

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN EQUITY

IN CHAMBERS

SUIT NO. E. 24 of 1981

ORIGINATING SUMMONS

In the Matter of TIFFANY MARTINE
LEIGH LORD and CLARK DOUGALL
LEIGH LORD.

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In the matter of The Children
(Guardianship and Custody) Act.

BETWEEN	LEIGH DOUGALL LORD	APPLICANT
AND	LOLA MARIE ROBERTA LORD	RESPONDENT

Ronald Williams, Q.C. for the Applicant.

C. U. Hines for the Respondent.

July 16, 21, 24, 31, 1981

JUDGMENT

WOLFE, J.:

Leigh Dougall Lord, hereinafter referred to as the Applicant, a medical practitioner, married Lola Marie Roberta Lord, a radiographer, cosmetician and beauty counsellor on the 29th day of July, 1972. At the time of the marriage the applicant was 51 years of age and the respondent 22 years of age. They lived and cohabited at 13 Kendal Road, Mandeville in the parish of Manchester.

This union produced two children, namely:

Tiffany Martine Leigh Lord, born on the 11th day of April, 1974, and;

Clark Dougall Lord born on the 4th day of September, 1975, hereinafter referred to as the relevant children of the marriage.

It is common ground that the parties enjoyed a happy marital relationship until 1978, when problems developed.

The applicant contends that the problems were due to the fact that the respondent became involved with a couple who were the

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leaders of an elite social group of Americans whose past-time was night-time revelry. This necessitated the respondent being out late at nights frequently. This habit of the respondent became so chronic that applicant concluded that she "regarded going to bed early as a criminal offence."

The applicant strongly objected to this way of life primarily because the children were often left at home for long hours at night while their mother revelled and possibly because of his age and professional commitments he was unable to keep pace with his young and fun-loving wife.

Despite the objections of the applicant, the respondent continued to pursue her nocturnal activities.

The respondent suddenly decided to pursue her profession as a cosmetician in Kingston. This required her to be away from the home for two to three days each week. To this the applicant agreed. The applicant stated that although he did not approve of it he agreed in the hope of fostering a harmonious relationship.

It is to be noted that at the request of the respondent the applicant caused an out-building at the matrimonial home to be converted into a Beauty Parlour to be used in her profession as a cosmetician.

The relationship became strained and in September 1980, the respondent left home with the two relevant children of the marriage. She subsequently returned to the matrimonial home in October 1980.

In December 1980, it was agreed between the applicant and respondent that they would spend Christmas in Montego Bay. The applicant provided the respondent with the sum of One Thousand Dollars to make the necessary preparations for the Yuletide Season. On the 18th December, the respondent left home for Kingston along with both children enroute to Canada unknown to the applicant.

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Upon her arrival in Canada the respondent sought to take steps to remain permanently in Canada with the children. This was averted by quick action on the part of the applicant.

The respondent then signed an agreement in which she agreed to remain in Canada for six months while the applicant and the children would return to Jamaica. Notwithstanding the agreement, she returned to Jamaica with the applicant and the children but did not resume cohabitation. This agreement was tendered and admitted in evidence as Exhibit I.

Since then the respondent has intermittently visited the matrimonial home remaining there sometimes for a period of two days.

The respondent on the other hand contends that she was forced to leave the matrimonial home due to the fact that since the beginning of 1978 "when for a number of different reasons the applicant embarked upon a systematic campaign designed to intimidate, to belittle and humiliate me and as time passed he intensified his effort in such a way that its persistence in referring to me as insane, stupid, lunatic, psychiatric case brought me to the point where my health deteriorated rapidly and even though the applicant saw the effect of his action on me he increased rather than abated his effort to make me ill."

It is against this background that both applicant and respondent have moved the Court to resolve the question of custody of the relevant children of the marriage.

These applications are made under s. 7(1) of The Children (Guardianship and Custody) Act.

" Section 7(1) The Court may, upon the application of the father or mother of a child, make such order as it may think fit regarding the custody of such child and the right of access thereto of either parent having regard to the welfare of the child, and to the conduct of the parents, and to the wishes of as well of the mother as of the father "

Section 18 of the Act sets out the principles on which questions relating to custody are to be decided.

The main thrust of the applicant's case as I understood it was that the children were well settled in their present situation, being well cared for, enjoying a reasonable standard of living and having an all together happy life.

His contention was supported by affidavits deposed to by seven persons who the respondent conceded were closely connected to the family with whom she enjoyed a good relationship.

The Rt. Rev. William Murray, Bishop Suffragan of Mandeville deposed as follows:

" I have had the opportunity of observing his love and affection of his children, as well as their own obvious love for him and have no hesitation in stating that I believe that he is well qualified to provide them with a home with the necessary stability and love which would be conducive to their growth, security and interest. "

Una Aspacia Cuthburt, a godmother of the child Tiffany, had this to say in her affidavit:

" I regard the said Doctor Leigh Dougall Lord as a devoted family man with high christian principles who exhibits genuine love and devotion for his children and indeed his entire family.

That I have observed this devotion and decication of Doctor Lord to his children, even to the extent of helping in the bathing of the children Tiffany and Clark, and the reading of bedtime stories to them on occasions that I spent in their lovely home. "

Juliet Robertson, Assistant Headmistress in charge of Early Childhood Division, Belair School by way of affidavit said:

" Tiffany Martine Leigh Lord and Clark Dougall Leigh Lord are currently enrolled at the Belair School, Mandeville, where their attendance has been regular and they have been progressing well in their work. "

I accept as true the extracts quoted as I too came to the view that the applicant was genuinely concerned with the welfare of the children. I was particularly impressed when under cross-examination he said:

" I do not wish to have the children for myself but in their own interest. "

I am satisfied that the applicant has done and is doing everything to provide the children with a stable home and with an upbringing conducive to their well-being.

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" 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. "

Lord McDermot in J. v. U. 1969 1 AER 788 in considering the scope and meaning of the words emphasised above said:

" Reading these words in their ordinary significance, and relating them to the various classes of proceedings which the section has already mentioned, it seems to me that they must mean more than that the child's welfare is to be treated as the top item in a list of items relevant to the matter in question. I think they connote a process whereby, when all the relevant facts, relationships, claims and wishes of parents, risks, choices and other circumstances are taken into account and weighed the course to be followed will be that which is most in the interests of the child's welfare as that term has now to be understood. That is the first consideration because it is of first importance and the paramount consideration because it rules on or determines the course to be followed."

As I approach the task of adjudicating upon these applications, I bear in mind also the observations of Lord Justice Stamp in Re K. (Minors) [1977] 1 A.E.R. p. 647 at p. 649:

" Although one may of course be assisted by the wisdom of remarks made in earlier cases, the circumstances in infant cases and the personalities of the parties concerned being infinitely variable, the conclusions of the court as to the course which should be followed in one case are of little assistance in guiding one to the course which ought to be followed in another case. "

The manner in which the applications were presented has led me to conclude that the crucial issue herein is whether the welfare of the children necessitated them being removed from their present situation.

I have been led to this conclusion as at no time during even the arguments did either party attempt to establish that the other was not a fit and proper person to have custody of the children.

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The respondent on the other hand is unsupported in her application. In support thereof she relies heavily on the tender age of the children, maintaining that at such an age the maternal influence is a necessity especially in the case of Tiffany. With this contention I agree. However, there are situations in which the welfare of the children dictates otherwise.

She further contends that in their present situation the children "are uncontrollably exposed to the influence of the applicant's domestic staff none of whom have shown that they have the potential to set the right example for the children."

It is worthy of note that at least two members of the domestic staff were "scrupulously hand picked" by the respondent herself.

I must confess that I find that the allegation of exposure to the domestic staff is a red herring being drawn across the ~~trial~~ ^{trail}.

In our present economic situation where mother and father are required to seek employment such exposure has become a fact of life. Many children in our society owe their upbringing, moral and spiritual to faithful and devoted household helpers.

The respondent's plans for the children, if granted custody, embraces the very exposure she speaks so discriminatingly of, as she intends to pursue her busy avocation of a cosmetician which will necessitate her being away from home.

Having left the security of the matrimonial home, the respondent's present and future life is shrouded with uncertainties,

I formed the distinct impression both from her affidavit and her evidence under cross-examination that successfully re-establishing herself will depend materially upon what financial support she can get from the applicant.

Notwithstanding the foregoing, I am satisfied that she loves her children and would prove an efficient mother if she were able to bring stability to her life.

An examination of the respondent's affidavit shows clearly that all her arrangements for the children, if granted custody, are based on the assumption that the Court will make a substantial order for maintenance against the applicant.

The competing claims of the applicant and respondent may be summarised tersely as certainty versus uncertainty.

Having identified the claims thus, the question arises: What does the welfare of the children demand?

In resolving this issue, I adopt the words of Smith J.A. (as he then was) in Clarke v. Carey (1971) 12 J.L.R. p. 637 at p. 648:

" In deciding this question it must be said at once that this is not a case of balancing what has been called the wealth of the father against the 'relative poverty' of the mother. "

While the tender ages of the children point strongly in favour of custody being granted to the mother, yet there are other overwhelming factors which indicate that such an order would not be in the best interest of the children. To so order would be to pluck the children from a settled and happy home where their every need is ministered unto and place them in a totally new environment stamped with uncertainty.

I sympathise with the claim of the mother but the welfare of the children which is paramount leads me to hold that custody, care and control of the relevant children ought to be granted to the applicant, Leigh Dougall Lord and I so order.

I further ordered that the respondent, Lola Marie Robertha Lord shall have reasonable access to the said relevant children.

It is also further ordered that the children shall not be taken out of the jurisdiction without the consent of both parties or pursuant to an order of the Court.

On the question of costs, I feel constrained to note that the respondent's stance in opposing the application and seeking an order for custody is not an unreasonable one considering the delicate nature of the matter. In fact, the posture adopted by her has greatly assisted the Court in arriving at its decision. In the circumstances, there will be no order as to costs. Liberty to Apply.