

22-1-98

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Graham.

IN THE GRAND COURT OF THE CAYMAN ISLANDS

DIVORCE AND MATRIMONIAL CAUSES REGISTRY

CAUSE NO. D76 OF 1996

BETWEEN: DENISE KARLENE PARSONS
Petitioner

AND: ANTHONY IRVIN PARSONS
Respondent

Judgment of the Honourable Mr. Justice Graham
on January 22, 1998, in George Town, Grand Cayman.

APPEARANCES:

MRS. A. HERNANDEZ:

Appeared on behalf
of the Petitioner

MRS. I. NERVIK:

Appeared on behalf
of the Respondent

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1 THE COURT: In cause D76 of 1996 Denise Karlene
2 Parsons was the petitioner and Anthony Irvin was the
3 respondent.
4 The Parsons were married on the 14th of November of
5 1987. He had previously been married. His first wife was
6 killed in a tragic accident. That accident produced a very
7 considerable sum of money and so the parties lived in a
8 house of some size in West Bay.
9 There were two children born to them; Tahira on the
10 13th of October of 1988. She is now nine. And Jordan,
11 born on the 28th of July 1992. He is now five. The
12 marriage broke down. The responsibility for that is
13 irrelevant. Although it so happens that the petition was
14 launched by Mrs. Parsons, it was not contested by
15 Mr. Parsons and there was a decree nisi on the 29th of
16 November 1996. The parties separated finally in August of
17 1996 Mrs. Parsons continuing to live in the former
18 matrimonial home in West Bay and Mr. Parsons moving out,
19 leading a somewhat peripatetic existence for a time but now
20 settled in a house that he owns and sublets. He has
21 adequate accommodation of that house, although the changing
22 scene of the people coming and going are not ideal for the
23 proper maintenance, upkeep, and happy life of two young
24 children. But that is not decisive of the matter. He is
25 planning to have a separate flat built upstairs and when

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1 the rest of my judgment is taken as a whole, it will be
2 seen how necessary it is for that modification to take
3 place.

4 Ancillary matters including the custody of these two
5 children was adjourned by the judge to chambers. As to the
6 ancillary matters, I expressed myself this morning as being
7 unhappy with the present state of the evidence. I gave
8 certain directions or suggestions -- they were more
9 suggestions than directions -- to counsel on both sides and
10 I shall, on another occasion, hear that matter. A day
11 should be set aside for it and I reserve it to myself.

12 Custody. Mr. Parsors' family really does not exist
13 anymore. He is, as far as his own blood family or close
14 blood family is concerned, more or less alone in the world.

15 By way of contrast, Mrs. Parsons comes from a large
16 family. Her father and mother, unfortunately, are divorced
17 and the eight children seem to spend a good deal of their
18 time waging war against one another. It is a very tragic
19 situation. I have listened today to brothers and sisters
20 saying things about one another which I had not hoped to
21 hear. I can only hope that the passage of time and perhaps
22 a few grey hairs will reunite a family which should be a
23 family and not wage war upon one another. Of course, when
24 that is the case, it makes life very difficult for a judge
25 who sees these people for a short period of time and can

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1 only come to the most fleeting impression of what they have
2 to say, and why they are saying it.

3 One thing more. Last Tuesday on my own volition, I
4 asked to see these two children. They were brought to me,
5 to my room, in the presence of Miss Clark, the social
6 worker, and I spoke to them. I am not going to reveal what
7 they said to me and I give the strongest direction both to
8 Mr. Parsons and Mrs. Parsons that they are not to ask those
9 children what transpired between myself, Miss Clark, and
10 the children. If they do, I would regard it as a serious
11 contempt of court. I hope I am making that quite plain.

12 In dealing with the impossible task which a judge has
13 to attempt, I have to bear in mind a number of
14 propositions. The first, as Mrs. Nervik quite rightly
15 reminded me, was that my primary concern is the interests
16 of the children; it is the paramount interest of the
17 children and that I have in mind at all times.

18 In the end, having heard all the evidence I make
19 these findings of fact: I am satisfied on the balance of
20 probabilities that Denise Parsons does go beyond legitimate
21 and proper chastisement of these children. In particular,
22 she beats the little girl unreasonably and improperly. She
23 has told me that she uses a strap on both children. I must
24 tell her that such behaviour is quite unacceptable. And in
25 fact, the use of a strap is an offence in the criminal law.

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1 That is not reasonable chastisement. I am not one of those
2 people who believe that a child can never be smacked. That
3 is the law in Sweden and in some so called advanced
4 societies. Of course it is reasonable for a mother or a
5 father or an aunt or a grandmother to smack a child gently
6 but firmly when that child requires it. But the use of a
7 strap goes beyond that and is to cease and cease forthwith.
8 I hope Mrs. Parsons will take my words to heart. I will
9 add something more on the subject at the end of my
10 judgment.

11 Accordingly, Mrs. Cambridge, whom I found to be an
12 honest lady, warm-hearted Jamaican lady, who I think was
13 indeed put upon by Mrs. Parsons and rather, given the
14 unspoken ultimatum; sign this reference or else, she did
15 not spell it out. She did not have to. I believe that
16 Mrs. Cambridge's conscience was troubling her, which is why
17 she went to Mrs. Nervik's office, having discussed it with
18 one of the members of the family with whom, unfortunately,
19 Mrs. Parsons is at war. She then repudiated the reference
20 and made a statement about the beatings. It may be that
21 there is some exaggeration as to the effect of the
22 beatings. That may be the case, but I am satisfied that
23 her beatings of the children have been unreasonable and I
24 have made it quite clear what will happen if ever they are
25 repeated -- well I have not yet made it clear, but I will

1 later in my judgment.

2 What am I to do? Her husband works every day. He
3 says he will engage a helper. I have not seen the helper.
4 I can make no assessment of her at all. Although the
5 mother is not a perfect mother -- although she could work
6 towards being one if she put her mind to it and controlled
7 herself, it is my judgment that the young children are --
8 unless the circumstances are really quite exceptional --
9 better off with their mother, particularly a young girl.

10 I was struck by the evidence of one of Mrs. Parsons'
11 brothers. That was Mr. Marco Archer. I found him a good
12 witness. I thought he was objective. He was fair to both
13 sides, but he seemed to think -- and I have great deal of
14 respect for Mr. Marco Archer -- that Mr. Parsons' feelings
15 are not quite as developed as they should be with regard to
16 his daughter.

17 I accept the evidence -- all the evidence before
18 me -- that the children want to remain with their mother.
19 That is not decisive, but is a fact which I do consider and
20 have considered, and have put in the balance in order to
21 decide what order I shall make. Access has been completely
22 unsatisfactory. I am not going to make any findings
23 whether it was deliberately frustrated or not. What I am
24 going to do is to make orders to see there is a regular and
25 defined access. That any breach of the orders that I make

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1 will result in appropriate action in the courts.

2 The orders that I make are these: That the custody,
3 care, and control of both these children shall remain with
4 their mother. This court will entertain an application in
5 one year's time to substitute an order for joint custody,
6 if I am satisfied that the parties are getting on well.
7 Joint custody only works if both parties work at it, and I
8 would be very sympathetic for an order for joint custody in
9 one year's time. All custody orders are temporary.

10 Mrs. Parsons, I hope you are listening to me when I say
11 that. All custody orders are temporary. I hope that I
12 will never have to interfere with this order, but I will if
13 I must -- if you make me.

14 They are to spend two weekends per month with their
15 father. That is to say "staying access". They are to have
16 two weekends per month with their father. There is to be
17 no attempt to frustrate that order. If there is, the court
18 will act.

19 Both Mr. And Mrs. Parsons are to receive counselling
20 from the Department of Social Services for the period of
21 one year, because I place the children under a supervision
22 order for one year. What that means is that you will
23 receive visits. Both of you. They will not be announced.
24 They will come when they think it appropriate and you will
25 receive the people from the Social Services and they will

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1 judge matters; that is to say, your conduct. Both of you
2 will be under constant review for one year. I order that
3 three month records be prepared and sent to me. The
4 children will also receive counselling from the Department
5 of Social Services at the discretion of Miss Clark.

6 This court asks -- but it cannot order -- asks that
7 the children be asked to recommence contact with their
8 extended family and in particular their grandmother. The
9 grandmother is a vital component of any successful family,
10 particularly for young girls. This young girl is going to
11 reach the age of puberty in a few years' time, perhaps even
12 sooner. She will need both her mother and her grandmother
13 at that difficult time of her life.

14 One of the matters I shall consider in three months
15 and six months and nine months and twelve months' time will
16 be a degree to which both parties -- and I particularly
17 address to my remarks to Mrs. Parsons -- have managed to
18 establish a proper relationship between their grandmother
19 and both these young children. They have a right to that.
20 It is not to be taken away and the children are not to be
21 used as pawns in an adult game. I hope I make that quite
22 clear. Those are the orders that I make.

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The Honourable Mr. Justice Graham,
Judge of the Grand Court