

**IN THE SUPREME COURT OF GRENADA
AND THE WEST INDIES ASSOCIATED STATES
IN THE HIGH COURT OF JUSTICE
(CIVIL)**

GRENADA

CLAIM NO. GDAHMT 2017/0075

BETWEEN:

SONIA CHEETHAM BROW

Petitioner

and

DARREN WILLIAM BROW

Respondent

Before:

The Hon. Mde. Justice Agnes Actie

High Court Judge

Appearances:-

Ms. Lisa Taylor for the Petitioner

Ms. Rosanna John for the Respondent

2020: August 19

RULING

- [1] **ACTIE, J.:** The parties in this ancillary relief claim were married on the 24th June 2007. The marriage produced two children, now aged 12 and 8, respectively. The Petitioner filed a petition for divorce and by Order dated December 10th, 2018, the court granted the Petitioner interim custody of the minor children until the hearing and determination of the substantive matter. On 25th July 2019, the court granted a Decree Nisi which was made absolute on 6th September 2019.

- [2] On 4th October 2019, the Petitioner filed a Notice of Application for Ancillary Relief seeking the following orders:

The Petitioner be granted custody of the children with reasonable access to the Respondent; That she may be granted such maintenance, periodic payments, secured provision and or lump sum for herself and the children of the family as may be agreed or otherwise as the Court deems just. That the Respondent pays the costs of and incidentals to this application.

- [3] On 12th March 2020, Counsel for the parties indicated that the issue of maintenance could be dealt with by agreement, leaving only the matter of custody for determination by the Court. The parties were directed to file and exchange written submissions should they fail to reach a settlement on the issue of custody.

- [4] The Respondent consents to the Petitioner having physical custody with primary care and control of the minor children but asks the court to grant Joint Legal Custody to both parents. The Petitioner opposes the Respondent's request.

Law and Analysis

- [5] The only issue for determination is whether the parties should be granted joint legal custody of the minor children.

- [6] **Section 42 (1) Matrimonial Causes Act 1973** provides:

"The court may make such order as it thinks fit for the custody and education of any child of the family who is under the age of eighteen-

- (a) in any proceedings for divorce ~~...~~ before or on granting a decree of divorce or at any time thereafter
- (b) where any such proceedings are dismissed after the beginning of the trial, either forthwith or within a reasonable period after the dismissal; and in any case in which the court has power by virtue of this subsection to make an order in respect of a child it may instead, if it thinks fit, direct that proper proceedings be taken for making the child a ward of court."

- [7] **Section 10 (2) of the Maintenance Act, Chapter 180 of the 2010 Revised Laws of Grenada** provides:

"The Court in deciding the question of custody of the child (legitimate or otherwise) shall 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 right at common law possessed by the father in respect of custody is superior to that of the mother, or the claim of the mother is superior to that of the father". This is "the welfare principle so called".

- [8] The overarching legal standard that the court is to apply in making any order affecting children is what is "the best interests of the children". The court entertaining any application in respect of custody must consider all the factors presented to it concerning the children and the parties, such as: the character of the competing parents; their ability to look at the children; their intentions in respect of the upbringing of the children; their economic, domestic and personal circumstances; the relationship of the children with each party; the wishes of the parents; conduct of the parents towards each other and towards the children; maintenance of the family unit; material standards and advantages which the children reasonably expect (and) preserving the status quo in the children's life".
- [9] The wishes of a child old enough is also to be considered. On 19th March 2020, this court had a private conversation *via ZOOM* with the older of the two children who was at the time in Argentina with the Petitioner and other relatives.
- [10] Counsel posits that the Respondent has proven to be reasonable and has conceded that primary care and control should remain with the Petitioner. Counsel further submits that both parents are equally capable of meeting the children needs and as such it is in the best interest of the minor children that the parents share joint legal custody to decide important matters affecting the upbringing of the children.

[11] Counsel cites the authority in **Dipper v Dipper**¹ in which Ormrod LJ said:

'It used to be considered that the parent having custody had the right to control their children's education, and in the past their religion. This is a misunderstanding. Neither parent has any pre-emptive right over the other. If there is no agreement as to the education of the children, or their religious upbringing or any other matter in their lives, that disagreement has to be decided by the court.'

Cumming-Bruce LJ, said:

'... it (is) a fallacy which continues to raise its ugly head that, on making a custody order, the custodial parent has a right to take all the decisions about the education of the children in spite of the disagreements of the other parent. That is quite wrong. The parent is always entitled, whatever his custodial status, to know and be consulted about the future education of the children and any other major matters. If he disagrees with the course proposed by the custodial parent he has the right to come to the court in order that the difference may be determined by the court.'

[12] Counsel also refers to authority in **Jussa v Jussa**,² where the court granted custody to the wife with reasonable access to the father. The father conceded that wife should have care and control but appealed against the custody order. The Court of Appeal granted a joint custody order, with care and control to the mother. Wrangham J. in giving the rationale for the decision said:

"The joint order for custody with care and control to one of the two parents is, perhaps, of rather more recent origin . . . For my part, I recognise that 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. Where you have a case such as the present case, in which the father and the mother are both well qualified to give affection and wise guidance to the children for whom they are responsible, and where they appear to be of such calibre that they are likely to cooperate sensibly over the child for whom both of them feel such affection... it seems to me that there can be no real objection to an order for joint custody."

[13] Counsel for the Respondent also cites several cases from our jurisdiction where the court granted joint custody with sole care and control to one parent: -

(1) In **Jarecki v Meyers**,³ the mother sought sole custody of the minor.

The Court found that the father had not lived up to his financial

¹ [1980] 3 WLR 626.

² [1972] 2 All ER 600.

³ BVIHMT 2007/0067.

obligations but awarded joint custody to both parties with care and control to Petitioner and said:

“There is nothing on the evidence which persuades me that Mr. Meyers’ behavior is so inimical to the child’s welfare so as to deprive him of a full say in her care and upbringing. In all the circumstances I am of the view that it is in the child’s best interest to award custody to the parties.”

- (2) In **Callwood v Callwood**,⁴ the Father who had never lived with the child sought Joint Custody. The Petitioner contended that the Respondent had demonstrated that he was not responsible and that the relationship between the parties was such that there was no reasonable prospect that the parties would be able to make decisions together. The court in granting Joint legal custody to both parents with primary care and control to the petitioner said:

“...., this is not a man who has behaved in such a way that he should be kept out of this child’s life entirely or not be allowed to participate in important decisions related to the child’s life.”

- (3) In **Martha Torres v Pedro Basto**,⁵ a mother seeking sole custody of a minor indicated to the court that she found it difficult to make joint decisions regarding the minor’s welfare. The court said:⁶

“Both Parents play an active role in his life and there are no serious allegations of neglect and no allegations of abuse made in respect of either Party. This is a credit to both parents.”

The court granted the parties joint custody with primary care and control to the mother.

[14] The Petitioner objects to the granting of joint legal custody and asks that she be granted full and final custody of the minor children with liberal access to the

⁴ BVIHMT 2015/0023.

⁵ CLAIM NO. BVIHMT2012/0041.

⁶ at paragraph 135.

Respondent. The Petitioner's reasons expressed in her affidavit are that (1) the Respondent has deliberately defaulted on his student loan thereby causing the Petitioner to assume liability for paying the same as a guarantor of the loan (2) the Respondent's fails to make timely financial contributions for the children's maintenance; (3) the Respondent has demonstrated intemperate and irrational behavior towards his children and a lack of judgment in his parenting by: "badmouthing" the Petitioner to the children; making arrangements with the children concerning their travel without involving the Petitioner as custodian; attending at the schools of the children and removing them from classes and on at least one occasion during exams;(4) The Respondent purchasing expensive and age inappropriate cell phones for the children against the objection of the Petitioner; (5) The Respondent applying undue pressure on the children for not immediately responding to his texts and messaging without regard to their own schedules and activities.

[15] The granting of joint legal custody allows for the parents to share the responsibility in making or participating in decisions of great importance in the minor children's lives. Decisions as to whether or not a child should undergo a medical operation, what religion the child should adhere to, what school the child should attend, what extracurricular activities the child should pursue are some of the critical issues to be discussed or informed where joint legal custody is granted to parents.

[16] The reasons proffered by the Petitioner against the grant of joint legal custody are mostly based on the Respondent's past conduct in relation to his financial affairs and untimely maintenance allowance for the minors. The court is of the view that the Petitioner's complaints are not detrimental to the relevancy of the factors to be taken into consideration when considering a joint custody application. From all accounts it appears that the Respondent has demonstrated a genuine interest to participate in or to be notified of important decisions affecting the children's welfare. The court must always approach the decision on the basis that the paramount consideration is the welfare of the children.

[17] In **Caffell v Caffell**⁷ Ormrod LJ, said

“... there are cases in which the party who has not got the day-to-day control of the children is anxious to preserve as much of his or her contact with them as possible in the new circumstances where the parties have separated, and there is a good deal to be said for recognizing the responsibility and the concern of the father in this case by making some order which shows that the court recognizes that he is anxious to take an active part in their upbringing.”.

[18] The granting of a joint custody depends very much on whether there is reasonable prospect that the parents can co-operate. Counsel for the Respondent says that in recent times, the parties have shown an improved ability to co-operate and have done so especially within the past six months. The court notes that the Respondent consents to the Petitioner being granted full custody with primary care and control of the minor children. The Petitioner has in turn consented to the Respondent having unrestricted access to the children. The parties have since the hearing reached an amicable arrangement for the maintenance of the minors.

[19] It is in the interest of the minor children that both parents should have an opportunity to play a role in the education and other important decisions for their future development. The court usually proceeds on the presumption that competent, loving and caring parents possess sufficient objectivity to be able to make rational decisions in the interests of the children and will be able to co-operate with each other concerning matters of importance in the upbringing of their children. The court having reviewed the evidence and applying the authorities to the facts, is of the view that the Respondent should be consulted and/or given an opportunity to make decisions in important matters in relation to the welfare of the minor children. As such the Respondent's application to be granted joint legal

⁷ [1980] FLR 169, page 171.

custody is allowed and the Petitioner is granted sole physical custody with primary care and control of the minor children.

ORDER

[20] In summary and for the following reasons it is Ordered:

- (1) The Petitioner is granted Sole Physical Custody with Primary Care and Control of the minor children, Sydney Brow and Rowan Brow with liberal access to the Respondent, especially on the minor children's birthdays.
- (2) The parties are granted Joint Legal Custody of the said minor children.
- (3) The Respondent shall have reasonable access to the minor children to spend half of the Summer and Christmas school vacations.
- (4) In the case of any disagreement over major matters affecting the children, the parties have liberty to apply.
- (5) Each party shall bear its own costs.

**Agnes Actie
High Court Judge**

By the Court

Registrar