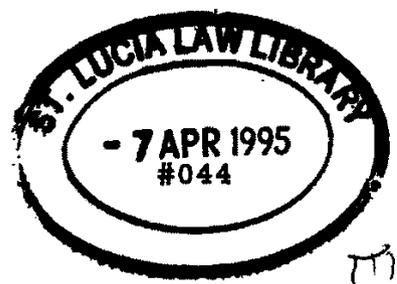


St. Lucia

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IN THE HIGH COURT OF JUSTICE
(CIVIL)
A.D. 1994

Suit No. 339 of 1993

BETWEEN: MARY THERESA ELEODORE
(nee Edmund)

Applicant

and

MONICA GREENE

Respondent

APPEARANCES:

Mr. Peter I. Foster for the Applicant

Miss P. Jeffery-Mendes for the Respondent

1994: November 18.

JUDGMENT

MATTHEW J. (In Chambers)

This case is really a contest between a paternal grandaunt and a maternal grandmother in respect of an infant born 30th December, 1992 to Sonja Alleyne. Sonja Alleyne is 25 years old and is now at Her Majesty's Prisons on remand in respect of an alleged murder committed on 16th May, 1993 of Joseph Popo, the alleged putative

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V

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GREENE

father of the infant.

Now a number of documents have been filed in this case and I have read them most carefully. There is a summons for temporary custody of the infant child filed on the 21st of May, 1993; there is a notice of hearing filed on the same day; and there is an affidavit of the Applicant Mary Theresa Eleodore and I looked in particular at paragraphs 3, 4, 7 and 8 (1) of the affidavit. Paragraph 3 says she was acquainted with the minor Josephann Jaseela Alleyne prior to the death of Popo. It says at paragraph 4 she is a housewife and resides in the village of Gros Islet in a three bedroom wall house and then at paragraph 7 she says that the living conditions of the said grandaunt, (I believe that is an error; she may have meant the grandmother) that the living conditions of the said grandaunt and her ability to care for the said minor child had not been ascertained and investigated. That shows you that I have read the affidavit so I can determine an error there, and at paragraph 8 (1) she is asking for temporary custody, very important. There is another affidavit of the Applicant filed on 21st May, again same as the first. There are two affidavits. In this one she also repeats that she wants temporary custody. And then at paragraph 6 simply asks that she be appointed tutrix to the minor. I will refer to that later. Of course I saw the birth certificate of the infant born on 30th December, 1992.

Now there is an order made by Justice d'Auvergne and that order

made on 26th May, 1993 says that the minor child Josephann Jaseela Alleyne should remain in the custody of Mary Theresa Eleodore until further order. Now the Applicant had asked for temporary custody and it seems to me that the Applicant got what she asked for; temporary custody, and that is implied by the wording of the order.

The next document on file is a notice of restoration by Counsel for the Respondent. And then I also saw the report of the Director of Social Services of St. Lucia dated September 1st, 1993. Now the report states Sonja's wishes which was confirmed here this morning that she would like the child to be with her family. And the report goes on, and that has not been attacked, to state the issues that were dealt with by the learned Judge. The report says that when the matter was first heard on 21st May, 1993 it was adjourned, because of the following considerations. The learned Judge thought that the mother of the child should have knowledge of these proceedings. The Judge said, that since the maternal grandmother was in St. Lucia at the time she would have to be interviewed. The report also said that the Judge said that the parents of the child were unmarried, therefore the maternal relatives should have priority in the matter of custody. It was also said that investigations would have to be carried out to determine who would be the fittest person to care for the child.

Well here I noticed the report was lacking because the Director of Social Services did not carry out instructions fully for he did not

investigate into the living conditions of the infant and the Applicant, the point Mr. Foster was making.

Now the report also refers to the report of Mrs Simpson of Barbados and it went on to recommend that custody be awarded to the Greene family. I read the report of Vivian Simpson of the Child Care Board of Barbados and there it states the willingness of Mr. and Mrs Greene and the other members of the Greene family to have Josephann. And it also said that Mr. and Mrs Greene lived in a proper environment.

The last document on this file which I read this morning came in yesterday and it was a third affidavit by Mary Theresa Eleodore. It criticizes the report of the Director of Social Services and of course it states her virtues and ability to take care of the infant child. So this is all the documentary evidence and this morning we had Viva Voce evidence from Sonja Alleyne.

She told us she is 25 years old. Her baby's name is Josephann Alleyne and she does not know anybody in the world called Maurica Eleodore. There is an exhibit concerning a baby called Maurica Eleodore which is appended to the third affidavit of Eleodore but Sonja does not know any such person. And Miss Mendes has asked that the Court should not take note of that exhibit report because that person is not in the case. Sonja said that these are proceedings in respect of her child. She said she loves her

daughter dearly and would like her family to take care of her. And she says by family she meant her mother, her father, her sisters and her brother. And then she says if she were to change, if her present residence were to change she would go to the island of Barbados. In cross-examination she admitted that the Eleodores have the child from an early age, 4 months she said and 16 days to be exact, and she reiterated that she would like her family, her mother, to take care of her daughter. She agreed she would like to see the child regularly, but she still says she wants her mother in Barbados to have the child. And then she admitted that to an extent she agrees Josephann knows her family to be the Eleodores because that is whom Josephann is used to for the time being.

There is no doubt that in matters of this nature the welfare of the child is of paramount importance. Both Counsel say so. I agree that is the law. Mr Foster made extensive reference to **Brownlie's** Family Law, Seventh Edition at Pages 322 et. seq. and he referred to what I consider are the guidelines which make one determine what is the welfare of the child. In particular I want to refer to the aspect of material well-being because the law is quite clear. At Page 331 of **Brownlie** it is stated that the quality of the home life that the child will have must not be measured in purely material terms. The amount of time and energy that a parent can devote to his care and upbringing is of great importance; so that this question of the Applicant presumably being in a better financial position ought to be put in proper perspective. I always like in

matters of this nature to remember the distinguished theologian. He happens to come from my country. He attained the position in the Church of General Secretary of the World Council of Churches, the equivalent of the Pope in the R.C. Church and his mother was a maid. Now the law says as regards to the welfare principle:

"There is only rule; that rule is that in a consideration of the future of the child the interests and welfare of the child are the first and paramount consideration. But within that rule, the circumstances of each individual case are so infinitely varied that it is unwise to rely upon any rule of thumb, or any formula, to try to resolve the difficult problem which arises on the facts of each individual case".

So although you know that law and you look at the cases, at the end of the day you look at each individual case. In this case I have no doubt that both sides love the infant very much and I said something similar in CANDIA WILLIAMS V DOCTOR RODNEY WILLIAMS, suit No. 109 of 1982 decided on April 25, 1986, a decision which I gave in Antigua on a custody matter and where I looked at all the law and the Court of Appeal agreed. Infact in that case I gave custody to the father. It was a special case and in those cases there is always love on both sides. The Court has to weigh the different considerations and no one can discount the kindness which was shown by Mrs Eleodore when in the circumstances the infant was left without a father and according to Mr. Foster without a mother; that

she cared. The fact that she was kind to her and probably still is does not really determine the issue. I must also note that this case is peculiar for in most of those cases of custody there is a contest between parents but now we have a contest between people who are not parents.

The reports from the Director of Social Services of St. Lucia and the Child Care Board of Barbados would seem to recommend that it is in the interests of the child that she remains with the Greenes. Now that is their recommendation. I do not have to accept it. I am the person to determine this matter but I have to recognize that these people are qualified to do the particular job that they do. As I said earlier I agree that the Director of Social Services of St. Lucia should have reported on the Applicant but I do not think any harm has been done because in the affidavit which was filed yesterday I have noted what Mrs Eleodore has said of herself and I take it into consideration. I do not for one minute deny her ability and willingness to look after the infant. I said earlier that I believe she loved the child, and that both parties seem to love the child.

I also refer to what the report says the Judge said, "**that the parents of the child were not married therefore the maternal relatives should have priority in the matter of custody**". That seems to have been the view of the learned Judge. I have no reason to disagree with that view.

For the reasons given by Miss Mendes, the mother's wishes have to be considered. The mother of the infant is not yet dead. She is only on remand. Several things can happen. Putting it at its worse, if she is convicted of murder, you know the death penalty is not carried out in St. Lucia and she could even be released later. It is not too long ago we had the sad situation where somebody accused of a first murder was set free but he committed another murder and was again given the death penalty. That was the man who killed the accountant at Reduit. We know that for manslaughter people are set free after sometimes short sentences. I sentenced a man who killed another with a gun to five years imprisonment. The Court of Appeal reduced it to three and the Mercy Committee reduced it again. And then she could be acquitted. No one is sure of the outcome. But she made it quite clear that if she is released she will return to Barbados. As I said I agreed with the Judge's decision that the mother's relatives are the closest. The Deceased was only a putative father, a supposed father, and true enough that when Sonja was asked a question she said the Deceased was the father. But his name did not even appear on the birth certificate. According to the birth certificate this child has a mother but she does not have a father and her mother's family are willing to take her. I have regard to that part of the report which talks about a twin sister. Everybody knows how twins are. Her claim should be important.

This Applicant is 61 years old and the Court would not willingly

allow an infant to be put in custody of such a person. Only last Wednesday I did an adoption matter and the Solicitor General, as tutor ad hoc, remarked that a person of similar age was a bit old to adopt the infant but in that case the child was abandoned, nobody wanted her. We had no choice there but you see that has to be considered because when in the next few years, ten or so, when Mrs Eleodore is an old person she may not be able to take care of the infant. She cannot rely on her daughter to boost up her application. Her daughter may have her own life to live and to take care of her own children. The daughter is for the most the second cousin of the infant. She may well feel why must she be responsible when the infant's mother putting it at its highest is in jail and it was the mother who killed the father.

On the other hand I can see the twin sister adopting the infant as her own natural child and I go further to say that I do think it may be a bad thing that the child be removed from the environment. It is not without significance that I noticed that a child called Maurica Eleodore is on record and I agree with the learned Counsel for the Respondent that this is an indication of the intention of the Applicant. But I should tell Counsel that there is no need to be fearful for I would never grant anything but temporary custody to the Applicant until Sonja Alleyne is free to take care of her child. So the remedy the Applicant anticipates will not arise from my order. Any thought of ever having the infant permanently ought to be dispelled no matter what name she gives it.

I have no doubt that it is in the best interests of the infant to have her brought up with her natural family, her natural grandmother, and I accordingly order that custody of the infant be delivered to Monica Greene until such time that Sonja can take control of her child. There shall be no order as to costs.

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A.N.J. MATTHEW
PUISNE JUDGE