

THE EASTERN CARIBBEAN SUPREME COURT
SAINT VINCENT AND THE GRENADINES
IN THE HIGH COURT OF JUSTICE

SVGHMT2018/0064

BETWEEN:

CHERIL LABORDE NEE CARR
of Mesopotamia

PETITIONER

AND

PEACOUS LABORDE
of Dubois

RESPONDENT

Appearances:

Mr. Jemalie John for the Petitioner

Mr. Jomo Thomas for the Respondent

2020: February 21

REASONS FOR DECISION

Byer, J.:

- [1] This was a case that epitomized what the courts have called “an anxious case”¹, those cases that fundamentally affect the welfare of a child.
- [2] The history of this case has made it abundantly clear that the welfare of these children, the subject of the application, needed the attention of the appropriate authorities, to undertake their statutory duties to preserve parental rights instead of disrupting them, in what counsel for the father has termed an “illegal” manner.

¹ L v L (Custody of a child) 1981 2 FLR 48

- [3] I cannot say enough about the disappointment this court has felt for the manner in which these children were treated by the system that was meant to protect them and these two parents who upon their birth were given the God given privilege of raising them.
- [4] Children are a gift. Not pawns to be used in a game of adulthood.
- [5] This application has been filed by the mother of these children seeking sole custody, supervised visits with the father and maintenance of the said children.
- [6] In order for this court to address its mind to the application before it, it is necessary to address the historical events that impacted this family.
- [7] In 2016, while the marriage still subsisted, these parties found themselves before the family court and in that year, the mother entered a consensual arrangement with the father to a sharing of the time spent with the children².
- [8] In her cross examination the mother admitted that this did not continue for any great length of time and eventually to enable stability, (in her words) the children stayed with their father during the week and she had them on the weekend.
- [9] It appears that after this order was made the mother may have returned to the family home and resumed residence with the father and children as we were then told that in June 2017 she left the home, finally and returned to her family in Mesopotamia.
- [10] The mother filed divorce proceedings in May 2018. At that time according to the Statement of Arrangements filed with the divorce, the mother admitted that the children were living with the father and the intention was that this arrangement would continue³.
- [11] Between May 2018 when this document was filed on behalf of the mother, and September 2018 we are not privy to what transpired between these parties but by September 2018 the father had filed an application in the Family Court seeking what appears to have been sole custody of the children. There was no appearance for or on behalf of the mother and the application was granted and the father was given custody with reasonable access to the mother⁴.

² Exhibit CL4 to Affidavit of the Petitioner filed 19/12/19

³ Statement of Arrangements filed 17/5/18

⁴ Exhibit CL1 to the Affidavit of the Petitioner filed 11/2/19

- [12] There is no record that the mother ever appealed this order or made any application to set it aside on the basis of any irregularity, and as such when this application was filed for sole custody and ancillary orders, in February 2019 the order of the family court was a mere 5 months old and still subsisting.
- [13] What does appear from the record is that the mother having “discovered” and I use that term loosely, that the male child had some bruises from disciplinary action that the child said was inflicted by the father in January 2019, the said child was removed from the father’s care, without court order by the Child Protection Unit and placed in the Salvation Army home, a state run facility. Thereafter, it appears based on the recommendation of the police the female child was also removed and placed at the home. This removal in 2019 seemed to have been secondary to the removal of the male child.
- [14] It must however be noted at this juncture that some two years earlier, in 2017, the mother had made allegations to the police about sexually inappropriate behaviour of the father towards the female child.
- [15] It was admitted to by the mother that nothing came of these allegations and the father was never arrested or charged regarding the same.
- [16] So, by 2019 when the allegation against the father for the use of corporal punishment on the male child arose, the 2017 allegation remained just that, an allegation.
- [17] Having said that, I must therefore categorically state that it was therefore extremely prejudicial and even I would say highhanded of the police to refer to the female child in 2019 upon the removal of the male child as having been “sexually molested”⁵. It was indeed unfortunate, if this was in fact the view taken for the removal of the female child. It was clear to this court, that in fact by 2019 the female child on two separate occasions had indicated to the police that her father had done nothing wrong⁶.
- [18] So by 2019 when this matter was filed before this court, the court was presented with two children in the care of the state removed from the custodial parent without the requisite court authority and living in a home with other children when as far as this court could determine they had two parents

⁵ Report of Assistant Superintendent of Police Juliana Charles dated 21/2/19 attached to the report of Roselle Solomon Social Worker filed 10/1/2020.

⁶ Report of Roselle Solomon filed 10/1/2020.

competent to care for them, a fact admitted to by the social worker Ms. Solomon at the trial of the matter, who had been appointed by the court to investigate the matter.

- [19] At this stage therefore it is abundantly clear as both counsels have identified, the overarching consideration of this court on the application before me is what is to be in the best interests of these children.
- [20] So what does this terminology mean in real terms for the court?
- [21] In an article published in the International *Journal of Law, Policy and the Family* of 2015⁷ the authors Godburt, Parent and Saint-Jacques defined the best interest of the child as the following - acts that provide the child with stability, protecting them from parental conflicts and preserving the primary relationships they have developed. This assessment at the end of the day cannot be undertaken from the perspective of the parent but rather from the perspective of the child.
- [22] In looking at this case, this court is particularly mindful of these considerations, together with the consideration that in any decision made by the court, I must look at the long-term welfare of the children⁸.
- [23] That being said, it was extremely disheartening to this court to see once again how parents in divorcing each other seek to establish alliances with their children to seek the upper hand.
- [24] This court saw the parties give their evidence on cross examination and what struck me was the fundamentally different ways that they gave their evidence and what I discerned as the motives behind the stories they sought to give the court. I do not accept that the father was an angel with regard to how he interacted with his family during the course of the marriage but neither do I accept that the mother was blameless.
- [25] In fact, I accept that the father has always had the best interest of the children at heart, I accept from his evidence and even on the grudgingly given admissions on the part of the mother, that the father has indeed been the primary care giver in this family of these children. There are periods when the mother's absence was unexplained and unaccounted for in which the father was ever present even given his work schedule. Additionally, I accept the evidence of the social worker that the father during the periods that the children were in his care that he had made adequate arrangements for the children to be cared for in his absence.

⁷ 2015 Vol 29 Issue 3 Dec at page 272 – *Positions taken by judges and custody experts on issues relating to the best interest of children in custody disputes in Quebec*

⁸ *M v M (Custody of Children)* 1983 4 FLR 603

- [26] I further accept that the father is aware that he has some perhaps archaic ideas with regard to discipline but he maintains that he does punish his children to keep them on the narrow path and I can infer that in working with incarcerated individuals on a daily basis, that he perhaps allows that interaction to influence his belief system. He however freely admitted to the court that he is prepared to learn a new way of raising his children so as not to be considered abusive and I believe that he has their best interests at heart and loves them.
- [27] With regard to the mother, it was indeed unfortunate that she has in this court's eyes sought to sully the reputation of the father in the manner that she did. It is always of some consternation to the court how parents of either gender believe that in tarnishing the character or reputation of the other can at the end of the day benefit the children.
- [28] However, the allegations were made and the question for the court is how it now treats with the same. In the persuasive authority out of Canada **Vincent v Roche-Vincent**⁹ the court's take on such unproven allegations was to "*weigh such evidence and consider its veracity in reaching [its] decisions.*"
- [29] In the instant case I do not accept (and no such submission was made) that the allegations by the mother against the father about the sexual interference with the female child were made in bad faith. I believe that the mother may have had an emotional response to the findings of the doctor but having heard the child recant the said indications, I also believe that if this mother had the best interest of her child at heart as opposed to finding a way to damage the reputation of the father, she would have sought to have had proper investigations carried out as to what may have occurred with her daughter. Instead she persisted in the claim and almost 3 years later nothing has come of it and her daughter is in the care of the state as opposed to her family. This court is therefore mandated in my mind to completely discount these allegations against the father.
- [30] With regard to the allegations of their son, I accept, and the father admitted that he was on that occasion harsher than usual¹⁰. I also accept that the punishment that was meted out on that day was not so much to do with the expectation of the son being responsible for his sister but for lying to his father with regard to the incident that led to the disciplinary action¹¹. This attitude of the father must therefore in my mind be taken into consideration.

⁹ 2013 BCCA 136

¹⁰ Affidavit of the Respondent filed 20/3/10 at paragraph 11

¹¹ Cross examination of the father at trial

- [31] Having therefore said all of this, this court is now in a position, to make a final determination of this matter as between the parties.
- [32] As indicated the application before the court is for sole custody, but it is of course open to this court to make any order it sees fit that inures to the welfare of these children. In that regard, I must immediately state that joint custody is not one such course open to the court in these circumstances. As the court in the case of **Kalliokoski v Kalliokoski**¹² stated in similar circumstances and words which I adopt. *"I find that there has been significant conflict [over the years] and the parties' ability to work together in a collaborative manner to meet the needs of the children has been minimal. The serious difficulties in the parties' relationship are such that a joint custody arrangement would not be feasible and would impede effective decision making concerning the children."*¹³
- [33] I am fortified in this view when this court had to make an order to schedule visitation times for these parents at the state home last year when it became clear that they could not even be in the same vicinity of each other.
- [34] Therefore the only avenue open to this court is one of sole custody in favour of one parent with reasonable access to the other.
- [35] In this case, it would be inappropriate of this court not to take cognizance of the fact that a court of competent jurisdiction had made an order for custody to the father and although it cannot supersede any order this court seeks to make, it must signal to this court that there was some merit in that order having been made. In fact in the case of **C (G) v V-F (T)**¹⁴ it was recognized by the Canadian court that interference in the parental authority of a father should not be condoned unless it is proven that he is unworthy to have custody or is unable to perform his duties properly.
- [36] Although the courts of the United Kingdom do not go this far in making this a proposition of law, they have come to recognize that even though it may be a "sensible" decision¹⁵ for children to remain with their mothers, that this is merely a working rule and not one to be followed slavishly¹⁶.
- [37] Instead the courts have declared that all one *"learns when trying custody cases in the [court] is that there are very few generalizations which are really useful. Everything turns on a nice appreciation*

¹² 2016 ONSC 2273

¹³ Op Cit paragraph 45

¹⁴ 1987 2 SCR 244

¹⁵ **B v B (Custody of Children)** 1985 FLR 166

¹⁶ **M v M (Custody of Children)** 1983 4 FLR 603

of the detailed facts with regard to the people involved and their situation – the grown- ups- and above all the relationships of the children involved with those grown- ups.”¹⁷

- [38] Therefore this court has considered all the evidence of the parties, the social worker who at trial resiled from her initial assessment that the children should be placed with the mother to say that either parent was capable and taking into account the law and weighing all these factors in the scales, I am satisfied that it is the long term welfare of the children that the application of the mother should be denied.

The order of the court is therefore as follows:

- 1) Application of the mother is dismissed.
- 2) The children of the family are therefore to be in the sole custody of the father with reasonable access to the mother.
- 3) Further in light of the fact that these parents are unable it appears to have any degree of civility between them, a situation I hope will change as the emotions that led to these circumstances subside, I will also order how such reasonable access is to be arranged.
 - a. The mother shall have the children from Friday afternoons after school until Monday morning when she shall return the children to the school premises for school.
 - b. The school which the children are to attend upon the making of this order is to be indicated to the mother through her attorney at law.
 - c. School holidays will be divided equally between the parties. That is for the avoidance of doubt, Easter, Summer and Christmas. The first half is to the mother the second half to the father.
 - d. The parties will have alternate years for Christmas Day and Boxing Day starting with the father who shall have Christmas 2020.
 - e. The parties will alternate the Birthdays of the children being the 27th January for the male child and starting with the female child to the mother in October 2020.
 - f. The children are to be provided with a means of contacting their mother during the week while they reside at their father's home.

¹⁷ Op Cit per Cummings-Bruce LJ at p184

- g. The father is to undergo a refresher course on parenting skills at the Marion House said instruction to be undertaken within the next 6 months.
- h. All information regarding extensive medical care and educational trips that may require the children to leave the jurisdiction is to be conveyed to the mother through her attorney at law.
- i. The mother is to make a payment of \$200.00 per month towards the maintenance of the children. Payment of the said sum is to commence at the end of May 2020 that is the 29th May 2020 and such payment is to be made to an account at an institution as provided by the father to the attorney at law for the mother.
- j. In all the circumstances I make no order as to costs.
- k. Liberty to the parties to apply.
- l. I also set a review date of this matter to come back to the Court in 6 months in September 2020 on a date to be set by the Court.
- m. Carriage of the order to the Petitioner/Applicant.

Nicola Byer
HIGH COURT JUDGE

By the Court

Registrar