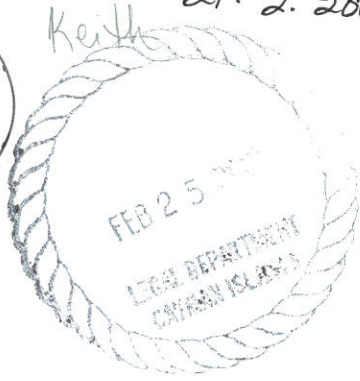


21. 2. 2003

file



**IN CHAMBERS**  
**IN THE GRAND COURT OF THE CAYMAN ISLANDS**  
**BEFORE: The Honourable Mr. Justice Sanderson**

**CAUSE NO: 730/01**

In the Matter of **GEOVANNA JANELLE DOMINGUEZ**, a minor

-and-

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

-and-

In The Matter of an Application of Wardship



**BETWEEN:**

**GEOVANNI GARRO PIEDRA**

*Plaintiff*

*- and -*

**(1) JANET TAVIA DOMINGUEZ**

**(2) DIRECTOR OF SOCIAL SERVICES**

*Defendants*

**APPEARANCES:**

**Counsel for the plaintiff: Mrs. Nervik**

**Counsel for the first defendant: Mrs. Brooks**

**Counsel for the second defendant: Mr. Keith Myers**

**HEARD: February 3<sup>rd</sup> – 5<sup>th</sup>, 2003**

**REASONS FOR  
JUDGMENT**

Sanderson J.

The plaintiff has applied for custody of his daughter Geovanna. The defendant Ms. Dominiguez (now Carter) alleges that the plaintiff had sexually molested their

daughter. The plaintiff denies this and alleges that because Ms. Dominquez is mentally ill she should not have custody.

The child is approximately 5 years old and has been living in foster care since June of 2002 and for intermittent periods before that. Her older brother, who is not the plaintiff's child is also living in foster care with her. Both children have been wards of this Court.

### **ALLEGED SEXUAL MOLESTATION**

The onus is on Ms. Dominguez to prove on a balance of probabilities that the plaintiff has molested his daughter. I have been referred to the cases of *Re: W (minors) (Sexual Abuse Standard of Proof)* [1994] In the Court of Appeal, 1994 1 FLR page 419 and *H v H and C* (Kent County Council intervening) *K v K* (Haringey London Borough Council intervening).

I am firmly satisfied that the plaintiff has not molested or touched his daughter in a sexual way. I am equally satisfied that the allegations of molestation have been fabricated and that Ms. Dominquez has coached her daughter to say such things.

I have carefully reviewed the affidavit material and social services reports that have been filed. The plaintiff and the defendant both gave evidence and were

cross-examined extensively. Other witness whom the parties wanted to cross examine were called, including the plaintiff's wife, the defendant's psychiatrist Dr. Lockhart and Ann Morris who interviewed Gevonna regarding the claimed sexual abuse.

I was impressed with both Mr. Garro and his wife as witnesses. They were both forthright and honest people. It was obvious they were loving people who were concerned with the best interests of Geovanna. I am confident they can provide her with a nurturing home environment. Although Mr. Garro did have some inconsistencies in his testimony I was not troubled by them. They were consistent with the frailties of human memory and did not impair my favourable impression of his credibility.

I was not impressed with Ms. Dominquez as a witness. She lacked credibility in many respects. Her demeanour in the witness box, her many contradicting answers on important points and the implausibility of her explanations have led me to the conclusion that she was not being truthful in her testimony. Where the evidence of Ms. Dominquez conflicts with the evidence of Mr. or Mrs. Garro or the affidavit evidence of others. I accept their evidence in preference to hers.

The first time an allegation of sexual touching was made against Mr. Garro was on July 18, 2001 when Ms. Dominquez took her daughter to see Dr. Kirckham. She testified in cross-examination, that is when she first learned of a potential

sexual molestation. She was certain of this. She tried to give the Court the impression that it was the doctor who discovered this problem. However, she had written a letter to a member of the government in which she claimed that had learned of this allegation from her daughter some days before the visit to the Doctor. She then confirmed in her evidence that the letter was correct and she had learned of it from her daughter before the visit to the doctor.

It is clear to me that she was not telling the truth. She took Geovanna to Dr. Kirkham and she told him of her concerns of sexual abuse. She wanted him to confirm her allegations but the doctor could not. He said instead:

*“Medical Report*

*Re Giovanna Dominquez D.O.B 23/02/98  
GT Hospital Docket No 168573*

*Diagnosis: Vulvovaginitis*

*The above named was brought by her mother to see me at the General Practice Clinic on 18/7/01. She complained of a ‘sore pee pee’. This had been aggravated after swimming in a chlorinated swimming pool. Janet (her mother) voiced concerns that she might have been interfered with during an unsupervised visit to Geovanna’s estranged father some days beforehand. Janet stated that after this episode Geovanna’s behaviour had deteriorated (emotional lability, inappropriate precocious sexual play).*

*Examination revealed a happy playful child. The vulva appeared to be inflamed with generalised erythema around the vulval area. The hymen was seen and was in tact. A swab was taken and sent to the lab. No evidence of infection was demonstrated from this test. A diagnosis of vulvovaginitis was made. In view of the absence of demonstrable infection and the mothers concerns, external sexual abuse was considered a possible cause for her symptoms. She was treated with clotrimazole cream and emulsifying ointment. It*

*was agreed that social services should be involved and Janet contacted Sonja Herd social worker.*

*Geovanna was also subsequently referred to Dr. Fernandez (locum paediatric specialist) who saw her on 14/9/01. He in turn referred Geovanna to Ann Morris (specialist child psychology nurse).*

*I saw Geovanna again on 2/10/01 with a further allegation by Janet that Geovanna had been molested by her father. I heard Geovanna say during the consultation that he 'put his finger in my pee pee'. On this occasion*

*Geovanna's behaviour was erratic, and agitated. Janet by now appeared to be under considerable stress to the point of appearing exhausted and unwell.*

*I elected to organise an urgent referral to Dr. McIntyre (specialist paediatrician) and Geovanna was seen by her on 10/10/01.*

*In the meantime Geovanna was also seen by Dr. Lucianlo (Paediatrician –Chrissie Thompson Hospital) - separate report available.*

*The situation has recently been complicated by Janet's illness-which necessitated a brief admission to hospital. Geovanna is presently in foster care i.e. a place of safety.*

*Dr. Peter Kirkham MRCGP MRCP  
General Practitioner"*

Dr. Lockhart later confirmed that vulvovaginitis is an infection that can be contracted in a number of ways including improper hygiene. Further Mr. Garro had not seen his daughter since June 2, 2001 (again Ms. Dominquez gave conflicting evidence on this date) and Ms. Dominquez had not observed any redness in her daughter's vaginal area from June 2 to July 18. Finally her daughter has had similar diagnosis at other times subsequently when Mr. Garro had not been alone with his daughter.

In August Ms. Dominquez took her daughter to see Anne Morris. Geovanna told Ms. Morris that her father had put his finger in her pee-pee and made it hurt.

Geovanna showed Ms. Morris her index finger. Ms. Morris concluded that Geovanna was not fabricating her story.

Ms. Morris was unaware that Ms. Dominquez was suffering from a mental illness at the time. She was also aware that Geovanna and her brother Alejandro had told other people that their mother had told them to say these things.

I am well satisfied that Ms. Dominquez told her children to say this. She was worried for the first time in June that Mr. Garro would enforce his rights to access through the Courts. She did not want that. Further she is obsessed with the notion that her children have been sexual molested. She has alleged that her mother, and other members of her family have molested both her daughter and her son. Yet she does not seem to have taken any appropriate steps in regard to those allegations.

Time does not permit me to review in these reasons all of the evidence on this issue. I have no doubt that Ms. Dominques' desire to keep her daughter and deny access to the father, coupled with her own mental illness have caused her to fabricate this story.

I am fortified in that conclusion by my own interview with both children, which was conducted in private and confidentially, with the consent of all parties.

## THE DEFENDANT'S MENTAL STATE

Ms. Dominquez suffers from a bi-polar disorder. She has been hospitalized three times for her illness. She has either surrendered to others or lost custody of her children on several occasions including;

- (a) approximately 2 weeks in June 2001
- (b) Approximately 2 ½ months Oct–Dec 2001
- (c) Since June of 2002

Dr. Lockhart is her treating psychiatrist. He testified that so long as she stays on medication she would be able to care for her children. He said if she did not, she would pose a danger to her children as well as herself. He felt that although she has been on her medication regularly for about 5 months she required on going monitoring and psychiatric treatment.

Ms. Dominquez has displayed a variety of serious symptoms in the past including; manic depression, insomnia, hypomania, psychosis with psychotic episodes. (i.e. she loses touch with reality) grandiose delusions, paranoia and excessively risky behaviour. Her illness in the past has on occasion put her children at significant risk or danger.

Dr. Lockhart is, however, pleased with her progress. Since December 18, 2002 she has had her children staying over night with her. The length of those stays have been increasing and she seems to be coping well enough. She has just remarried to a 22 year old man. She had only known him for about one week (directly) before they began to discuss marriage. She only had 1 week of personal contact with him before he came here to marry her. I am somewhat concerned about that situation given the short duration of the relationship and the circumstances surrounding it.

### **DECISION**

There is no dispute that the paramount concern is what is in the best interests of the children. These orders are meant to be interim orders to await the final reports of the department of social services. They are, however, important.

#### **They are:**

1. Custody of the daughter Geovanna Dominquez is awarded to the father.
2. Day to day care and control of Geovanna Dominquez is awarded to the father.
3. This order to become effective March 1, 2003 with the daughter to remain in care of foster parents until March 1, 2003. In the interim the father is to be given access to Geovanna from Friday afternoon until Sunday evening at 7pm each weekend.
4. Commencing March 1, Ms. Dominquez will have access to Geovanna; (1) Every other weekend from 3pm Friday to 8am Monday. She is to pick her up and drop her off at school. (2) Every alternate week from 3pm Monday to 8am Wednesday. Again to pick her up and drop her off at school.
5. Ms.dominquez is to continue to undergo psychiatric treatment and maintain her requirement of medication.

6. Alejandro shall remain a ward of the court and remain in the care of foster parents.
7. Ms. Dominquez to have access to Alejandro at the same time as Geovanna. That will allow them 2 or 3 nights a week together. The 2 or 3 days a week that Ms. Dominquez has access will be less stressful than full-time which has caused her some difficulty in the past. It will allow the children to spend 2 or 3 days together to foster the attachment they have developed. It will allow the social services department the opportunity to observe other children in their home environment and to prepare updated reports.
8. This order will remain in place for 6 months. This will allow time for the development of the relationships between father, daughter and hopefully to allow social services time to analyse and report on family situations with respect to both parties.
9. Mr. Garro is to find new accommodation – no later than April 1, 2003 so that Geovanna will have a bedroom of her own, or to share with her new sister.
10. Mr. Garro not voluntarily remove Geovanna from jurisdiction without leave of the Court.
11. If Mr. Garro is ordered deported then he is to notify Ms. Nervik immediately.
12. That this order be served on Mr. Franz Manderson with the request that Mr. Garro not be deported without leave of the Court.

Finally this judgment shall not be made public. It will be kept confidential by the parties and be kept sealed in the court file, not to be opened except by the Court.

Dated this 21 day of February 2003

*D. B. Sanderson J.*  
Judge

