

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CLAIM NO. E600/2002

BETWEEN MARC HALL APPLICANT
AND DEBRA JONES-HALL RESPONDENT

Mrs. Judith Cooper instructed by Chambers Bunny & Steer for Applicant

Mrs. Patrice Roberts-Brown instructed by Crafton Miller & Company for the Respondent

Heard: October 10 and November 9, 2005

Straw J (Ag.)

Background

The issue in this present case before the court for consideration is an application for custody, care and control of Stephanie Franchessa Hall, the youngest of two children born to the applicant, Mr. Marc Hall and his ex-wife, Mrs. Debra Jones-Hall during the course of their marriage.

The circumstances of this case are an all too common phenomenon in our society where families are torn apart as a result of the break up of a marriage/or common-law relationship. The resulting consequences of alienation, anger, hurt and loss of security affect each and every member of the family unit to one degree or another.

Stephanie was born on February 4, 1994. She is now 11 years old. Her older sibling, Matthew Hall was born May 13, 1988. He is now 17 years old. The Halls separated on September 17, 2001 and the marriage was dissolved on February 18, 2005.

Mr. Hall has subsequently remarried and is residing in the previous matrimonial home in Montego Bay with his new wife, his stepson and his son Matthew, who had been in an educational institution in the United States of America subsequent to the separation. He is no residing with his father in Montego Bay.

Previous Order of the Court

On October 9, 2003, Mr. Justice Pusey (Ag.), with the consent of both parties, granted joint custody of both Stephanie and Matthew to the applicant and respondent. In relation to Stephanie, she was to reside in Jamaica with Mrs. Jones-Hall. Mr. Hall was granted access to Stephanie as specified in the Order.

It is not necessary for the consideration of the present proceedings, to give details of the Order except to say that Stephanie was to be with her father one weekend per month and two-thirds of the major school holidays.

At the time, Mrs. Jones-Hall resided and still resides in Kingston where she eventually settled after the separation.

What is quite clear is that both children were affected psychologically by the separation of their parents.

In regard to Stephanie, she was examined by Dr. Aggrey Irons in February and March 2003, some months before the first custody hearing. Dr. Irons noted that at the time, Stephanie expressed that she would rather live with her mother if she had to choose. However, she also expressed a desire to live in Montego Bay or Miami because all her old friends were there.

The Present Application

The applicant, Mr. Hall, is now applying for a variation in the Order of Mr. Justice Pusey (Ag.) in the following terms:

“That the applicant, Marc Hall be granted custody, care and control of the relevant child, namely Stephanie Francessa Hall, born on the 4th day of February 1994 with reasonable access to the defendant, Debra Jones-Hall.”

It is important to note that at this time, Stephanie is now residing with Mr. Hall in Montego Bay. Mrs. Debra Jones-Hall had, of her own free will, made a decision that Stephanie should reside with Mr. Hall, for the period September 30, 2005 to August 30, 2006. She has requested that the court dismiss the application and grant Mr. Hall temporary care and control of Stephanie until August 30, 2006 with access to her.

Submissions in relation to the Application

Mr. Hall filed three affidavits in support of his application dated June 16, 2005, October 10, 2005 and October 27, 2005. Mrs. Judith Cooper-Batchelor submitted on his behalf that Mrs. Jones-Hall cannot provide a stable and secure environment for Stephanie in Kingston and that her life is ‘shrouded with uncertainty’ (per **Lord v Lord** 1981 18 JLR, pg. 288).

She stated that since Mrs. Jones-Hall left the matrimonial home in Montego Bay, she has lived with the two children in Florida, then with Stephanie at four addresses in Kingston up to July 2005.

The court notes that these have all been rented accommodation. Mrs. Jones-Hall, in her affidavit dated October 14, 2005 stated that she hopes to have the issue of the respective interest in the former matrimonial home determined before August 30, 2006. She further states that she would then be in a better position to secure her own home.

Mrs. Cooper-Batchelor further submitted that because Matthew is now living with Mr. Hall, it would be beneficial for both Stephanie and Matthew to be living together in the interest of fostering sibling relationship.

She cited the case of **Buckeridge v Shaw** RMC C A No. 5/98. In that case Walker L J, at page 8, stated as follows:

“Another consideration for the court must be the desirability for children, born of the same parents and whose births closely follow each other, to grow up together in the same environment thus facilitating a bonding between the children.”

This is therefore a relevant consideration for the court in custody cases. Mrs. Patricia Roberts-Brown submitted on behalf of Mrs. Jones-Hall that there is an age difference between Stephanie and Matthew (6 years) and the possibility exists Matthew might be leaving home in the near future to pursue further studies.

Relevant Factors Considered by the Court

Section 8 of the Children (Guardianship and Custody) Act states as follows:

“Where in any proceeding before any court, the custody or upbringing of a child ... 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 ... is superior to that of the mother, or the claim of the mother is superior to that of the father.”

It is quite clear to the court that Stephanie’s emotional welfare, at this point in time, is the central and crucial issue for the court’s consideration. This is for the following reasons as set out below:

- Both Matthew and Stephanie suffered emotional stress after the separation of their parents. Stephanie received some therapeutic intervention with visits to Dr. Pottinger and Dr. Irons prior to the first custody hearing on

October 9, 2003. Visits to Dr. Irons were made February 3, 2003 and March 3, 2003. Dr. Irons' report dated March 31, 2003 revealed that Stephanie preferred to reside with her mother if she had to choose. However, she also expressed a desire to live in Montego Bay or Miami where, apparently her friends are located.

- In August 2004, while Stephanie was visiting her father in Montego Bay, Mrs. Jones-Hall found a letter in Stephanie's bag. The letter repeated several times that Stephanie hated herself. It also expressed that she was going to kill herself. Mrs. Jones-Hall did not inform Mr. Hall of the letter or its contents.
- On August 20, 2004, on her return to Kingston, Stephanie was taken by her mother to Dr. Yvonne Bailey-Davidson, a consultant psychiatrist. The doctor noted that Stephanie had no suicidal thoughts but assessed her as having depression. She was seen by Dr. Davidson on three subsequent occasions, then stopped her visits.
- Mrs. Jones-Hall, in her affidavit filed on October 25, 2005, stated that Stephanie was not comfortable speaking about her problems with Dr. Bailey-Davidson, that this was the reason why the visits were terminated. She also stated that after she found the letter, she called Stephanie, that Stephanie asked her not to tell her father, that when she contacted Dr. Davidson and discussed the letter, she was advised to honour Stephanie's request as failure to do so might result in a breach of trust between mother and daughter.

- In February 2005, Stephanie deliberately scratched her arm with a broken marble. She was then taken to see Dr. Barney Eldemire in March 2005. In fact, both Mrs. Jones-Hall and Stephanie had individual as well as joint sessions with Dr. Eldemire.
- In April 2005, a most distressing incident occurred. Stephanie was sexually assaulted by an intruder at her mother's (one bedroom) rented accommodation at Upper Mark Way. Her mother, who was apparently on medication for rheumatoid arthritis, was asleep in the living room during the entire incident. Dr. Eldemire continued to see Stephanie on and off after the sexual assault.
- In September 2005, the premises at Monterey Drive, (where Stephanie and her mother were then residing), was the object of a burglary. However, Stephanie and her mother slept through the entire incident as their bedrooms were locked away from the rest of the house.
- On September 26, 2005, Dr. Eldemire, Mrs. Jones-Hall and Stephanie met in his office. Dr. Eldemire reports that Mrs. Jones-Hall took the decision, that in Stephanie's best interest, she should live with her father. Dr. Eldemire further reports that Stephanie did not agree with the decision as her preference was to remain with her mother.

The court notes that, in a second report dated October 3, 2005, Dr. Eldemire stated that Mrs. Jones-Hall and Stephanie have a good relationship. The court also considers Stephanie's school report from Immaculate Conception Prep. School. The

comment is made that she was making steady progress. Her grades, as well as her work and social attitudes are impressive.

Stephanie has experienced severe emotional stress and trauma over the last four to five years.

Dr. Bell, a psychologist, assessed Stephanie while she was in Montego Bay on September 1, 2005. His report reflects that Stephanie has been traumatized by the sexual assault. He stated that she admitted to feeling 'a little safer in Montego Bay with her dad.' She was diagnosed as suffering from post traumatic stress disorder and recommended that she be placed in a secure environment (to the extent of preventing any outside intrusion).

In the court's opinion, there is nothing on the evidence presented to warrant the court granting sole custody to Mr. Hall at this time. Both mother and father are living within the jurisdiction. Mrs. Jones-Hall has also demonstrated an ability to place Stephanie's welfare above her own interest in making the decision to send Stephanie to reside in Montego Bay temporarily.

Bearing in mind, Stephanie's age, gender and the distress that she has experienced, the 'mother factor' will be an important consideration. Having regard to the paramount consideration of the welfare of the child, the court refuses the application for the sole custody by Mr. Hall.

The Issue of Care and Control

This is a relevant issue for the court's determination if consensus cannot be reached by the parties. However, the court is of the view, that it would not be prudent to make such a decision at this time. There are many issues to be considered, including

Stephanie's psychological and emotional progress, the choice of a secondary educational institution (Stephanie will be sitting G S A T in 2006), Mrs. Jones-Hall's economic stability and residential location. The court should be guided by updated reports on all these issues. With regards to the relevant child Stephanie Francesca Hall, the court therefore makes the following Order:

- a. An interim Order for care and control is granted to Mr. Hall until August 30, 2006.
- b. The respondent shall have access to Stephanie one weekend per month, this weekend is to be the weekend which follows the last Friday in each month. The respondent is also granted access to Stephanie on two-thirds of the major school holidays and on alternate mid-term holidays.
- c. Neither party is permitted to remove Stephanie from the jurisdiction without the written permission from the other party giving at least seven (7) clear days notice prior to the child leaving the jurisdiction. If written permission has been sought and the permission is refused or the party fails to respond, then the requesting party may seek the court's leave to take the child out of the jurisdiction.
- d. If either party wants Stephanie's passport either for travel or documentation purposes, then the same is to be promptly made available to the other party and returned.
- e. All communication to the applicant from Stephanie's school and therapist should be made available to the respondent within a month.

The matter is to be set for hearing in July 2006.

A Notice of Application for Court Orders has also been filed by the applicant in relation to a Maintenance Order for the child, Stephanie Hall. He is now seeking a revocation of the Maintenance Order made on December 16, 2004.

Apparently, this Maintenance Order was made pursuant to the Order of October 9, 2003. The court cannot locate a record of the Order on the file at this time. Both parties, however, have referred to it in their respective affidavits.

In the circumstances, the court will suspend the Order for Maintenance by the applicant in relation to the relevant child, Stephanie Hall until further Order.