

SAINT LUCIA

**IN THE HIGH COURT OF JUSTICE
(CIVIL)
A.D. 1998**

SUIT NO: 920 of 1998

BETWEEN:

- 1. CARMEN HELIODORE**
- 2. PATRICK HELIODORE**

PETITIONERS

and

CAMILLUS PLUMMER

DEFENDANT

Appearances:

Miss B. Downes for the Petitioners
Miss C. Combie for the Defendant

JUDGEMENT

1998: October
1999: January 8th

d'AUVERGNE, J.

FACTS

The minor Zikki Camille Calise Plummer is the daughter of deceased Louise Heliodore and the Defendant. The deceased lived with her parents the Applicants and their siblings till her death on the 16th of August 1996. The minor lived in the same household and was being raised with her young uncle and aunt who are 9 years and 7 years respectively.

There was an arrangement that the Defendant collected the minor

every morning brought her to the Day Care Centre and brought her back home (that of the applicants) every evening. Moreover the Defendant had regular access to the minor.

After the death of the deceased the arrangement continued but on the twenty third day of August 1998 23/8/1998 the Defendant collected the minor in the morning but did not take her back home as usual and infact to date she has not returned home

The applicants are dissatisfied and have applied by Summons supported by affidavit for the return of the said minor with reasonable access be granted to the Defendant.

The Defendant on the other hand has filed an affidavit in reply admitting to most of the facts save that he deposes that since the death of the deceased the relationship between the applicants and himself has become very strained and the Applicants have refused to allow him the regular access to his daughter, so that on the 23rd day of August 1998 he collected his daughter and took her to live with him, and his fiancée, his future wife and his step daughter. He further deposed that they will soon be married and would be applying to the court for the adoption of the minor.

At the trial there was no doubt that there existed, to say the least, strained relations between the parties. I found the Defendant an aggressive young man who wanted to dictate to the court what should be done but one could understand his feelings.

ARGUMENT

Learned Counsel for the Applicants argued that the minor was in a stable home which she had known from birth, that she knew and loved the Applicants and moreover had been raised with the young uncle and aunt as a sister, that the intended wife and her daughter were strangers to her and despite the fact she was accustomed with her putative father, the Defendant, she had never "lived" with him before.

Learned Counsel for the Defendant outlined the basic principle with regard to custody of children. She argued that whether the child be legitimate or illegitimate the welfare of the child is the first and paramount importance.

She quoted **Re Thain 1926 1 Chancery Pages 676.**

Re F 1976 A ALLER Page 417

CONCLUSION

Applying the principles of **Re Thain** and **Re F** which is almost on all forms with the case under consideration.

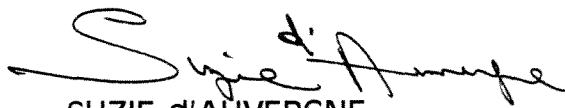
I have no alternative, since I cannot say that I find the Defendant and his wife to be unfit persons to take care of the child, to grant the custody of the minor to the father.

My order is as follows.

Summons dismissed

Zikki Camille Calise Plummer to remain in the care and control of the Defendant.

That there will be no order as to costs.


SUZIE d'AUVERGNE
HIGH COURT JUDGE