when he works in a job that does not allow him as much flexibility as other employment may or where he cannot have MC with him).

[44] Having found the preceding it was therefore pellucid to the court that in order to consider what would be in the best interest of MC, the Mother and Father had to work on their relationship and learn how to communicate. At the close of trial, this court therefore invited the parties to attend an online co-parenting course which is monitored by the social worker assigned to the family court with the hope that that would be the start of the healing process as these parties learn to speak to each other. Up to the writing and delivery of this judgment, it was with great disappointment that the court was informed that although the mother had completed the programme within two weeks of its commencement, the Father had shown no such commitment or even attempt to do so and had in fact completed a mere 17% of the programme undertaking what amounted in real time to twelve (12) hours of his time.

[45] This level of commitment on the part of the Mother and the lack of interest on the part of the Father is therefore a very real concern to the Court. It cannot be lost on the parties that "from a child's point of view it is never enough for a court to determine which parent appears to be the better able to provide for [her] future welfare after [her] family life has been shattered and leave the matter at that point. The judgment of the court is really only the starting point for the building of new relationships between the child and each of [her] parents in their new roles and between the separated parents themselves."⁸

[46] This is what should inform parties in these sorts of cases, as opposed to their holding onto feelings of being wronged and righteous indignation as to what went wrong. Neither of these parties in this court's mind has exhibited that maturity that lends the court to consider that an order of joint custody makes sense in all the circumstances. In fact, "such an arrangement requires maturity on the part of each parent in accepting the other on an equal basis as one with whom the responsibility for the child can be shared, in

⁸ **Foster v Foster** 1977 FLC 90-281

accepting that the child must physically reside with one or other of them and in accepting that generous access by the other parent is an essential part of the arrangement. Above all, it requires a **sincere and genuine** willingness by both parents to work together to ensure the success of the arrangement and by its very nature, such willingness is not something that can be imposed by a Court.”⁹ (my emphasis added). Thus it is clear that an order of joint custody can only be made “...where there is reasonable prospect that the parties co-operate.”¹⁰

[47] This court has not lost sight that this case like others, is also caught up in it the divorce proceedings themselves, where the emotions surrounding the breakdown of the marriage get subsumed and exacerbated where the issue of the custody of children is concerned. It becomes “ asking a good deal of maturity of the parties to expect that either of them will be able to subserve his or her then existing conception of what is in the best interests of the children to any conception of that matter that involves the sharing of their custody with the other party.”¹¹

[48] Therefore when this court considers these two parties and how far apart they are on the basic matters where “simple matters are....blown out of proportion¹²” and decisions as to choice of school saw them in “full battle cry”¹³ this court cannot feel comfortable making an order where in the end of the day the person who suffers most is the child herself.

[49] This court therefore finds that the Mother and Father have not reached a level that will allow them to manage and navigate the very complex and intricate arrangement that flows from an order of joint custody and in those circumstances, I award sole custody to the Mother.

[50] I now therefore need to consider how the Father will gain access to MC.

Access arrangements

[51] When this court considers this issue the main point of contention as between the parties is whether the present access arrangements (which need to be modified in any regard to facilitate the Father’s work schedule) should also now include overnight visits.

[52] In the evidence of the Father in response to the observations made by Dr. Gunning Banhan, he admitted that his present residence had undergone renovations to address the uninhabitability of the room set aside for the presence of MC. Those renovations at

⁹ **Kruger v Kruger** 104 D.L.R. (3d) 481

¹⁰ **Jussa v Jussa** [1972] WLR 881

¹¹ **Kruger** Supra

¹² **Shuric Merchant v Tameika Williams** NEVHCV2009/0085

¹³ Notice of Application filed 12th September 2023 by the Father for the child to be removed from the new school enrolled in by the Mother without consulting him; **Shuric Merchant** Ibid

- the time of trial were mostly completed, but that there was some requirement for them to be entirely complete.
- [53] However, the court has no such information as to the present state and the same has indeed not been independently inspected to determine whether the same is now in a state to allow overnight visits.
- [54] In this court's mind, this is the only sticking point in making an affirmative order to that effect. In saying so, this court takes the continued position that unless there is undisputed evidence as to whether one parent is a danger to a child, this court must not interfere in the parental relationship and allow the parties to work out the parameters of that relationship. "A person cannot be even partially deprived unless it be concluded that he or she has been guilty by action or inaction of a serious and unjustified failure to perform the parental duty."¹⁴ A parent, in this court's mind, must be given an opportunity to rise to the occasion.
- [55] Therefore I order that a report is to be prepared by the Social Worker attached to the Family Division of the High Court into the accommodations of the Father within 4 weeks of the date of this judgment. Once the court is satisfied that the Father is in a position to accommodate MC on overnight visits the court will recall the matter and give directions as to how those overnight visits are to be conducted. If the Father does not avail himself of this opportunity and put things in place for the accommodation of MC within 4 weeks of this judgment, he shall be relegated solely to the additional arrangements as hereinafter provided.
- [56] The Father shall therefore be at liberty to i) access MC on her birthday for one half of the day to be determined by the parties; ii) to access MC to spend the day with him on his birthday and Father's Day; iii) to access MC on three days per week after school namely on Monday, Wednesday and Friday until 7:30 pm when she is to be returned to the home of the Mother. If the Father is on any given day unable to collect the child from the school, he is to inform the Mother within 2 hours of such unavailability and make alternate arrangements to meet the child on another day or at a later time on that same day before the time of return to the Mother's home. If the Father is unable or unwilling to make appropriate arrangements for overnight visits, the Father shall be entitled to continue his visits with MC on Saturdays and Sundays from 10 am until 6 pm each day.
- [57] The court sincerely hopes that the parties will learn how to interact with each other as time passes and MC gets older so that the parameters of this order can morph into a tenable arrangement that engenders stability and support for the only person with whom the court is concerned, MC.
- [58] The final issue is therefore the quantum of the maintenance that is to be paid by the Father to the Mother for the use of MC.

¹⁴ **C(G) v V-F(T)** 1987 2SCR 244 at 260

Maintenance Sums

[59] As the court considers this issue, it must take into account that on cross-examination the Father agreed to the following contributions for MC a) tuition /school supplies;b) apparel; c) linens and towels; d) medical expenses, e) hairdressing expenses and f) extracurricular activity of cycling.

[60] However in assessing the evidence that was given by both parties on their income and expenses, I do accept that the information provided by the Mother was more detailed as to what she spent her salary on and the expenses for herself and MC, but I do not accept that the Mother is not capable of adding to her income and may have done so from time to time and that further that the Father does supplement his income from time to time. In fact, he did agree on cross-examination that since the filing of these proceedings, he has been able to purchase a new vehicle. This was done by obtaining a loan from a financial institution that he admitted would have had to have been satisfied that his present income matched, if it was not, in fact, in excess of his expenses to qualify for the same. It was therefore clear to the court that there was no full disclosure on the part of the Father as to his income and this court is permitted in those circumstances to draw adverse inferences as against him.¹⁵

[61] I therefore do not accept that the income as stated in evidence by the Father accurately identifies his streams of income and his expenses, but neither do I accept that he is in a position to pay the full sum as claimed by the Mother I therefore order the following in relation to the maintenance of MC

- (1) 50 % of the tuition and 100% of school supplies for the child MC
- (2) 50% of medical expenses
- (3) Provision of apparel, towels, and linens for a period of 6 months in the year
- (4) 100% of the cost of the extracurricular activity – cycling only
- (5) 100 % of the hairdressing expense for 6 months of the year
- (6) payment of \$1600.00 per month commencing on 28th February 2024, and continuing every last working day of the month but no later than the 5th working day of the new month to be paid into the account of the Mother as she may designate for that purpose.

Conclusion

¹⁵ **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

[62] This court is of course not at all naïve to believe that this judgment will be the 'cure-all' for these parties, but what it does hope is that it gives the parties the opportunity to carry out some serious introspection and find what they truly wish to walk away with. I am sure that having done so they will recognize that it is not what they want or desire as more as to what is best for this child that they created together and brought into this world and for whom they bear the sole responsibility for shaping and raising. I wish the parties the best of luck going forward.

Order of the court

1. Sole custody to the Mother with access to the Father as set out in paragraph 56 hereof subject to the following paragraph.
2. A report is to be prepared by the Social Worker attached to the Family Division of the High Court within 4 weeks of today's date on the suitability of the accommodation of the Father.
3. The matter will therefore be recalled on 23rd February 2024, for the court to make the final order in relation to the access arrangements.
4. The Father shall make the maintenance arrangements and payments as set out in paragraph 61 hereof.
5. Each party to bear their own costs.

P. Nicola Byer
High Court Judge

By The Court

Registrar