

22.11.89

IN THE GRAND COURT OF THE CAYMAN ISLANDS  
HOLDEN AT GEORGE TOWN, GRAND CAYMAN  
CAUSE NO. 321/89

BETWEEN:	GARSTON TODD GRANT	FIRST PLAINTIFF
AND:	HEDY NADINE GRANT	SECOND PLAINTIFF
AND:	GARSTON GILBERT GRANT	THIRD PLAINTIFF
AND:	ANN ELAINE WATSON-MORGAN	DEFENDANT
RE:	CUSTODY OF MONIQUE WATSON BORN ON 29TH OCTOBER 1985	

For the plaintiffs: Ms. Cherry Bridges  
For the defendant: Ms. Sheri Bodden

#### JUDGMENT

Monique Watson was born on 29th October 1985. She is the daughter of Ann Elaine Watson-Morgan. Garston Todd Grant acknowledges that he is the father. The parents are known respectively as "Andalyn" and "Todd" and it will be convenient to refer to them thus. Monique was left by Andalyn in the care of Todd's parents, Mr. and Mrs. Garston G. Grant, when she was about 3 months old. The circumstances which led to this are in dispute. In April 1989, Andalyn married and now wishes to have her daughter back. Todd and his parents oppose this, and wish Monique to remain in the residential environment which she has known throughout most of her life.

Monique is at present living with her mother, her new step-father and her half brother, a boy name Quincy, who is about 10 years old. The reason for this is that on 17th June 1989 Andalyn took her out and did not return her to the Grant's house as arranged. The present summons by the plaintiffs, which seeks custody, care and control of Monique is the consequence. It is the father who is entitled to make the application under the Guardianship and Custody of Children Law, and it is acknowledged that the present practical effect of an order in his favour would be that Monique would continue to live in her grandparents' home, where Todd also lives. He is aged 25 and unmarried.

Todd alleges that Andalyn is an unfit mother. In this he is supported by evidence from his parents and others. He says that he believes that Andalyn abandoned Monique as a baby because she wanted to have a good time. Todd's father refers to the fact (which is not denied) that Andalyn caused a serious injury to the arm of one of her uncles during a domestic fracas by slashing it with a machete and was convicted in consequence of the offence of doing grievous bodily harm. He believes her to be a woman who is prone to violence.

Todd's mother, Mrs. Hedy Nadine Grant has sworn an affidavit in which she describes, among other things, an incident which took place on about 10th September 1989 when Monique spoke to her of being touched by Andalyn upon her private parts.

Other affidavit evidence put in on behalf of the plaintiffs came from Mrs. Erin Shapiro who exhibited her personal data in support of her claim to have had many years experience in the field of family violence. This does indeed indicate, and I accept, that she is a person of some international renown in that field. She says that she is extremely concerned about the safety and welfare of Monique, and that she has previously seen Monique when she was living with the Grants, at which time Monique was a perfectly normal and happy child. Her conclusions seem to be based on what she has seen with, or been told by, the Grants rather than any direct observation of Andalyn's family, or indeed of Monique while she was in Andalyn's care. I take account of Mrs. Shapiro's evidence only to the extent that it relates to her observations of Monique while she was at the Grants.

There is also an affidavit from Mr. Levi Walton of Watering Place, Cayman Brac, in which he says that he rented his house to Andalyn in 1986, that she lived there for approximately 4 months but eventually he had to ask her to leave because of what he had heard about her way of life at that time. Andalyn says she left because she was unable to pay the rent and that her landlord never expressed any discontent to her.

There were also submitted to me two psychiatrists reports - one from a Government Psychiatrist who was stationed on Cayman Brac,

Dr. Hesselbach, and the other from Dr. LaHee the Government Psychiatrist at the George Town Hospital. A report from Dr. LaHee was requested by Andalyn, as she suspected bias on the part of Dr. Hesselbach. The parties made themselves available for interview by each of these psychiatrists, and each saw Monique also. These two reports come to quite different conclusions. It is Dr. Hesselbach's opinion that to disrupt the stable loving relationship which Monique has with her grandparents Mr. and Mrs. Grant, whom she considers her parents, by separating her from them will result in incalculable emotional suffering and damage to her. Dr. LaHee on the other hand, thinks that her mother offers the best chance of permanence to Monique at this time because, as he puts it, "she is the most stable parent presently" I regard that as a phrase of great significance and shall refer to it again later. Dr. LaHee does also express the opinion that if the mother takes custody of Monique she should keep in touch with the Social Worker to learn what is acceptable behaviour and also to receive help to deal effectively with her adjustment reaction. He says too that the mother needs to spend more quality time with Monique to further foster the bonding and the attachment between them.

Andalyn and her husband both swore affidavits and gave oral evidence. I will deal first with what Andalyn says about the circumstances under which she left Monique with the Grants. She says that when Monique was born in 1985 she was in dire financial straits. She already had a five year old illegitimate son at the time and was living with her mother in a small house in the same yard as her grandfather's house where two of her uncles also lived. One of these is mentally retarded and the other is mute. Andalyn's mother also had to be sent away for treatment when Andalyn was 3 years old. Andalyn could neither afford to stay at home with Monique nor pay a baby sitter. She was seriously concerned about the safety of a young baby girl in such a domestic situation. Shortly after Monique's birth she moved out of her grandparents' yard and rented the house in Watering Place, Cayman Brac. She also began working. The Grants lived about ten minutes walk from her work place and she began to leave Monique with the Grants during the day. She says that it was the Grants who offered to keep Monique overnight for her, when they saw how difficult it was for her to hitch back and forth to work from the other side of Cayman Brac

with a small baby girl and that Todd had said (which he denies) that if she wanted assistance financially with Monique she should leave her with his parents. She therefore decided at the time that it would be in Monique's best interests to remain with the Grants. She says that the reason why her visits to the Grants' house became less frequent was that she felt she was not welcome in their house, and an embarrassment to them. It is also difficult for her to get to the Grants each day from the other side of Cayman Brac, but she never intended to abandon Monique.

Her explanation of the incident when she slashed her uncle's arm with a machete is that he was attacking her aged grandmother and her mother and she struck him because she believed that if she did not stop him somehow he would kill both of them. She says that she is not a violent person and this was an isolated incident.

Andalyn's husband, Zebedee Morgan, is a Jamaican by birth and has lived in Cayman Brac for almost two years. He met Andalyn in December 1987 and married her on 22nd April 1989. He is a construction worker and earns \$1100 per month. He lives with his wife and her son Quincy - and, at the present time, Monique - in a house rented from the Government in Northeast Bay, Cayman Brac. He says that he supports his wife's desire to have the children with her, believes and accepts that his wife cannot have any more children and is content to live with her and her two children as a normal happy family. There is no evidence at all that the marriage between him and Andalyn has been anything other than successful in the months since it took place. Andalyn now earns about \$1000 per month.

The essence of Andalyn's case can be stated in a few words. It is that, whatever may have been the troubles and turmoils of her past, she is now as a result of her marriage able to put all that behind her and offer a stable and loving home to Monique in the environment of a normal family.

The following are the findings of fact and law which I consider most important for the determination of this matter.

Monique has lived in a comfortable and stable environment with the Grant family from the time she was about 3 months old until 17th June 1989 when she was removed by her mother.

The strongest influences on her life during that time were Mr. and Mrs. Garston Grant. Todd Grant, was not made aware of any allegation that he was Monique's father until after she was born. Indeed it was not until she was born that it was apparent to anyone, including her mother, that she was not the child of another man. In these circumstances Todd's circumspection about expressly admitting paternity is understandable and I do not draw from it any inference of lack of affection towards Monique. He now acknowledges that he is the father. I also accept that it was not because of Monique's birth that he left Cayman Brac and that since his return there when Monique was about 2 1/2 years old he has shown a proper degree of interest in the child, while leaving the main responsibility for her upbringing, financial and otherwise, with his parents. The extent of the financial contribution which each makes is a matter for them, provided that the result is proper provision for Monique. I am satisfied that it has been.

I regard the mishaps to Monique which were referred to in evidence as having occurred while she was with the Grants - being buffeted by the sea and splashed by paint thinner (or, according to Todd, a soapy mixture or detergent) as being in no way unusual or indicative of lack of care. Nor do I draw any adverse conclusion from her being allowed to spend time playing around at the Grants' garage premises. Andalyn does acknowledge that Monique has been well looked after by the Grants, and I am satisfied that this is so and that there is a real bond of affection between them, and particularly between Monique and her grandparents.

The picture of the Grants presented by the evidence and the Social Worker's report is that of a stable family soundly established on Cayman Brac.

Andalyn's background has, until her marriage this year, been very different. Her father is unknown. There are indications of mental

problems in her family. I have already referred to these. She acknowledged that the family as a whole is "nervous". She had her first illegitimate child, Quincy, when she was 17. She has a conviction for causing grievous bodily harm to her uncle through I infer from the extremely lenient sentence which was passed upon her that the Court accepted that there were mitigating circumstances. I accept the account of the matter which she gave in her evidence. Nevertheless it is an indication of the troubled family background which I must take into account.

I have to consider next the circumstances under which Monique was left with the Grants. In this connection I was referred to S. 14 of the Guardianship and Custody of Children Law. That sets out two circumstances in which the court shall not make an order for the delivery of the child to a parent unless the parent satisfies the Court that, having regard to the welfare of the child, he or she is a fit person to have the custody of the child. The first circumstance is when the parent has abandoned or deserted the child.

It was submitted that while S. 14 was not directly applicable, in that I was not being asked to make an order for delivery of Monique to Andalyn, with whom she is already living, the section gives some guidance as to the factors which the court should take into account in a case such as this.

In Watson & anor. v. Nikolaisen (1955) 2 QB 427, the meaning of the word "abandoned" within the meaning of S. 3(1)(a) of the Adoption Act 1950 was considered. It was held that within the meaning of that Act a parent "abandoned" an infant only if the abandonment was of such a kind as that which rendered a parent liable under the criminal law; and, on the facts of that case, the mother had not abandoned her child because she had not left the child to her fate but handed her over to people in whom she had confidence.

Adoption proceedings raise different issues to those brought under S. 14 of the Guardianship and Custody of Infants Law. However, I am quite satisfied that Andalyn did not abandon Monique within the meaning of section 14, even if I take the view of her motives which

was put to me by the plaintiffs. In fact I do not. The report of the Social Worker, who has been in touch with Andalyn since 1985, is entirely consistent with her assertion that she has always loved the child. She left her with people in whom she had justifiable confidence. She lived within a few miles of them and maintained contact, albeit sporadic. She could not have been oblivious to the child's situation at any time and the word "abandoned" is quite inappropriate to describe what she did. She left her with blood relatives of the child, when in difficult circumstances.

Section 14 also applies where a parent has allowed a child to be brought up by another person at that person's expense for such a length of time and in such circumstances as to satisfy the Court that the parent was unmindful of his parental duties. Andalyn was an unmarried mother of 22 with two illegitimate children, who needed to work to earn a living at the time when she left Monique with the Grants. Clearly she needed to leave them with someone else for much of the time in those circumstances. I am not satisfied that she was unmindful of her parental duties in doing what she did.

In any event, Andalyn's past is only relevant to the extent that it assists me in determining whether or not it is in Monique's best interest to be returned to her. That consideration is paramount. It leads me to the second English case to which I was referred, J and anor v. C and ors (1969) 1 ALL ER 788. It went to the House of Lords, and differs from the present case in that it was not a dispute involving the two parents, but between the parents and foster parents. The importance of the case in relation to the present matter is that it affirms the principle that it is the welfare of the child which is paramount, even over the rights of parents. Lord Guest referred with approval to the following passage from the judgment of Danckwerts LJ in Re Adoption Application No 41/61 (1962) 3 ALL ER 553 -

"But I would respectfully point out that there can only be one 'first and paramount consideration', and other considerations must be subordinate. The mere desire of a parent to have his child must be subordinate to the consideration of the welfare of the child, and can be effective only if it coincides with the welfare of the child. Consequently, it cannot be correct to talk of the

pre-eminent position of parents, or their exclusive right to the custody of their children, when the future welfare of those children is being considered by the court."

In the Cayman Islands, the principle applicable is expressed as follows in S. 18 of the Guardianship and Custody of Children Law -

"Where in any proceeding before any Court the custody or upbringing of a child or the administration of any property belonging to or held in trust for a child, or the application of the income thereof, is in question, the Court, in deciding that question, shall regard the welfare of the child as the first and paramount consideration, and shall not take into consideration whether from any other point of view the claim of the father, or any right at common law possessed by the father, in respect of such custody, upbringing, administration or application is superior to that of the mother, or the claim of the mother is superior to that of the father."

'Welfare' in that section must be taken in its widest sense, being measured not only by money or physical comfort, but including considerations of moral welfare and ties of affection as well.

I now need to consider in more detail the reports of the two psychiatrists in this matter - Dr. Hesselbach and Dr. LaHee - and the Government Social Worker, Miss Jervis-Brooks. Miss Jervis-Brooks' conclusions were as follows -

"It is obvious that Monique is well loved by Todd, Mr. & Mrs. Grant, and also by her mother and brother. It is also obvious that Monique loves the Grants very much as they are the persons she has spent most of her life with. Andalyn admits that she could not offer Monique the best that the child needed because of her poor circumstances at the time of Monique's birth. She believed the Grants were helping her with the child. Mrs. Grant said she was helping the child and not Andalyn.

It is believed that the Grants can supply Monique's needs, both materially and emotionally, however, it is questionable whether Todd, who is the one seeking custody, could accomplish this without their constant assistance. Should Todd marry and take Monique to live with him it will be another emotional upheaval for Monique to be again

taken from Mr. & Mrs. Grant.

The situation that is presented is a very difficult one in that Monique is not old enough to herself make a decision in the matter. It is, however, being recommended that the following points be considered in making a decision.

(a) Mother is presently able to offer child a stable and consistent family experience.

(b) Child is attending school and is settled.

(c) Social Worker has found no evidence to prove mother unfit.

(d) Putative father, on his own, cannot rear child at this time.

(e) Child would be living in the home of putative father's parents which suggests impermanency."

Miss Jervis-Brooks clearly attaches importance to the question of whether Todd could supply Monique's needs, both materially and emotionally, without the constant assistance of his parents. But the constant assistance of his parents is what he now has, and there is no reason to think that they will not be able to continue to give it. Mr. Grant is 51, his wife 49, and in apparent good health. They are somewhat old to assume a parental role, but by no means inordinately so. Their role in relation to my determination of what is in Monique's best interest is of no less importance than that of the natural parents, and I accept that they are financially able to give Monique a good education and a good home.

Each report indicates the importance of stability in Monique's life. They differ, however, in their view of how this can be achieved. There are two aspects of this question of stability. The first relates to the effect on Monique's emotions of being suddenly removed from her familiar environment and put to live with people whom she knows far less well. Dr. LaHee says that the quality of care during separation markedly affects the child's reaction to it and that the experience of graded separation in happy circumstances does help to reduce stress. He also says that children need the experience of being physically detached from their families so that when separated they do not become distressed. I do not doubt any of that. Unfortunately I do doubt the likelihood of Monique's continued

separation from the Grants being in the happy circumstances which Dr. LaHee envisages.

Dr. LaHee says that Andalyn "offers the best chance of permanence at this time because she is the most stable parent presently". In that he seems to be looking at Todd in isolation, rather than the total input of the Grant family. To be sure, Todd will almost certainly marry one day. That must entail some change in Monique's life. I am not bound to assume that it will be destabilising or harmful. It is likely, in my view, to be of the graded kind which Dr. LaHee looks upon with favour.

It is unfortunate that the two psychiatrists differ on the matter on which they are best qualified to speak - Monique's present emotional state. Dr. Hasselbach wrote that in a professional interview it was apparent that Monique was unhappy and troubled. He did not elaborate on that, and has now left the Cayman Islands. Dr. LaHee found her to be relaxed and friendly and concluded that despite her separation experiences she did not appear anxious or unhappy and showed no overt evidence of emotional instability. I also interviewed Monique. Not surprisingly perhaps, she was speechless for most of the time, though towards the end we were able to recite some nursery rhymes together. She expressed no views whatsoever about Andalyn or the Grants, and I venture none about her state of mind on the basis of our talk. Clearly she is too young to express an informed wish about her future.

I find this a difficult case, but conclude that the welfare of Monique calls for her to return to the care of her father and his parents. My reason for saying this are these. I regard the environment of the Grant family as being the one in which Monique is more likely to achieve emotional stability and development. The Grants can show a record of nearly four years care of Monique, and a good prospect of a continuation of that care. As and when Todd marries, a decision will have to be made as to whether his new matrimonial home or the home of his parents is the better place for her to be. As she grows older it is likely to be easier to assess her own view on such a matter. I am satisfied that the Grants will make a responsible decision.

I accept the view of Dr. Hesselbach with regard to the consequences of the disruption of Monique's relationship with the Grants. It must, in the circumstances of this case, be a disruption rather than a happy transition. Moreover, Monique would be going, if she were to remain with her mother, into a family whose problems I have already described. It is greatly to be hoped that Andalyn will be able, following her marriage, to put these matters behind her, but there must be a risk that she may not. I cannot justify exposing Monique to such a risk when the secure home in which she has been living remains available for her. Dr. LaHee acknowledges that Andalyn should keep in touch with the Social Worker to learn what is acceptable behaviour and also to receive help to deal effectively with her adjustment reaction. He also says that Andalyn needs to spend more "quality time" with Monique to further foster the bonding and attachment between them. That would not be easy in view of Andalyn's work commitments. None of these problems arise if Monique stays with the Grants.

I can make no finding as to what gave rise to Monique's remarks to Mrs. Grant which she has recorded in her affidavit dated 3rd October 1989. I do, however, accept her evidence of what those remarks were as being truthful.

On all the evidence, I have concluded that in awarding custody of Monique to Andalyn I would be exposing her not only to a continuance of the emotional trauma associated with the sudden disruption of her existing emotional relationships which has taken place, but also to an appreciable element of risk in the longer term. That is far from saying that I have concluded Andalyn is an unfit mother, and I must emphasise my view that it is in Monique's best interest that she should be allowed to remain in contact with her. It is an unfortunate feature of cases of this kind that serious and unpleasant allegations are made. In the present case, however, there are also reports from independent experts upon which the parties have an opportunity to reflect. I commend in particular to the Grants those parts of the reports which reflect the more positive aspects of Andalyn's character.

In the order which I shall now make will be a provision that Andalyn shall have reasonable non-residential access to Monique. I shall not

be more specific than that at this stage, as I am putting a responsibility on the parties to seek to work matters out for themselves. If they cannot there will be liberty to apply to the court for a further order.

My order is \_

- (1) that custody of Monique Watson be granted to her father, Garston Todd Grant jointly with her grandparents Garston Gilbert Grant and Hedy Nadine Grant.
- (2) that Monique be collected from school on Friday 24th November 1989 and thereupon resume residence with her father and grandparents.
- (3) that Monique continue her schooling at the Creek School, Cayman Brac until the end of the current term, with her education thereafter being at the discretion of her father.
- (4) that reasonable non-residential access to Monique be afforded to her mother, Ann Elaine Watson-Morgan.
- (5) Liberty to apply.

*G. E. Harre*

G.E. Harre  
Judge



22nd November 1989