

**THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
ANTIGUA AND BARBUDA**

CLAIM NO. ANUHC2009/0070

BETWEEN:

KOBIE UKEMA HENRY SNR.

Claimant

and

DORSIER SEBASTIAN

Defendant

Appearances:

Ms. Sherrie–Ann Bradshaw for the Claimant
Ms. Monique Gordon for the Defendant

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2009: November 11
2010: February 5
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JUDGMENT

- [1] **MICHEL, J:** By Fixed Date Claim Form with Affidavit in Support filed on 11th February 2009 the Claimant, Kobie Ukema Henry Snr., claimed that he is the father of Kobie Ukema Henry Jr. born of the body of the Defendant, Dorsier Sebastian, on 29th May 2007. He claims also that the aforesaid child resides with the Defendant and that he, the Claimant, is denied reasonable access to the child despite his expressed interest in the welfare of the child and his financial contribution towards the general maintenance of the child. The Claimant therefore

sought an order pursuant to the Guardianship of Infants Act, Cap. 197 of the 1992 Revised Edition of the Laws of Antigua and Barbuda that:

1. The Claimant be granted joint custody of Kobie Ukema Henry Jr. who was born on the 29th day of May 2007, with physical custody of the child resting with the Defendant;
2. The Claimant be granted liberal access to Kobie Ukema Henry Jr.;
3. The Claimant pay the sum of \$100.00 per week towards the maintenance of Kobie Ukema Henry Jr.;
4. Such other order be made as the Court deems just.

[2] On 18th February 2009 the Defendant filed an Acknowledgement of Service of the Fixed Date Claim Form and Affidavit in Support in which she admitted that the Claimant is the father of Kobie Ukema Henry Jr. and indicated her intention to defend the claim.

[3] The matter was first called on 3rd April 2009 and was adjourned to 15th May then to 5th June and then to 2nd July when Harris, J. made an order that:

1. In the interim, the Claimant be given and is entitled to participate in the upbringing of the child namely KOBIE UKEMA HENRY Jr. who was born on the 29th day of May 2007 and to regularly visit with the child;
2. Access to the said child KOBIE UKEMA HENRY Jr. shall not be unreasonably withheld by the Defendant;
3. The Claimant to pay the Defendant the interim sum of \$100.00 per week for the maintenance of the said child on or before the 3rd day of July 2009 and continue thereafter until further order of the Court;
4. This Order is to remain in force until further order of the Court;

5. Further hearing of the matter adjourned to the 18th day of September 2009;

6. The parties have liberty to apply;

7. The Claimant to file and serve this Order.

[4] On 18th September 2009 the matter was adjourned to 9th October and then to 29th October.

[5] In the meantime, on 8th October 2009 the Defendant filed an affidavit in which she stated that her net monthly salary is \$2,696.84 and that she recently had to move into rented accommodation which has significantly increased her expenditure and made it almost impossible for her to make ends meet in the support of herself and her son. She itemized her monthly expenses which totalled \$4,100.00 and claimed that her current direct expenses as it relates to her son, excluding clothing and medical, amount to \$1,750.00 per month, of which \$450.00 covers his accommodation, \$1,000.00 for food and \$300.00 for day care. She stated that just to make ends meet she now needs a minimum contribution of \$250.00 per week from the Claimant for the maintenance of the child. She then proposed, in relation to the Claimant's access to the child, that he picks up the child from day care every Friday afternoon and return him there on the ensuing Monday. Excluded from this arrangement would be Mother's Day, Christmas Day and the Defendant's birthday, with Christmas Day being shared between the Claimant and the Defendant.

[6] On 21st October 2009 the Claimant filed an Affidavit in Reply to the Defendant's Affidavit in which he contested the Defendant's income and expenses and related his own change of circumstances brought about by his fathering of a new baby whom he estimates he will have to contribute \$650.00 monthly towards her maintenance. He stated that, based on his salary and present circumstances, he cannot afford more than \$100.00 per week for the maintenance of his son. He proposed that the Defendant and himself should have joint custody of the child,

that he pays \$100.00 per week for the maintenance of the child, that he be given access to the child on alternate weekends and on at least two days in the week, that he has the child on Father's Day and on his birthday, while the Defendant has the child on Mother's Day and on her birthday, and that himself and the Defendant alternate Christmas Day and New Year's Day with the child.

[7] On 29th October 2009 the Court made the following order by consent of the parties:

1. That the Claimant is granted access to the child, Kobie Ukema Henry Jr., from 3.00 p.m. on Friday 30th October 2009 until 9.00 a.m. on Monday 2nd November 2009 and on every other Thursday thereafter commencing on Thursday 12th November 2009 from 3.00 p.m. until the ensuing Monday morning.
2. That the aforesaid child shall remain with the Defendant every Mother's Day and on the Defendant's birthday and shall be with the Claimant every Father's Day and on the Claimant's birthday.
3. That the aforesaid child shall alternate between the Claimant and the Defendant on Christmas Day and New Year's Day every year, with the child being with the Defendant on Christmas Day 2009 and with the Claimant on New Year's Day 2010.
- 4 That the interim order for maintenance made on 2nd July 2009 shall continue until further order of the Court.
5. That this matter is adjourned to 11th November 2009 for cross examination of the parties on their affidavits.

[8] On 11th November 2009 the Claimant and the Defendant were each cross examined by opposing Counsel on the contents of their affidavits and were re-examined by their respective Counsel, with some questions also being asked

by the Court. Counsel then briefly addressed the Court, which reserved its decision on the matter.

[9] In response to a question by the Court, the Defendant stated that she expected the Claimant to provide at least half of the cost of the maintenance of the child. In her affidavit of 8th October 2009 she stated that her current direct expenses as it relates to her son (excluding clothing and medical) is \$1,750.00 per month, of which \$450.00 covers his accommodation, \$1,000.00 for food and \$300.00 for day care.

[10] Having read the affidavits of the Claimant and the affidavit of the Defendant, having listened to the viva voce evidence of the Claimant and the Defendant, and having heard the oral submissions of their Counsel, this Court accepts that the Claimant is the father of the child, Kobie Ukema Henry Jr., and has decided that the Defendant shall continue to have legal custody of the child, with liberal access to the Claimant, who shall contribute to the maintenance and support of the child. The Court has decided to use as its guide the consent order negotiated and agreed to by the Claimant and the Defendant and their respective lawyers.

[11] The Court makes the following orders:

1. The Court declares that Kobie UKEMA HENRY JR. is the child of the Claimant, Kobie Ukema Henry Sr., and the Defendant, Dorsier Sebastian.
2. The Defendant shall retain custody of the child, with access to the Claimant as follows –
 - (a) The Claimant shall collect the child from the Day Care Centre at 3.00 p.m. on alternate Thursdays and shall retain physical custody of him until the next ensuing Monday morning at 9.00 a.m. when the Claimant shall return him to the Day Care Centre.
 - (b) The child shall however be in the physical custody of the Defendant on

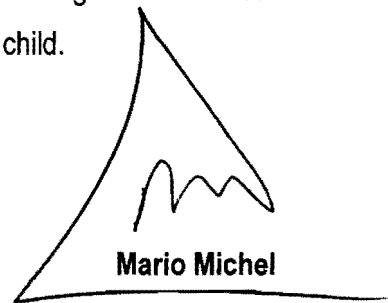
every Mother's Day and on the Defendant's birthday and shall be in the physical custody of the Claimant on every Father's Day and on the Claimant's birthday.

(c) The child shall alternate between the Claimant and the Defendant every Christmas and New Year's Day, so that the child shall be in the physical custody of the Claimant on Christmas Day 2010 and in the physical custody of the Defendant on New Year's Day 2011 and with the other parent on the same day in the following year.

3. The Claimant shall pay to the Defendant the monthly sum of \$500.00 towards the maintenance of the child, in addition to 50% of the costs of day care for the child and 50% of the child's medical expenses whenever they shall be incurred.

4. Liberty to either party to apply.

[12] By virtue of this order, the Claimant's compulsory monthly outlay towards the maintenance of his son will be exactly equal to the amount that he was estimating for his new daughter. By virtue of the order the Defendant will get the 50% contribution that she was seeking from the Claimant, barring the contribution towards the accommodation for the child which will be her contribution, as will be the case with the Claimant when he accommodates his son for four days every other week. The savings on the cost of food which the Defendant will realize during these four days every fortnight can be used for the purchase of clothes and other requirements for the child.



Mario Michel
High Court Judge