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

BEFORE THE HON. THE CHIEF JUSTICE

ON THE 21ST AND 22ND NOVEMBER, 1989

29/11/89
Guardianship
children law

C 255 OF 1989

In the Matter of the Guardianship and Custody of Children Law (R)
And in the Matter of the Guardianship of Tiffany Ginette Simone Anderson a minor

Mr. D. Bannon for Applicant
Mr. D. Murray for the Respondent

COLLETT C.J. JUDGMENT

This is an application by the natural father of a young girl, Tiffany, now rising ten years of age to be appointed her sole legal guardian and to have legal custody of her transferred to him. The Respondent is her mother and opposes that application strongly.

The child was born out of wedlock some little time after the parties commenced their intimate relationship and before they began to cohabit. Indeed at the date of her birth, 19th December, 1979 the Applicant was overseas on a course sponsored by his employers, Cable and Wireless Ltd. Once they began to live together in 1980/81, strains and difficulties soon appeared and arguments and short separations began to occur. In 1982 the father met the lady whom, after an intermittent relationship with her lasting several years, he was eventually to marry in July, 1989. A male child was born to that lady in 1984 of which he was the father. During the years 1982 - 1988 the parties were sometimes living with each other and sometimes separately and they appear to have taken turns upon no systematic basis to have Tiffany live in their respective households during these periods of separation. The child has therefore grown up into an environment where home is not in a single place but into two places apart.

When the Applicant had Tiffany to live with him this has

recently been at the 3 - bedroomed house at Lower Valley which he built in 1987 and which he now owns. Here Tiffany has always had her own bedroom and has been provided with toys and a pet dog by her father. On the occasions when Tiffany has lived separately with her mother that has been in a three-bedroomed accommodation at Walkers road belonging to the Respondent's sister. Here however she has had to share a bedroom with her mother and latterly with her mother's new-born baby, since those premises are also occupied by the Respondent's own mother, her sister and the sister's daughter.

Clearly the Applicant's premises are more spacious and convenient than the Respondent's, just as his financial circumstances are more ample than hers. But Tiffany herself does not appear to find it unduly crowded with her mother, according to what she said to the social worker Ms. Claudette Drayton, who prepared a most helpful Social Enquiry report for the benefit of the Court. And that tallies also with what Tiffany said to me also when I spoke to her privately in my Chambers. For now at least living space concerns her little and for the future the Respondent has plans soon to move into a two bedroomed apartment of her own.

During 1982 - 1987 the evidence indicates that an informal arrangement grew up in course of time whereby Tiffany spent the nights of Monday to Wednesday with her mother and was then picked up on Thursday afternoon from school by her father and spent Thursday to Sunday night with him until she was returned to school on the next ensuing Monday. That changed early on in 1989 when the child went to live more or less full time with her father. It then changed again six months later when following the Applicant's marriage, the Respondent reclaimed physical custody of Tiffany, although she has recently resumed allowing the applicant overnight access to the child.

Both parties gave oral evidence to supplement their respective affidavits and it is right to say that I found each of them to be frank, open and truthful in their respective testimonies. From it I derived the clear impression of two reasonable and increasingly mature young people who, although each of them has inflicted a degree of hurt upon the other in the past, are now able to co-operate with

each other sufficiently where necessary in the interest of the welfare of their daughter whom both of them hold very dear to heart. Each of them loves the child and the child reciprocates in kind in each direction.

Each party however holds a different idea as to what would be best for Tiffany at this juncture. The Applicant wants her to make her home with him, his wife and his son (her half brother) of five years old, although he is prepared to allow the Respondent access. He argues that this would best serve to bring security and stability into Tiffany's life which presently is lacking. In her life he plays the role of father figure and there is no substitute available for this role. The Respondent on the other hand feels that as the mother of a young girl she can better relate to Tiffany than a father who is married to someone who can never replace her in the child's affections and to give Tiffany the affection and understanding which no amount of material well-being can replace. Resolution of this conflict is a delicate matter for the Court which is of course required by section 18 of the Guardianship and Custody of Children Law (Revised) to have regard to the welfare of the child as the first and paramount consideration affecting its decision.

Since this case concerns a child who was born out of wedlock and has not been legitimated, the task must start with the premise, established over many centuries at Common Law and not in this jurisdiction altered by any applicable statute, that the only legally recognised automatic parental authority over this child is that of the mother. If, however, the circumstances disclosed in evidence warrant it, this Court has jurisdiction to intervene; to transfer guardianship and custody to the natural father or indeed to any fit person prepared to undertake the care and upbringing of the child. The Court also has jurisdiction to order joint guardianship and joint custody between the natural parents and to give directions concerning care, control and access. But the Court will only exercise those powers if and to the extent to which it is clearly shown that the welfare of the child demands it. It follows logically that the burden of proof lies here upon the Applicant to satisfy the Court that its intervention is justified for that purpose.

Let me at once make it clear that I do not regard the past associations of either party with other individuals of the opposite sex to be of much if any relevance to the Court's decision on these issues. There is no evidence of moral danger to Tiffany either actual or potential from her relationship with either parent. I also treat the markedly greater material prosperity of the Applicant than the Respondent as a relevant factor only to the extent that it would be better for Tiffany in the long as well as in the short term if her father's present affection and interest in her future well-being were not to be chocked off by denying him any real say in her education or upbringing and any real influence upon the building of her character.

I cannot derive any real assistance from the school reports exhibited to the Applicant's affidavit in deciding whether Tiffany's academic progress at school would best be assisted by her father's rather stricter but perhaps at times over-strict regime or by the rather laxer one apparently favoured by her mother. There is no marked change apparent in her rate of progress which can be linked to which parent has had care and control of her at any particular period. She has now changed schools and appears to be settling down. My impression is that both parents can play a positive role in their respective ways in this particular aspect of her upbringing.

Although the importance of the feminine bond between a mother and her daughter has not been made the subject matter of any expert testimony before me, I accept the submission of counsel for the Respondent that this is so universal a facet of human experience that I am entitled to take judicial notice of it and I do so accordingly. The deprivation of such influence in Tiffany's case over the next few years would, I am convinced, be a severe blow to her welfare which it would be difficult if not impossible to soften by the substitution of any different relationship. This is a major factor.

Upon a weighing up of all the factors disclosed in evidence I have reached the conclusion that the Applicant has not demonstrated to me that the welfare of Tiffany at this juncture justifies this Court in removing from the Respondent the parental authority which she enjoys at Common Law and transferring custody to him as guardian. I

have, however, come to the conclusion that her welfare does require that I should substitute for the present unsatisfactory and unstable arrangements a regime of joint guardianship and joint custody to be operated in practice in accordance with certain specific directions and guidelines to be laid down.

Counsel on both sides have argued against such an arrangement of joint custody and I have given their arguments serious consideration. I hope they will not think me disrespectful of their submissions if I say that these naturally reflect the views of their respective clients that each of them on his or her own is best able to guide and bring up Tiffany.

The social worker however has approached the problem quite objectively and she has recommended joint custody. The only weakness in that recommendation is a lack of specifics as to how it should operate. I believe those specifics can be supplied by a variation of the regime which seems to have operated prior to March this year and which coincides with the preference Tiffany herself has expressed. It also coincides with modern thinking in the courts of the Commonwealth as to the desirability in any situation in which it is practicable to do so of involving both parents of a child in his or her upbringing. Despite the coolness which persists between the Respondent and the wife of the Applicant I believe that to be practicable here. Above all I feel that if Tiffany were to be required to establish her home exclusively with either her father or her mother's family, there would be a loss to her quality of life in that she would inevitably have forfeited the close relationship with one or other of two affectionate and concerned parents. Upon the evidence I find that Tiffany has not so far gained an established home with either parent and that to require her now to do so exclusively would be conducive to her happiness or real welfare.

The proximity of the Middle School which Tiffany now attends to where her mother lives and proposes to live argues in favour of her living there from Monday to Friday in term time. The holidays should be spent in equal proportions between the two parents. This arrangement may at first sight appear unusual but it should be bourne

in mind that it is something well within Tiffany's recent childhood experience and which she is unlikely therefore to find strange or disturbing. I believe that it will conduce to her happiness and to a feeling of her being wanted and appreciated better than any alternative on offer for her.

In response to the Applicant's summons, therefore, I order as follows:-

1. That Gregg Vanguard Anderson and Vera Alice-Mae Bodden be appointed joint guardians of Tiffany Ginette Simone Anderson;

2. That these two parties have joint custody of her with care and control to be exercised by Mr. Anderson between 3:30 p.m. on Fridays and 8:30 a.m. on Mondays during school termtime and by Ms. Bodden between 3:30 p.m. on Mondays and 8:30 a.m. on Fridays.

3. That during school holidays care and control be exercised by each party sequentially for one half of the holiday period.

4. That there be liberty to apply generally in regard to the working of this order.

I will hear counsel further as to costs.

Dated 29th November, 1989.

G.COLLETT.