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**IN THE GRAND COURT OF THE CAYMAN ISLANDS
HOLDEN AT GEORGE TOWN, GRAND CAYMAN**

CAUSE NO. D56 OF 2003

IN THE MATRIMONIAL CAUSES REGISTRY

9-07-04

BETWEEN: CETA CINDY FUENTES PETITIONER

AND: LUIS OMAR FUENTES RESPONDENT

Before: The Hon. Justice Levers

Appearances:
Ms. K. Martinez-Thompson of Karin Thompson & Company for the Petitioner
Ms. Sheridan Brooks of Brooks & Brooks for the Respondent

Heard: May 7 and 12, 2004



JUDGMENT

Lever, J.

This is an application by the Petitioner, Ceta Cindy Fuentes for the following relief:

- 1) an order in respect to matters relating to the custody, maintenance, welfare and upbringing of the child of the marriage, Jovin Omar Fuentes, who was born on the 17th October, 1989 and;
- 2) an order in respect to the disposition of the matrimonial property;
- 3) such further and other orders as this Honourable Court shall deem fit.

1 **Background**

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3 The Petitioner Mrs. Fuentes filed for the dissolution of the marriage on the 13th of May,
4 2003. The contents of the Petition were proved and an order made on the 26th June,
5 2003. There is one child of the marriage, namely, Jovin Omar Fuentes born on the 17th
6 October, 1989, the subject matter of these proceedings.

7

8 In order to assist the court in coming to a well informed decision as to custody, care and
9 control a Social Inquiry Report was ordered. That report is now ready. Objection to the
10 contents of or the lack thereof has been taken by Mrs. Brooks the attorney for the
11 Respondent, Mr. Fuentes.

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13 The Court will deal with those concerns about the Social Inquiry Report at the
14 appropriate time in this judgment.

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16 Mrs. Fuentes has a position at Cable and Wireless and has been there for some 15 years.
17 She appears to be a highly motivated professional who presently earns more money than
18 Mr. Fuentes.

19 Mr. Fuentes is a gentleman from Honduras who has lived in the Cayman Islands for
20 many years. He has relatives here. He's been employed in the construction field ever
21 since he came to the Cayman Islands. He worked with Arch and Godfrey Construction
22 Company for 11 years and is now employed with T & D Exterior Wall Systems.

23

1 The relationship between Mr. Fuentes and Mrs. Fuentes apparently was a volatile one
2 even before marriage but overlooking the problems they both decided to unite in
3 marriage and the child, the subject matter of these proceedings was the result of this
4 union. Mrs. Fuentes alleges that Mr. Fuentes drank too much and oftentimes came home
5 drunk to start to harass her. There is an injunction preventing Mr. Fuentes and
6 Mrs. Fuentes from molesting or assaulting each other.

7

8 Both parties presently occupy the matrimonial home, as a result of a court order. They do
9 not co-habit.

10

11 Mr. Fuentes blames unhappiness in his marriage to Mrs. Fuentes liking to go out to
12 parties and her unjustified jealous outburst. They both allege that they contributed equally
13 to the financial obligations of the marriage. They both accuse each other of infidelity and
14 violence but despite these problems Mr. Fuentes initially did not wish to dissolve the
15 marriage. Even today when asked how he feels about his wife, he says he loves her.
16 However, since she wants a divorce he is willing to go forward with it.

17

18 The child of the marriage attends John Gray High School and he is in year 10. During the
19 past two school terms it has been reported that his behaviour and academic standard has
20 declined. He has been seen to be hanging around with boys who are generally involved
21 in drugs and fights. This young man has been suspended from school for non-
22 compliance with detention orders and fighting.

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3 **Social Inquiry Report**

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5 As stated previously, a Social Inquiry Report was ordered and submitted to this Court.

6 There have been complaints on the contents of the report from Mrs. Brooks. She feels

7 that the Social Worker should have in fact spent time with the child's grandmother who

8 seems to be a central figure in the child's life and who lives in Bodden Town. She further

9 complains that the social worker did not read the affidavits prior to the interviews and

10 also did not address the question of the mother's boyfriend who may well be the child's

11 future stepfather.

12

13 Finally and more importantly complaint is made that the social worker apart from noting

14 the child's preference did not pursue his wishes to enquire as to the reason the child

15 wished to live with the father. She submits that the social worker should be asked to do a

16 fuller report.

17

18 The reason for a Social Inquiry Report is that the inquirer must be able to make a family

19 come alive with written pictures so that the Court can have a sense of truly knowing these

20 people and understanding their circumstances. The assessment may well be pedestrian if

21 this is not done. Without this ability it becomes difficult to describe effectively the

22 quality of a mother's relationship with her child or the father's relationship with his child,

23 as issues like this are extremely important. Reports must be balanced. Events of great

1 importance in a child's life can potentially flow from a recommendation to the Court.
2 The report providing the recommendation must ensure that it is truly expert. There needs
3 to be a listing of all sources of information and material read, interviews, observation
4 sessions, the names of any tests used, times and dates, and a narrative account of the
5 evolution of this family and the child's place within it and the strengths and
6 vulnerabilities evident.

7

8 As the Court was not satisfied that the enquirer had done the research as widely as it
9 should be done, and in view of the age of the child, counsel requested and the Court
10 agreed to interview the child. The child was therefore seen in the presence of both
11 attorneys but not the father and mother. The Court found the child was quite intelligent,
12 pleasant but confused. The first question asked of the Court was why are my parents
13 divorcing. He did not understand it and still does not understand it. He was quite
14 adamant in stating that he loved both his mother and his father but found it difficult to
15 live with his mother. He found her to be bad tempered and at times violent. He said he
16 preferred to live with his father not because he was more lenient but because he did not
17 have to suffer any verbal abuse from his father. This confirms the position he took when
18 he spoke to the social worker. To the Court he expressed the view that if he could not
19 live with his father, he would like to live with his maternal grandmother in Bodden
20 Town.

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The Law

In considering the question of custody, care and control of a child it is imperative that the Court considers the welfare of the child as being of paramount importance. What then should a Court address when concluding the best interest of the child? A parent must:

- (a) provide a home for the child;
- (b) determine and provide for the child’s education;
- (c) determine the child’s religion;
- (d) discipline the child;
- (e) provide medical care;
- (f) protect and maintain the child and
- (g) provide financial assistance to the child.

Parents have the right to custody, care and control of their children and should not be deprived of such a right unless the law allows such a deprivation. In the case of *Milne and Milne* unreported 10th July, 1974 Trinidad and Tobago no. 2162 of 1973

Georges, J. stated:

“it is clear from the recent cases that the emphasis is not on the rights of the parents to custody but on the right of the child to be placed in the environment which will be most conducive to its welfare. It’s the duty of the Court to assess all relevant circumstances and arrive on the balance of the decision which serves that end.”

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In this case the parents own a matrimonial home. Both parents can provide housing depending on whether one parent wants to buy the other's half of the property or sell the property, divide the proceeds equally and move into their respective new homes. The child's education can be addressed possibly by both parents, but I would find that the father is less likely to be a good source of discipline when it comes to homework and education. The mother is apparently more educated than the father is.

The question of maintenance and financial support can be addressed in any order this Court makes against either parent. What then stops the Court from finding that custody, care and control should not be given to both parents. Having seen both parents in Court, having seen the hostility between both parents and having seen the child, it is clear that a child as confused as he is already does not need to be placed in joint care and control of parents who simply do not seem to be able to communicate with each other. The animosity is so evident that it is clear to the Court that these parents cannot share too much of the responsibility together.

This is a child who has indicated on more than one occasion to strangers to the family that he does not understand why his parents are divorcing. He is going through adolescence. The Court must bear in mind that financial needs whilst important, are not perhaps in certain circumstances as important as emotional stability and love. Both parents love the child. The child has stated his preference. He says if I cannot live with my father then I wish to live with my grandmother.

1 The Court is mindful of the fact that the father may be more lenient than the mother and
2 that the child may wish to live in circumstances or in surroundings where he may be able
3 to do what he wishes to do. On the other hand, the Court saw the child, the Court saw the
4 mother and the father and it is of concern that the child whilst declaring his love for both
5 parents does not wish to live with the mother. The fact that both parents still have to live
6 in the same house may be an aggravating factor in the adult's relationship. Therefore
7 whatever decision this Court makes must be reviewed within one year in order to ensure
8 that the welfare of the child is protected. I therefore intend to make this order to be
9 reviewed in 12 months.

10

11 1) Joint custody to both parents;

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13 2) The child to be in the care and control of the father; whom I feel is calmer
14 and can provide stability at present.

15

16 3) The mother to have liberal access as agreed between the parties but in any
17 event every other weekend, half school holidays and mother's day and every
18 other Christmas Day.

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20 4) The father to maintain the child with assistance from the mother for half
21 school fees, dental, optical and medical expenses.

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23 5) Liberty to apply.

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Children previously were forced to live up to the old concept of the child as some lesser form of life who should be seen but never heard. I am of the view that the right of a child who has reached a certain age to make decisions for himself even if those decisions conflicted with and challenged parental rights must be taken into account when it comes to his welfare. In this case I've stated previously the child's needs must be for stability, emotion and calm in his environment at present.

This then leaves the court to determine the rights of the parties as to the matrimonial asset.

Evidence As To The Matrimonial Home

The matrimonial property which is registered in the joint names of both parties comprises of a parcel of land and the home situated thereon at registration section Savannah block 27E, parcel 104. There is a mortgage outstanding with Cayman National Bank of some \$124,000. The purchase price was \$125,000. It is now valued at \$192,718. The valuation deducts \$11,500 for furnishings which the Petitioner claims she paid for herself. However, I do not accept that all the money for the furnishings came from the Petitioner herself.

1 The property is owned jointly by both parties and each party has a 50% interest in the
2 land. The order therefore is that the property either be sold and the parties divide the net
3 proceeds equally or the parties have the option to buy each other's interest.

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5 No order as to costs.

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7 Dated this 9th day of July, 2004

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10 Levers, J.
11 Judge of the Grand Court

