

Huban. 3/11/06

1 IN CHAMBERS
2 IN THE GRAND COURT OF THE CAYMAN ISLANDS

3
4 GC CAUSE NO: 423 OF 2006

5
6 In the Matter of the Guardianship and Custody of Children Law
7 (Revised)

8
9 And in the Matter of an application by Mr. Shervin Rankine, the
10 biological father of the infant, KAHLIL RANKINE aka KAHLIL
11 RANKINE-CUMMINGS who was born on 19th September 2005

12
13 BETWEEN:

14 SHERVIN RANKINE

Applicant

15
16 AND:

17 AMANITA CUMMINGS

Respondent

18
19
20 BEFORE: The Honourable Madam Justice Levers

21
22 Appearances:

23 Ms. S. Brooks for the applicant

24 Ms. Z. Merren for the respondent

25 Heard: 20th October 2006



26
27 _____
JUDGMENT



28 Levers, J.

29
30 This is an application by the Respondent mother to set aside an
31 Order of this Court dated 12th October 2006 and to set aside the

1 Originating Summons taken out by the Applicant Shervin Rankine
2 and asking for a declaration that the Court has no jurisdiction over the
3 Respondent in these proceedings.

4
5 In the alternative, the Respondent seeks the following order:

6
7 1. That under the inherent jurisdiction of the Court, the
8 proceedings be struck out on the grounds that the Cayman
9 Islands is not the appropriate forum for these actions and that
10 the Supreme Court of British Columbia is already seized of the
11 issues between the parties by virtue of the Writ of Summons
12 filed by the Respondent on the 21st September 2006.

13
14 The Respondent submits that the identical proceedings have been
15 commenced in the Supreme Court of British Columbia. As
16 jurisdiction is fundamental to any application before this Court. I
17 heard submissions on jurisdiction initially.

18
19 The evidence is that the child was born in Canada in September 2005
20 in the Province of British Columbia. The Respondent went back

1 briefly to British Columbia to have the child for health reasons. Birth
2 Certificate mentions no father, but it is common ground that the father
3 (having had a blood test done) has been acknowledged as the father.

4
5 The Respondent is Canadian and was working in the Cayman Islands
6 on a work permit. In April 2006, she was forced to return with the
7 child to Canada because her work permit expired. The parties
8 cohabited until then. The child is now 13 months. The Respondent
9 states that she only left for a month in April 2006, hoping to come
10 back to these islands but she did not get her work permit and
11 therefore did not come back.

12
13 The Applicant alleges that it was always the intention of the
14 Respondent to bring up the child with him in the Cayman Islands.
15 When the Respondent did not return and was giving the Applicant
16 problems with access, he filed an Originating Summons in Cayman
17 and obtained an ex parte Order in the following terms:

18
19 1) That the Respondent was not to leave the jurisdiction of the
20 Cayman Islands with the child; and

1 2) That all papers were to be served on the Respondent within 24
2 hours.

3

4 The Respondent however in Canada had commenced proceedings
5 by way of a Writ but no further action was taken by the Respondent
6 as on a Writ it is common knowledge that a defence would have to be
7 filed and various steps taken prior to the Canadian Court adjudicating
8 on the matter.

9

10 The Applicant was served with these papers in September 2006
11 when he went to visit the child for his birthday. The Applicant is
12 concerned that access has been difficult so far and will continue to be
13 difficult. There is evidence before me that the Respondent has
14 informed the Applicant that she will dictate access. That she was
15 going to decide on whether the child should see the Applicant and
16 decide whether the access should be supervised or unsupervised.
17 In court when these allegations were made, the Respondent did not
18 deny the fact that she wanted to know every single detail of the
19 Applicants movements with the child and in fact wanted the Social
20 Services to visit the child and the father when access was taking

1 place, in order to ensure that the child was alright. There is, of
2 course, no evidence that the child was in any form of danger and the
3 Respondent herself concedes that the Applicant is a good father, as
4 does the Applicant concede that the Respondent is a good mother.
5 In those circumstances, it is not for this court to have a supervision
6 order in place for either party. It is my view that the Respondent
7 having obtained no order in the Canadian Courts that that Court was
8 not seized of this matter. I have made an ex parte Order. I am of
9 the view that I am seized of this matter and have jurisdiction to hear
10 it. The question of either party getting sole custody was not
11 canvassed before me. I therefore ruled that joint custody be awarded
12 to both parties.

13

14 As to access, it is clear that the child of 13 months must be with the
15 mother. The child is going to be in a day care when the mother is
16 working full time (which she hopes to do as of the 1st November
17 2006). In those circumstances, the father can easily have access for
18 any prolonged period of time. In addition the child is not breast fed.
19 His mother is willing to look after the child, as is the Respondent's
20 mother willing to look after the child and indeed looks after the child

1 while the child is in Canada. The Applicant's family will assist and
2 support the Applicant in the care of the child. For those reasons I
3 made the following Order:

- 4 1. Joint custody to Applicant and Respondent. Care and control
5 to Respondent mother;
- 6
- 7 2. Access –
- 8
- 9 (a) till the child reaches 5 or commences schooling, the
10 father to have access in Cayman for one month every
11 three months. The child to be collected by father and
12 returned by him to the mother; and
- 13 (b) access in Canada whenever the father is there, such
14 access not to be unreasonably withheld and access to
15 be 4 times per week from 10:00a.m to 6:00p.m.
- 16
- 17 3. Maintenance – CI\$200 per month for the months that the child
18 is with the Respondent;
- 19 4. The parties to have the child alternate Christmas holidays;
- 20 5. The Order to be reviewed when child commences school;
- 21 6. The above Order to be filed as a mirror order in the Court in
22 British Columbia;
- 23 7. Penal Notice to attach; and
- 24 8. No Order as to Costs.
- 25

26 Dated this 3rd day of November 2006

27

28 Judge of the Grand Court

