



[2023] JMSC Civ 265

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

HIGH COURT CIVIL DIVISION

CLAIM NO. SU2020CV02060

IN THE MATTER OF Section 20 of The
Children (Guardianship and Custody) Act

AND

IN THE MATTER OF an Application by
VT to be appointed guardian of minor
child AS

AND

IN THE MATTER OF The Children's
Advocate

BETWEEN

VT

CLAIMANT

AND

DS

DEFENDANT

AND THE OFFICE OF THE CHILDREN'S ADVOCATE

INTERESTED PARTY

IN CHAMBERS (VIA ZOOM)

Ms Nashana Thomas instructed by Lambie–Thomas & Co. for the Claimant.

Ms Zoe Williams representing The Office of the Children's Advocate

DS in person and unrepresented

Heard on: March 1, and 27 April 2023

FAMILY LAW – APPLICATION FOR LEGAL GUARDIANSHIP OF A MINOR – THE CHILDREN (GUARDIANSHIP AND CUSTODY) ACT SS. 4, 8, 14(1), 20- MOTHER OF CHILD WAS A MINOR - FATHER CONVICTED OF SEXUAL ABUSE OF MOTHER - WHETHER *PARENS PATRIAE* JURISDICTION IS TO BE EXERCISED WHERE BOTH PARENTS ARE ALIVE – WHETHER THE COURT HAS AUTHORITY TO DISREGARD A PARENT’S OBJECTION IN GRANTING THE APPLICATION – CHILD IN NEED OF CARE AND PROTECTION.

REID, ICOLIN J.

Introduction

[1] On the 27th day of April 2023, I granted the Claimant’s application for legal guardianship of the minor, AS. I gave a short summary of my decision and promised to put my reasons for the granting of the application in writing. I must apologise for the long delay and now fulfil that promise. To protect the identity of the child, throughout this judgment, the parties will be referred to by their initials.

BACKGROUND

[2] The Claimant, VT is the maternal grandmother of AS, a minor, born on the 17th day of May 2017. AS was born to the Claimant’s daughter, AR, at 14 years old. AR was sexually abused and impregnated at 13 years old by DS, her mother’s common-law spouse. DS was convicted and incarcerated for having sexual intercourse with a person under the age of sixteen. Both AS and AR have been living with VT, who has been their primary caregiver and provider from her own resources.

[3] On the 18th day of June 2020, VT filed a Fixed Date Claim Form pursuant to the Children (Guardianship and Custody) Act (hereinafter referred to as the ‘CGCA’), seeking legal guardianship of AS. She filed her affidavit in support and at the time of filing her application, AR was still a minor and did not possess the legal capacity to consent. However, since then AR has attained the age of majority and has since

filed an affidavit in support of the application. VT's application was also supported by two other witnesses, who are persons familiar with her and who consider her to be a "fit and proper" person to be AS's legal guardian. When the claim was filed, DS was still incarcerated and was therefore served while in custody. However, during these proceedings DS completed his sentence and was released from prison. He thereafter attended the hearing of the matter and was granted an extension of time to file an affidavit, but he did not file one.

- [4] In support of her application, VT deposed that she is the primary caregiver and provider for both AS and AR and that it is in the best interest of AS, that the application be granted. She stated that it would allow her to make important decisions concerning his well-being. VT indicated that AS is enrolled in an early childhood educational institution and attends church where he receives religious education. VT highlighted that she has developed a strong bond over the years with AS and that she has been taking care of him since birth.
- [5] The Child Protection and Family Services Agency (hereinafter referred to as "the CPFSA") as also the Office of the Children's Advocate (hereinafter referred to as "the OCA") are the best agencies to provide the Court with independent information concerning these types of applications. The Court therefore made orders requesting their input for consideration of this application. A social enquiry report was provided by the CPFSA while the OCA provided an investigative report.

Social Inquiry Report by the CPFSA

- [6] In the Social Enquiry Report provided by the CPFSA, it was revealed that VT had left AR in the care of DS while she travelled overseas for work purposes. VT later learnt about her daughter's pregnancy and the authorities were contacted. AS is the product of this sexual abuse whereby DS was convicted and sentenced to several years in prison.
- [7] Since AS's birth, VT has been his main caregiver and provider. DS has not had any contact with AS. VT has expressed that AR does not portray a sense of

responsibility towards AS even though he is in the same household, and she does not feel that AR loves AS like a mother should. VT pointed out that AR is very dependent on her to care for AS and at times AR takes out her problems on him. She further explained that although AR is not abusive towards AS, she tends to get aggressive when faced with challenges.

- [8]** VT revealed that she made efforts to have AR continue her education whereby she returned to school and obtained 2 CXC subjects. She stated that she continues to be responsible for AR and wants to assist her to do more academically. VT, however, pointed out that AR has no desire to go back to school and so the financial burden of taking care of AS falls squarely on her (VT's) shoulders. VT expressed that she has provided a loving and stable environment for AS and has also sought and obtained professional help for AR because of the trauma she has experienced in her life.
- [9]** AR shared that she was not entirely comfortable with the idea of legal guardianship because AS is her only child, and she wants the chance to bond with him. She pointed out that VT has been nurturing and caring for AS since he was born because she was only 13 years old when she became pregnant. However, later in the same interview, she stated that she does not have a problem with her mother obtaining legal guardianship because she will still get to interact with her son even if she is not in the same household. AR also said that there were times when she did not feel a bond between herself and AS even though he calls her mommy.
- [10]** The report indicated that currently AR appears to lack the capacity to holistically care for AS. AR is not employed and was reserved in her decision to become suitably qualified for meaningful employment. VT said that AR was released from her job recently due to her immature conduct. AR however said that she has two online businesses and plans to join the Jamaica Defence Force.
- [11]** DS, on being interviewed, admitted to the sexual abuse of AR. He expressed remorse and added that he has faced the consequences of his actions and only

feels that it is fitting that he be permitted visitation rights with AS and be allowed to contribute to his development. He said that he has no objection to VT becoming a guardian for AS, however, he did not think it was necessary because AR resides within the same household and was now an adult. He pointed out that he did not see the need for legal guardianship because VT can continue to be supportive of AR and AS without any order from the Court. He felt that it was a means for VT to alienate him from AS and was also an act of revenge on her part.

- [12]** The Children's Officer, in her analysis, found that AS was being properly cared for and stimulated in the care of VT and AR. The officer observed that VT was more of a mother figure to AS, while he and his mother, AR, had a relationship akin to that of siblings. She stated that DS appeared to understand the consequences of his actions resulting in the pushback from VT, however, he maintains that a child needed to have both his parents regardless of the circumstances. The CPFSA recommended that VT be made AS's legal guardian.

Investigative Report from the Office of the Children's Advocate

- [13]** Based on the exceptional circumstances of this case, the Court thought it prudent to have independent representation for AS and so, an order was made for the OCA to be joined as an interested party. The OCA reported similar observations regarding AS's conception, VT's care of AS, and AR's inability to provide for the welfare of AS.
- [14]** In their interview, VT indicated that her reason for applying for guardianship of AS was that she has been his primary caregiver from his birth, and she wanted to continue to do so in a formal way. She added that AR was still young and rather immature, and that she (that is VT) was in a better position to make the best decisions for AS.
- [15]** AR indicated that VT was her main source of support as DS was not active in the child's life. AR conceded that although she was self-employed where she sells clothes online, the expenses associated with AS's monthly care exceeded her

monthly income of approximately \$20,000.00. AR was also cognisant that she might not always be physically available for AS due to her ambitions, hence her agreement with the application for her mother to be appointed guardian of AS.

- [16] In an interview with DS, he expressed that he had no objections to VT's application for guardianship. (This report was conducted after the CPFSA report). He said that he had moved from his previous address in Spanish Town due to space constraints. He indicated that he was since residing with relatives at the new address, but no appropriate detail was provided of this new residence. He again expressed regret for his actions.
- [17] Two friends of VT were also interviewed, and they shared that VT was a good parent to AR and had a good relationship with AS. They added that VT was a kind, competent and suitable guardian, and was also law-abiding.
- [18] The OCA report indicates that VT was the breadwinner for her household and has maintained AS since birth. AR agreed with the application and their investigation did not reveal any adverse information or findings that would obstruct VT's application to be appointed as AS's legal guardian.
- [19] AS, although 5 years old at the time, was also interviewed. He said that he liked living with AR and VT and expressed his love for them both without having any preference for one over the other.

SUBMISSIONS

Claimant's submission

- [20] Miss Nashana Thomas, Counsel for VT, in her submissions, argued that the Claimant should be granted legal guardianship of AS and that this Court has jurisdiction to appoint a legal guardian in these circumstances. She submitted that AR has consented to the application by VT, but the father DS, was ambivalent about the application and has indicated this by his conflicting statements in the Social Enquiry Report and the OCA report. Counsel contended that DS appeared

to be more focused on being able to have access to and paying maintenance for AS, but she pointed out that neither of these issues were currently before this Court.

[21] Counsel placed reliance on section 49 of The Judicature (Supreme Court) Act; Section 20 of the Children (Guardianship and Custody) Act (CGCA); **B and C** [2016] JMCA Civ 48 and **Panton v Panton** SCCA NO. 21 of 2006. She also emphasized the best interest principles as per section 18 of the CGCA. Miss Thomas pointed the Court to **In re McGrath, (Infants)** (1893) 1 Ch 143 and **The Queen v Gyngall** [1893] 2 QB 232 in submitting that, in the case at Bar, even though it is not clear whether or not DS is opposed to the application, he would have forfeited his right to custody of the child or to oppose the application before the court based on his misconduct that led to the birth of AS.

[22] Counsel further submitted that it would be in the best interest of AS for legal guardianship to be granted to VT as she had been his primary caregiver, his financial provider, and the best person to make decisions for his future at this time. She highlighted that VT had ensured that AS had the proper educational and religious foundations and worked hard to make sure that all his needs were met. Ms. Thomas concluded that in the Social Enquiry Report, the recommendation was for VT to be made the legal guardian of AS. She added that the OCA report also gave a clear indication that AS appears to be a happy child, and their investigations did not reveal any adverse findings to obstruct the granting of the application.

OCA's Submission

[23] Miss Zoe Williams, Counsel representing the OCA, stated that the OCA has jurisdiction in this matter according to section 4 of the Child Care and Protection Act (hereinafter referred to as the "CCPA") and was tasked with the duty of protecting AS's rights and promoting his best interests. Counsel relied on **R and M** [2019] JMSC Civ 26, **B and C** (supra) and **The Queen v Gyngall** (supra). She submitted that based on the doctrine of *parens patriae*, the sovereign was

regarded as having the right to make decisions concerning people who were not able to take care of themselves, and the Supreme Court was vested with the right to make legal decisions concerning all guardianship matters. She asserted that the Supreme Court in its inherent jurisdiction had the authority to appoint a legal guardian for AS, and in contemplation of that decision, AS's welfare should be the paramount consideration.

- [24] Counsel submitted further that by virtue of section 8 of the CCPA, AS would be considered a child in need of care and protection and his welfare ought to be safeguarded given the circumstances of the case. She also pointed out that if AS resided in the same house as his father, the law would recognize that AS's safety was jeopardized, and this was sufficient to give support to the finding that AS may be exposed to the risk of harm if DS was given access.
- [25] Ms. Williams submitted that AS needed care and protection as a direct consequence of his father's criminal actions and his mother's inability to properly care for him. She emphasized that the Court needed to zealously guard the child's welfare, and on this basis, the Court should disregard the parental rights in order to protect the child from risk of harm. Counsel relied on **Re: R (A Child)** [2015] Lexis Citation 213; and **R v D** [2005] EWCA Crim 3660).
- [26] Counsel concluded by submitting that the Court in these circumstances should exercise its *parens patriae* jurisdiction and she further recommended that VT be awarded legal guardianship of AS. She advocated that the Court considers that AS's welfare is of paramount importance and that in acting in AS's best interest, the Court can and should disregard the objection of DS. She argued that although the AS has not suffered any direct abuse from DS, the circumstances surrounding his conception and birth may have grave psychological effects on him. She emphasized that in the circumstances the risk of harm outweighs the right of access to the child and DS's parental rights would conflict with AS's welfare and best interest.

Who are the proper parties in these proceedings?

[27] I will briefly deal with the issue of the parties in this matter. When VT filed the Fixed Date Claim Form there were no Respondents to the suit. AR was a minor so for all intents and purposes she could not consent. The point must also be made that he was also being cared for by VT. DS was still incarcerated having not completed his prison sentence. The Court made an order that DS was to be served with the Fixed Date Claim Form and all the supporting affidavits.

[28] But then the question arose whether that was sufficient to protect the interest of AS. The Court considered Paragraph 14 of the First Schedule of the CCPA which states that:

14 (1) Subject to the provisions of this paragraph, the Children's Advocate may in any court or tribunal –

- a) Bring proceedings, other than criminal proceedings, involving law or practice concerning the rights or best interests of children;*
- b) Intervene in any proceedings before a court or tribunal, involving law or practice concerning the rights or best interest of children;*
- c) Act as amicus curiae in any such proceedings...*

[29] The Court thereafter made an order that the OCA was to be served with the initiating document and all the affidavits in support. It was felt that the OCA was needed to legally represent the interest of AS in this matter. They not only did their own investigations and prepared a report, but the legal officer made submissions on behalf of AS. The court was then satisfied that all the parties had a voice and would be able to fully consider the various views and issues relevant to AS' welfare.

ISSUES

[30] The issues for determination are as follows:

- i. Whether the Court has jurisdiction to grant the order sought by the Claimant.
- ii. Whether the Court has the authority to disregard a parent's objection in granting a guardianship application.

[31] Whether VT should be granted Legal Guardianship over minor child AS.

Issue i: Whether the Court has the jurisdiction to grant the order sought by the Claimant

Law and Analysis

[32] The Court's inherent jurisdiction to grant orders for guardianship is preserved by section 20 of the CGCA in the form of a savings law clause, which prescribes that:

"Nothing in this Act contained shall restrict or affect the jurisdiction of the Supreme Court to appoint or remove guardians."

[33] In **B and C v The Children's Advocate** [2016] JMCA Civ 48 at paragraph 19, Brooks JA (as he then was) comprehensively acknowledged and analysed the historical underpinnings of the inherent jurisdiction of the Supreme Court in the appointment and removal of guardians. Likewise, in **Re: Application for Guardianship of a Minor Child F** [2016] JMCA Civ 193 at para 11, Batts J opined ... *"The 'parens patriae' jurisdiction is to be exercised where the parents (or guardians) of the child are unable, unwilling or incompetent to take proper decisions in relation to the care and wellbeing of the child"*. The learned judge further added that this jurisdiction should be exercised *"where the parents (or guardians) prove unable, or fail to act in the child's best interest."*

[34] In exercising this jurisdiction to manage or disregard the parental right, the Court must act cautiously, and only act in opposition to the parent when judicially satisfied that the welfare of the child requires that the parental right should be suspended. I note from the onset that the primary issue in this case is not whether

the Court has jurisdiction, but whether the Court should exercise its inherent jurisdiction to make the orders sought given the circumstances of this case. I have considered the cautionary words of Brooks JA in **B and C** (supra) at paragraph 61 that “... *The appointment of a guardian, would mean that the child remains a ward of the court until the child either attains majority, or until further order of the court. The guardian, upon appointment as such, becomes an officer of the court, for the purposes set out in the appointment.*”

[35] As indicated above Sections 18 and 20 of the CGCA govern the power of this Court to make orders concerning guardianship. Section 18 of the CGCA state:

“18. Where in any proceedings before any Court the custody or upbringing of a child or the administration of any property belonging to or held on 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.”

[36] It is trite law that in matters concerning an application for guardianship, by virtue of statute and at common law, the first and paramount consideration of the Court should be the welfare of the child. In **Dennis Forsythe v Idealin Jones** (unreported), Court of Appeal, Jamaica, Supreme Court Civil Appeal No 49/1999, delivered on April 6, 2001, in considering the requisite approach to the principle, the Court at page 7, relied on the case of **In re McGrath (Infants)** [1893] 1 Ch 143, in which Lindley LJ said the following, at page 148:

“The dominant matter for the consideration of the Court is the welfare of the child. But the welfare of a child is not to be measured by money only nor by physical comfort only. The word welfare must be taken in its widest sense. The moral and religious welfare of the child must be considered as well as its physical well-being. Nor can the ties of affection be disregarded.”

[37] Forte P. in delivering the judgement in **Dennis Forsythe v Idealin Jones** (supra), went further to emphasise at page 8 that:

“A court which is considering the custody of the child, mindful that its welfare is of paramount importance must consider the child’s happiness, its moral and religious upbringing, the social and educational influences, its psychological and physical well-being and its physical and material surroundings, all of which go towards its true welfare. These considerations, although the primary ones, must also be considered along with the conduct of the parents, as influencing factors in the life of the child, and its welfare.”

[38] The Court, therefore, must consider all factors relevant to the welfare of AS. “Welfare” is being understood in its widest sense to encompass all aspects and needs of this child. The Court must scrutinize all aspects of the child’s well-being and the conduct of any party who seeks to apply for or object to the guardianship application in respect of AS. Further, the past conduct of DS, and his previous conviction for the sexual assault of AR, in so far as that conduct has or may, in the future, impact on AS’s welfare, must be considered by the Court.

Issue ii: Whether the Court has the authority to disregard a parent’s objection in granting a guardianship application.

[39] Section 8 of the CCPA provides inter alia:

8. – (1) For the purposes of this Act a child shall be considered to be in need of care and protection if that child –

a) having no parent or guardian, or having a parent or guardian unfit to exercise care and guardianship, or not exercising proper care and guardianship, is falling into bad associations, exposed to moral danger, or beyond control;

- b) is being cared for in circumstances in which the child's physical or mental health or emotional state is being seriously impaired or there is substantial risk that it will be seriously impaired;*
- c) is a child in respect of whom any offence mentioned in the Second Schedule has been committed or attempted to be committed;*
- d) is a member of the same household as a child in respect of whom such an offence has been committed; or*
- e) is a member of the same household as a person who has been convicted of an offence in respect of a child.*

.....

shall, without prejudice to the generality of the provisions of subsection 1 (a), be evidence that the child is exposed to moral danger.

[40] AS was not placed before the Court as a child in need of care and protection, but I note the submission of counsel for the OCA, that by virtue of section 8 of the CCPA he ought to be considered such a child. The court finds favour with this argument. A proper reading of section 8 (1) (c) of the CCPA would be relevant to AR, she being the victim of the sexual assault by DS, while subsection (d) would be relevant to AS, he being the member of the same household as his mother who was a victim of the assault (I bear in mind that at the time the claim was filed AR was a minor). Subsection (e) would certainly disqualify DS from having residential access to AS because the law recognises that the child's safety would be jeopardized and may provide support for a finding that the child may be exposed to some risk of harm if DS is given access at this time.

[41] The Court, therefore, finds that AS is a child in need of care and protection. The Court will now go further to consider the implications of this. In considering this application, I note that parental responsibility is a very serious matter. The abovementioned cases of **B v C** (supra) and **Re: Application for Guardianship**

of a Minor Child F (supra) have provided guidance on the Court's non-exhaustive considerations in matters concerning guardianship applications.

- [42] I note that VT in outlining her application deponed that she is the primary provider for both AS and AR and it would be in the best interest of AS, that the application be granted. This would enable her to make important decisions and to take any necessary actions concerning his well-being. This is an exceptional case where AS's parents, AR and DS are alive, and VT is the grandmother of AS. At the date of the filing of the application, AR did not possess the legal capacity to consent and DS was serving a sentence for his sexual assault of AR.
- [43] As the matter progressed before the court, AR attained the age of majority and was able to file an affidavit wherein she gave her consent for VT to be granted the orders sought in the claim. In her evidence, AR asserted that though she is the biological mother of AS, she is not able to adequately support him since she just graduated from high school and was unemployed. She expressed the view that the granting of the application would be in the best interest of AS.
- [44] As it pertains to DS, after being joined as a Defendant to the application, an order was made permitting him to file an affidavit in response. I note that to date he has failed to comply with the order. DS filed two separate documents, (both of which contained the same information) but they did not specifically comply with the Civil Procedure Rules, (2002) Part 30. However, I bear in mind that he was unrepresented, and I noted that the sentiments expressed in the two documents were conveyed to the CPFSA when he was being interviewed. In essence, he wanted shared custody of AS.
- [45] According to the CPFSA report, DS objected to the application and said that he wished to file an affidavit expressing his resistance to the application. He explained that he was not involved in AS's life due to his incarceration but now that he was released from prison, he wished to be a part of his son's life. He also questioned the necessity for the application and contended that it was sought by VT as an act

of revenge and to alienate him from AS. These assertions remained unproven on his part and no effort was made by DS to provide any such evidence to the Court. DS wanted to have shared custody of AS, yet to date, no information was given to the CPFSA, the OCA or to the Court as to his place of residence, his employment nor any plans that he may have harboured for the care and maintenance of the child. The meandering behaviour on his part about such an important matter did not go unnoticed by the Court and it only assisted in providing support for the submissions by both counsel that cast serious doubts on his fitness as a parent.

- [46] The Court must also analyse any matter relating to any situation that has the potential to affect the overall welfare of AS, whether positively or negatively. The court, therefore, must consider the past actions of DS in relation to AR and his conviction. I am guided by the words of Peter Jackson LJ in **In Re W-A (Children)(CA)** [2022] 3 WLR 1235 where at paragraph 8 he opined:

“...When considering whether evidence is relevant, the starting point must be the nature of the proceedings in which the question arises. The purpose of family proceedings is the protection of children and the promotion of their welfare and it is a fundamental principle that the court will take account of all the circumstances of the case...”

- [47] In **In Re W-A (Children)(CA)** (supra) the issue arose of whether the appellant's previous convictions for sexual offences against a child were admissible in care proceedings brought by the local authority, in respect of the two minor female children of his wife (with whom he lived). The appellant appealed the first instance judge's ruling that his conviction was admissible in the care proceedings. The court found that the lower court judge was correct to find that *“the conviction of the appellant was relevant and not subject to any exclusionary rules that might have made it inadmissible. These exclusionary rules were found to be incompatible with the welfare and interests of children and their families or the interests of justice in family proceedings, which were, substantively, welfare-based.”*

- [48] The learned judge concluded therefore that *“in family proceedings all relevant evidence is admissible. Where previous judicial findings or convictions, whether domestic or foreign, are relevant to a person’s suitability to care for children or some other issue in the case, the court may admit them in evidence.”*
- [49] I find that though there was no issue as to the admission of evidence regarding DS’s conviction, in the case at Bar, the case of **In Re W-A (Children)(CA)** (supra) is instructive. This Court in deciding issues relating to the welfare of AS, could not ignore the conviction. The evidence of DS’s past conduct and previous conviction, is relevant to the issue concerning the welfare of AS and the Court’s determination regarding this guardianship application. I find that it raises the question of whether DS poses a serious risk to his son, AS, and whether his past conduct would affect the child in any way, given the circumstances of the case. The court considers the fact that AR was a minor at the time of the offence and DS abused the trust placed in him by VT. He was also AR’s stepfather. She was 13 years old, and he was 59 years old. His behaviour then underscores his lack of good character and is relevant to his assessment as a fit parent.
- [50] The Court bears in mind that there is no evidence of sexual misconduct with males or any other child except AR. I, however, find favour with Ms. Williams’ submission that given the proximity and relationship between the sexual offender, the victim, VT, and AS, there is a risk of serious psychological harm if proper care is not taken, and DS is given access to AS at this time.
- [51] Further, I place reliance on **The Queen v Gyngall** (supra) where Lord Esher MR confirmed that the Court’s equitable jurisdiction allowed the Court to supersede a parent’s common law rights where they would conflict with the best interests of the child. The jurisdiction of the Supreme Court to intervene to protect the welfare of AS, against the objection of DS, is, therefore, well established.
- [52] Lord Esher MR opined that *“The Court must, of course, be very cautious in regard to the circumstances under which they will interfere with the parental rights. As*

*Knight Bruce, V.C., said in **In re Fynn** 2 De G. & S. 457, the Court must not act as if it were a private person acting with regard to his child. It must act judicially in the exercise of its power....Before this jurisdiction can be called into action... it (i.e. the Court) must be satisfied, not only that it has the means of acting safely and efficiently, but also that the father has so conducted himself, or has shown himself to be a person of such a description, or is placed in such a position, as to render it not merely better for the children, but essential to their safety or to their welfare, in some very serious and important respect, that his rights should be treated as lost or suspended or interfered with."*

- [53] I find that the effects of DS's past actions are likely to disrupt the healthy and safe environment already established by VT and he has not proven that he is a stable parent at this time to guarantee the welfare and best interest of AS. I also note, that although DS has indicated his seeming objections to the application, he did not provide any evidence for the court to consider. It leads the court to conclude that no serious thought was given to the reason for his objection or for the welfare of AS. I note further, as revealed by the evidence, that DS has never had any sort of interaction with AS due to his incarceration, nor has he sought to do so after being released from prison. He also has not disclosed his living arrangements for the child.
- [54] I further find that DS's past misconduct and conviction coupled with his ambiguous objection conflicts with his suitability as a parent and the Court has the authority to supersede his parental rights and disregard his objection to the granting of the application. Both reports provided valuable independent insights concerning the conduct of the parties and the environment that AS has been living in. They also revealed evidence of the unsuitability of both parents and reasons why AR would want to support the application by VT.
- [55] Based on the evidence, I find that both parents, currently, are incapable of meeting AS's needs. I find that section 8(1) of the CCPA aptly describes AS in relation to both his biological parents. Neither of them is fit to exercise proper care and

guardianship for AS. On a proper examination of this case, I find that there is ample evidence before me, that although both parents are alive, they are unable and or incompetent to make proper decisions concerning the care and well-being of AS and to act in his best interest.

Issue iii: Whether VT should be granted Legal Guardianship of the minor child AS

[56] I find that VT has been providing for AS's needs, his moral and religious upbringing, and his physical, mental, and economic needs; all of which facilitate his development and promote his welfare and best interests. The Court, therefore, forms the view that based on all the evidence presented which shows that VT is the main provider for AS's care and wellbeing, and he is at an age where he needs a stable support system, it is in the best interest of the child to grant the application being sought by VT.

[57] I consider the evidence which states that AS lives in a two-bedroom house with his mother, AR, and grandmother, VT. He attends school and church. VT also highlighted that she has developed a relationship with AS over the years and they are well-bonded as she has been taking care of him since birth.

[58] The application of VT was supported by two (2) witnesses, both of whom deponed that VT is a responsible and caring mother to both her daughter, AR, and her grandson, AS. They also testified that VT is the sole breadwinner and caregiver for both AS and AR's well-being. The witnesses said that she ensures that both AR and AS are well taken care of and are enrolled in school, and all AS's needs are met. They state that VT is hardworking and employed as a Legal Bearer for several years, and has proven to be trustworthy, kind, loving and is of good character. They were confident that VT would provide for both the emotional and material needs of AS. Both witnesses regarded VT as a fit and proper person to be appointed as the guardian of AS.

[59] Additionally, AR expressed the view that the granting of this application would be in the best interest of AS. AR also confirmed that AS resides with her and VT and

that VT has been the person who has been supporting AS and paying all his medical bills and educational expenses since his birth.

[60] I have observed in applications of this nature that preference may be given to the minor's nearest blood relative. Based on the evidence provided, VT, as AS's grandmother, would be considered the nearest blood relative except for his parents. VT has played a vital role in AS's day-to-day care and upbringing. AS's welfare and best interests point to his grandmother, VT, as being the most suitable and responsible person to provide for AS, particularly in comparison to his parents. I therefore do not hesitate to grant the orders sought by the Applicant, VT.

Orders

[61] It is hereby ordered that:

1. Legal Guardianship of the child AS born on May 17, 2017, is granted to VT.
2. The Applicant's attorney-at-law is to prepare, file, and serve this Order.