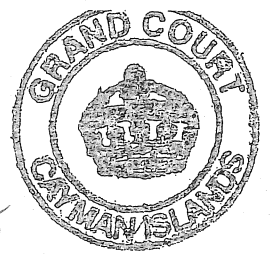


Revised 1/2004
Scot. or 19/04
Quality Improvement 20/00



4-06-08

IN CHAMBERS

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO: 310 of 2005

BETWEEN: I. M. PLAINTIFF

AND: T. W. DEFENDANT

Before: The Honourable Madam Justice Levers

Appearances:
Ms. Brooks for Defendant
Ms. Zena Merren for Plaintiff

Heard: 3rd & 4th June 2008

JUDGMENT

Levers J.

This is an application by the father, I. M. for an Order granting him care and control of the minor child A. who is at present approximately eight years old. There is an order in place giving the parties joint custody with the mother T. W. (the defendant in this matter) having care and control and the plaintiff having limited access to the child every other weekend.

1 These proceedings appear to have been initiated by the plaintiff in July
2 2005. At the time it was felt that it was in the best interest of the child
3 that she developed a relationship with the plaintiff as he apparently had
4 very limited access to the child previously.

5 The plaintiff at the inception of the pregnancy wasn't too enthused about
6 the child and in fact was unsure of the paternity of the infant. The
7 plaintiff subsequently developed a relationship with the child. The
8 defendant is now objecting to the plaintiff's application and has filed a
9 cross-summons seeking sole custody of the child, which was not pursued
10 in earnest.

11 In the normal course of events this being a fairly minor variation of an
12 order already in existence this court would not take time to give a written
13 judgment. However, I find this case particularly pertinent to the sort of
14 applications that are being made presently in these Courts. I believe it
15 will be a fruitful exercise and relevant and important to reiterate the
16 principles guiding the court in matters of care and control, access and
17 maintenance. The pitfall of assuming that payment of maintenance
18 equates to the quantity of access must be addressed. When an increase of
19 maintenance is requested by the applicant there appears to be a request
20 for increased access on a cross-summons.

1 I am also in this case not following the recommendations set out by the
2 Social Enquiry Report as strictly as recommended and that is yet another
3 reason why the Court in my view should give a written judgment.

4
5 Background

6 The parties commenced a relationship which resulted in the birth of the
7 minor child A. on the 8th of August 1999. It is clear from the evidence
8 before me that the plaintiff, the defendant and the plaintiff's present wife
9 were in a triangular relationship. When the defendant became pregnant
10 the question of paternity troubled the plaintiff and it appears that the
11 relationship was terminated. The plaintiff claims that he still provided
12 certain necessities for the child either directly to the defendant or through
13 her relatives.

14 In the early years of the child's life the relationship between the plaintiff
15 and the child was not what it should be but subsequently the plaintiff
16 commenced playing a role in the child's life. The evidence before me is
17 that the plaintiff has the child for weekends and the child is equally at
18 home with the mother as with the father and his present wife.

19 The father and wife have now moved to a new home and it is said that the
20 accommodation is far more comfortable than where the defendant lives

1 with the child at present. The application for care and control apparently
2 has been brought about by the concern in the deterioration of the
3 accommodation in which the defendant presently resides. The plaintiff
4 Mr. M. appears to have been quite content till after Hurricane Ivan to
5 have left the child with the mother.

6

7 It is not an easy task for the courts to decide on these matters. The
8 guiding principle of course is (should never be deviated from), that the
9 welfare of the child is of paramount importance.

10

11 In this particular case the court therefore took the following steps:

- 12 1. To interview the child
- 13 2. To visit the premises in which the defendant resides
- 14 3. To speak at length in the presence of the parties with the Social
15 Enquiry Officer and permit her to be cross-examined.

16

17 I wish to commend the officer for a thorough and most informative report
18 taken in apparently difficult circumstances and I bear in mind everything she
19 has said to me in coming to my decision.

20

21

1 The law

2 This case is an ideal example of putting parental responsibility at center
3 stage. The father's application shows that he is aware that acknowledging a
4 child's birth isn't just a legal requirement it is a lifetime commitment by
5 both parents to safeguard their child's development, health and welfare and
6 provide the child with the direction and guidance throughout childhood.

7 The father has quite properly conceded that if he was satisfied with the
8 mother's accommodation, this application would not have been made. It
9 seems therefore that it is a question of the living conditions that has brought
10 about this unfortunate circumstance which the court must examine.

11 I previously outlined the three factors that the court undertook in addition to
12 reading the affidavits.

13 The first factor is that the court looked into the child's wishes by
14 interviewing the child. When interviewing the child the attorneys were
15 present I have no intention in divulging the details of what the child said to
16 me save and except that it is clear that the child loves both parents and was
17 horrified at the thought that she would not see her siblings who live with her
18 at the mother's for any prolonged period of time. While the child expressed
19 a desire to live with the father at the moment, when the question of better

1 accommodation came up it was evident that she would like to return to her
2 mother, if the living conditions were equal.

3 Sir Hugh Wooding illustrated the importance for caring for children when he
4 wrote that:

5 “The hearts of young children are delicate organs. A cruel beginning
6 in this world can twist them into curious shapes. The heart of a child
7 can shrink so that forever afterwards it is hard and pitied as the seed of
8 a peach. Or again the heart of such a child may fester and swell until
9 it is a misery to carry within the body easily chafed and hurt by the
10 most ordinary things”.

11
12 It is for this reason that adults and in this case the court is fixed with
13 the legal responsibility to make decisions to ensure that the welfare of
14 the child and its upbringing is taken care of. It is the primary
15 consideration in any decision I will make.

16
17 Visit to the premises

18 The premises where the mother lives are appalling. The outside is
19 dirty not dangerous but dirty. The inside is a corridor (which is dirty)
20 with rooms off that corridor. The kitchen was not the best that the
21 court has seen. Inside the child’s room where the mother lives with
22 three other children and the child in question is crowded with

1 furniture. It was tidy at the time of the visit but I am not convinced
2 that it is always tidy. There appears to be no room for the children to
3 do homework in; There is no dining table on the premises and it is
4 my view that overall the premises are crowded, unclean and leave a
5 great deal to be desired. The mother informs the court that this event
6 sadly has occurred after Ivan and that she simply did not have the
7 money nor is money contributed towards the renovation of the
8 premises by the 14 other people who live there and use the one
9 bathroom available. She also informs the court that she is
10 endeavoring to move out. The court is concerned that the child is
11 being brought up in those circumstances. However I must remember
12 that the child was brought up previously in better circumstances in
13 that same house and the father was content to leave the child there
14 during the years from her birth to Hurricane Ivan. I must also
15 remember that having the right to look after a child involves more
16 than providing a home, it involves the bringing up of the child at
17 present and in the future. The court must not deprive the poorer of the
18 parent the child's care and control based on materialistic views of the
19 welfare of the child. I also bear in mind however that the father is

1 quite rightly concerned with the present circumstances in which this
2 child is living.

3 The court must consider and weigh all the relevant facts, the
4 relationships, the claims, the relationships of the parents, the risks, the
5 choices and other circumstances which will lead to a decision which is
6 in the best interest of the child's welfare.

7 The child is living with the mother and her boyfriend and the three
8 children of that relationship in one room. She sleeps in the same bed
9 with all of them. Incredibly however the child is thought well of at
10 school which she attends regularly, is an A student and there is no
11 allegation of ill treatment or neglect. The moral judgment of the
12 mother to have a relationship where she cohabits with a man in the
13 same bed as the child is a matter of some concern and it is borne in
14 mind that it is to be taken into account when a final decision is taken;
15 However the father does not complain of any of these matters save
16 and except to say that he is concerned at the nature of the
17 accommodation in which the child is presently living.

1 The Social Enquiry Report

2 The Social Enquiry Report recommends that the child is moved to the
3 father even on a temporary basis. In cross-examination it became
4 evident that the officer quite naturally was most concerned at the
5 condition in which the mother lived and was further concerned that
6 the mother could not seem to hold down a job. The mother now
7 assures the court that she is in employment and will continue to be so
8 and wishes to move from her present accommodation. She has also
9 assured the court that her relationship with Mr. D. is no longer. As I
10 stated previously the court is mindful of the excellent report that has
11 been undertaken and the recommendations it makes.

12
13 Conclusion

14 The summer holidays are on us and in those circumstances the child
15 will be with the mother for half the summer holidays and with the
16 father for half the summer holidays. The court must consider very
17 carefully before taking away care and control on a permanent basis
18 from the mother. In view of the mother's assurances that the court
19 will be satisfied with the accommodation she provides for the child in
20 a few months, it is my view that this matter should be reviewed in a

1 further three months no later than the end of August. I give the
2 mother a further opportunity to ensure that the child no longer lives in
3 those premises. Had it not been for this assurance, I would have
4 removed the child from the mother's care and control and given it to
5 the father as recommended by the report. This is a temporary reprieve
6 for the mother to ensure that this does not happen if she really so
7 desires.

8 The court therefore orders as follows:

9 1. That care and control remain with mother.

10 2. That the father has the following access:

11 (a) half the summer holidays to the father (the latter part of
12 the summer holidays).

13 (b) on father's day and half of her birthday.

14 (c) half of all the other holidays that is Christmas and
15 Easter.

16 (d) on weekends Fridays from 4pm to Monday mornings
17 till he drops her at school or at her mothers during the
18 holidays.

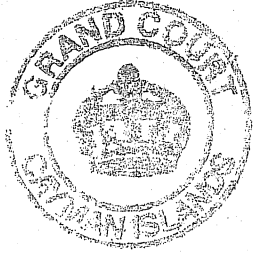
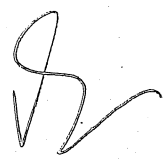
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20 3. That on condition that the parents advise each other three weeks
21 in advance of their travel plans and advise each other of the
22 address and the telephone number at which the child can be

1 reached there is no need for the consent of either parent or for
2 leave of the court for the child to travel with the respective
3 parent.

4 As it depends on the arrangements made for the accommodation in
5 August when the matter is reviewed, the maintenance is to be
6 reviewed at that time. Therefore the maintenance is to remain as
7 presently payable, and the lunch money payable to the school is to be
8 given to the mother while the child is with her for the summer
9 holidays. That money need not be paid if the child is with the father.
10 This matter must be reviewed before the child starts school.

11
12
13
14
15

Dated this 4th day of June 2008



Judge of the Grand Court