

SAINT LUCIA

IN THE HIGH COURT OF JUSTICE

CLAIM NO.827 of 2002

IN THE MATTER of an Application for an injunction restraining the Respondent from removing the children **GABRIELLE ELIZABETH ALEXANDRIA GRANT** and **VICTORIA ASHLEIGH ELIZABETH GRANT** from the custody, care and control of the Petitioner

And

IN THE MATTER of Sections 841-850 of the Code of Civil Procedure, Chapter 243 of the Revised Laws of St. Lucia

And

IN THE MATTER of Section 210A of the Civil Code, Chapter 242 of the Revised Laws of Saint Lucia

And

IN THE MATTER of the inherent jurisdiction of the Court

BETWEEN:

ANDREW RAYMOND ANTHONY GRANT

Petitioner

And

CERI-ANN ELIZABETH GRANT

Respondent

Appearances:

Mrs. Kim C. St. Rose for the Petitioner. With her is Mrs. Esther Greene-Ernest.
Mrs. Michelle Anthony-Desir for the Respondent. With her is Ms. Patricia Augustin.

2002: October 31, November 01, 04, 25
December 17

JUDGMENT

1. **HARIPRASHAD-CHARLES J:** This is an unfortunate custody battle in the Saint Lucian Court over two charming little Jamaican girls, Gabrielle Elizabeth Alexandria Grant, aged 9 and her younger sister, Victoria Ashleigh Elizabeth Grant, aged 6. Some background facts are essential in order to put the case in its proper perspective.

BACKGROUND FACTS

2. The Petitioner, Andrew Raymond Anthony Grant and the Respondent, Ceri-Ann Elizabeth Grant nee Chambers are Jamaican Nationals. They married each other on 18th day of August 1991 in Jamaica. After the marriage, the parties continued to live in Jamaica. The union produced two daughters, Gabrielle Elizabeth Alexandria Grant and Victoria Ashleigh Elizabeth Grant. Unhappy differences arose and as a result, Ceri-Ann left the matrimonial home in 1999 taking the children with her.
3. On or about June 2000, Andrew Grant left his family in Jamaica and moved to greener pastures in Saint Lucia. Since then, he has been living and working here. He holds the position of Vice President, Distribution Division of Cox and Company, a renowned family business on the island. He earns an attractive salary of EC\$8,000.00. His status on the island is governed by work permit regulations. His work permit is extended from year to year.
4. Ceri-Ann Grant continues to live in Jamaica with her two young daughters. They occupy a two-bedroom apartment in a middle-income area in Kingston, Jamaica. Ceri-Ann is employed with Air Jamaica as a part-time employee having worked with the said airline company for a cumulative period of eight years. She earns a salary of \$25,000.00 Jamaican dollars (approximately EC\$1,300.00).
5. On or about June 2000, Andrew Grant filed proceedings for the dissolution of the marriage in Jamaica. The status of the application is pending. Pursuant to his application for divorce,

Ceri-Ann filed a summons for custody and maintenance of their two daughters. The summons was not pursued in the Jamaican courts due to an informal workable arrangement which gave joint custody of Gabrielle and Victoria to both Mr. and Mrs. Grant with care and control to Ceri-Ann Grant. An additional term of the arrangement was that the children would remain in the custody of their mother in Jamaica and spend all Easter holidays, half of the summer vacation and every other Christmas day with their father in Saint Lucia.

6. The informal arrangement seemed to have worked well until July 2002. As customary, Ceri-Ann sent Gabrielle and Victoria to Saint Lucia to spend the summer with their dad. The summer vacation was rapidly approaching an end. It was alleged that the girls especially Gabrielle begged their father not to send them back to Jamaica. They expressed dissatisfaction with their accommodation, their day-to-day arrangements, the discomfort with the presence of their mother's boyfriends in the home and a perceived preference for and favouritism towards Victoria. Being concerned for the welfare of his two daughters, Mr. Grant petitioned the court for inter alia, an order that Mrs. Grant be restrained from removing the said children from his custody, care and control. The application was made "*without notice*."
7. On 30th day of August 2002, a Judge in Chambers favourably considered the application and Mr. Grant was granted interim custody of the two minor children, Gabrielle and Victoria pending the hearing and determination of the substantive custody battle which was deemed urgent.
8. By the date the substantive matter came up for hearing, the Respondent, Ceri-Ann Grant had already filed an application seeking the following relief namely:
 - (a) That the Order made on 30th day of August 2002 granting interim custody of the two minor children, GABRIELLE ELIZABETH ALEXANDRIA GRANT and VICTORIA ASHLEIGH ELIZABETH GRANT to the Petitioner be discharged.
 - (b) That the status quo which existed prior to the Order of 30th day of August 2002 be restored so that the two minor children, GABRIELLE ELIZABETH

ALEXANDRIA GRANT and VICTORIA ASHLEIGH ELIZABETH GRANT be returned to the *de facto* custody of the Respondent, Ceri-Ann Grant in Jamaica and that the issue of the custody and the maintenance of the said minor children be adjudicated upon by the Jamaica Supreme Court, or in the alternative,

- (c) That the Petitioner's application for custody, care, control and maintenance of the said minor children be dismissed and that the Respondent be granted custody, care and control of the minor children.

9. The jurisdictional issue was not pursued vigorously. In the end, Mrs. Anthony-Desir for the Respondent reluctantly conceded that the court was adequately clothed to hear and determine the matter. The proceedings before me were concerned only with who is to have the custody, care and control of the two children. To my mind, custody cases are by far the most difficult of all classes of cases that a judge has to deal with, and those difficulties are particularly apparent when one is faced with having to decide which of two perfectly adequate, loving and caring parents should have custody.

THE LAW

10. A convenient starting point is Article 210 A of the Civil Code of Saint Lucia which provides as follows:

"Where in any proceeding before any Court the custody or upbringing of a minor, ...is in question, the Court in deciding that question shall regard the welfare of the minor as the first and paramount consideration, (emphasis mine) and shall not take into consideration whether from any other point of view the claim of the father, or any right under this Code 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."

11. This provision is similar to the statutory provisions in relation to such matters in England and therefore, English cases provides useful guidance. In proceedings in which the custody or upbringing of an infant is in question, the court in deciding that question shall regard the welfare of the infant as the first and paramount consideration. The classical exposition is contained in the judgment of Lord Mac Dermott in the case of *J v C (1970) A.C. 668 at pp 710-711*:

"The second question of construction is as to the scope of meaning of the words '...shall regard the welfare of the infant as the first and paramount consideration.' 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 is now to be understood. That is the first consideration because of its first importance and the paramount consideration because it rules upon or determines the course to be followed."

12. In this sense, the paramountcy formulation simply reflects that the child's welfare is the court's sole concern and other factors are relevant only to the extent that they can assist the court in ascertaining the best solution for the child. See also Lord Oliver of Aylmerton in the more recent House of Lords case of *Re KD (a Minor)* (1988) A.C. 806.

13. It is now settled law that in matters with regard to custody of children, it is the welfare of the children which is the first and paramount consideration. The meaning of the word 'welfare' came up for review in *Re McGrath (Infants)* (1893) 1 Ch. 143. The case concerned the children of parents who were both dead and the issue of custody turned on the religion in which they should be brought up. At page 148, Lindley LJ said:

"The dominant matter for the consideration of the Court is the welfare of the child. But the welfare of the 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...."

14. The modern statement on the meaning of 'welfare' comes from the New Zealand case of *Walker v Walker and Harrison* (1981) NZ Recent Law 257. *Hardy Boys J.* had this to say:

" 'Welfare' is an all-encompassing word. It includes material welfare, both in the sense of an adequacy of resources to provide a pleasant home and a comfortable standard of living and in the sense of adequacy of care to ensure that good health and due personal pride are maintained. However, while material considerations have their place, they are secondary matters. More important are the stability and

the security, the loving and understanding care and guidance, the warm and compassionate relationships, that are essential for the full development of the child's own character, personality and talents."

15. Ideally, the Court should be concerned to promote the child's long-term future. Unless perhaps where the short-term disadvantages are so overwhelming as to rule out the long-term option: *Thompson v Thompson (1987) Fam. Law 89*. And it is sometimes said that in applying the welfare principle the court must act in the best interests of the child. However, this may put an unduly sanguine gloss on the court's function as a judge is not dealing with what is ideal for the child but with what best can be done in the circumstances. In *Clarke-Hunt v Newcombe (1893) 4 FLR 482*, Cummings-Bruce LJ succinctly puts it this way (at page 486):

"There was not really a right solution; there were two alternative wrong solutions. The problem for the judge was to appreciate the factors in each direction and to decide which of the two bad solutions was the least dangerous, having regard to the long-term interests of the children...."

16. So, in dealing with custody matters, the court must therefore, consider the matter for itself and exercise its own discretion in determining who shall have custody. The principles to be applied are not really in doubt. And it is not a contest between the parents. It is not based on their rights, and its primary concern is not to ensure their rights but to ensure the welfare of the children. The welfare of the child is the first and paramount consideration and there are no rules for determining who should be granted the right to look after the child. Every case turns upon its own facts but certain factors are more influential than others.

THE EVIDENCE

17. Mr. Grant gave evidence and called four witnesses including his father, his mother, his stepmother and Ms. Carole Mullally, a Consultant Counselor. In a nutshell, the evidence of Mr. Grant's witnesses painted him as a perfect father to these two little girl children. On oath, Mrs. Grant herself admitted that Mr. Grant has a close and loving relationship with his daughters. Under cross-examination she said:

"The Petitioner has kept in close contact with the children. The Petitioner telephones them regularly. He comes to Jamaica to attend their birthdays, communions and competitions. They (the children) come to Saint Lucia. He is a devoted father. I have no hesitation in sending my two daughters to Saint Lucia to spend time with their father. They have put on weight and have grown taller. I do not think the Petitioner is of danger to them. They have not shown any reluctance to come to Saint Lucia."

18. I myself found Mr. Grant to be the perfect and loving father to his children despite his attempt at taking his own life in December 1993 when Gabrielle was 9 months old, the alleged fraudulent withdrawal of monies from his father's bank account and his alleged bisexual tendencies.
19. On the other hand, all of the Petitioner's witnesses portrayed Mrs. Grant as an uncaring, uncouth and selfish mother who showed little concern for her children. Concerns were expressed about the two children being shuttled back and forth from grandparents' home to their home, that Mrs. Grant does not always cook for the children and would buy food for them and that she is romantically involved in relationships and her male companions sleep over from time to time. I do not think that these concerns make Mrs. Grant an unfit mother. In fact, I found her to be a caring and affectionate mother with some financial difficulties which is triggered by the late payment of maintenance for the children by the Petitioner.
20. It is also well-established that matrimonial misconduct is relevant in so far as it reflects on that person as a parent: *Re: F (an infant)(1969) 2 All ER 766 at pages 769-770*. The Court is not concerned to punish the adult for his or her conduct but only with doing what is best for the child: *Re L (minors) (wardship: jurisdiction) (1974) 1 All ER 913, 926, per Buckley LJ*.
21. Of particular concern to me is the testimony of Ms. Carole Mullally, deemed an expert by the court. It was crystal clear in her testimony that she never interviewed Mrs. Grant. It was also clear that she did not interview Mr. Grant. In her own words, she stated ' I had a slight discussion with Mr. Grant.' However, she was able to conclude that Mr. Grant was the better parent to have care and control of the two children and Mrs. Grant should learn

parenting skills and receive anger management counseling. In *Re R (A Minor)*(1993), the Learned Judge at first instance who dealt with a similar situation of the welfare officer's report which was prepared without the welfare officer seeing the mother in the company of the children remarked thus:

"She (the welfare officer) said that she had not found it necessary to do so. She said she did not believe that any issue needed investigation. This was despite the fact that there were a number of statements or affidavits by a number of witnesses to be called by the father including allegations of extreme lack of bonding and unnecessary chastisement. It seems to me that at the time when the response was given, it wholly undermines the report and Mrs. Heyward, it did seem to me then and now, had produced a fatally flawed report."

In my view, a welfare officer has a duty to see all the relevant people and particularly has a duty to see the child with each of the people who is asking to have the care of the child. A failure to see the child with one of the two parents, when both are asking for care and control, makes the report of far less value to the court, but even more important, it makes the recommendation one-sided and meaningless."

22. I think that the same would be true of the reports of Ms. Mullally. I would therefore regard her reports as well as her sworn testimony as being "fatally flawed". Then there were the reports of psychologist, Lorna Eaton who was unavailable for cross-examination. Her reports are in my opinion, meaningless as they were not tested in cross-examination.

23. During the proceedings, the Court appointed Ms. Clementia Eugene, Intake Counsellor, Family Court to investigate the matter. She provided a detailed report. She is an experienced welfare officer. She saw the children with the mother and the father. She visited their home in Saint Lucia. Even though her assessment is based on albeit a relatively short period, I will caution myself and not rely solely on her report. Learned Counsel for the Petitioner, Mrs. St. Rose seriously criticized Ms. Eugene's report as being one-sided. Ms. Eugene was extensively cross-examined by Counsel. She impressed me as a knowledgeable and experienced person. She was calm and collective even under intense cross-examination. She did express a concern: her financial inability to travel to Jamaica to see the living conditions of the Respondent. But, there is evidence that the Respondent resides in a relatively decent middle-income area in Kingston.

24. In addition to the expert witnesses, I had the opportunity of personally interviewing the children. The children appeared to be unsettled psychologically. Gabrielle appeared to be more affected by her parents' separation. She appears to be insecurely attached to her mother. There is a strong bond of affection between Gabrielle and her father. She has expressed a desire to remain with her father in Saint Lucia. Victoria, the younger child wishes to be in Jamaica with her mother.
25. In considering all of the circumstances in so far as they affect or are likely to affect the welfare of the children, I was urged to have regard to the checklist of relevant factors which are detailed in Section 1 (3) of the Children Act 1989 (U.K.). The checklist, though not exhaustive serves as a useful aide memoire of the factors that may impinge on the child's welfare and I gratefully adopt it.
26. While there are no statutes directing the court to give effect to the wishes and feelings of a child, the courts, over the last few years, have become increasingly aware of the importance of listening to the view of older children and taking into account what children say, not necessarily agreeing with what they want nor, indeed, doing what they want but paying proper respect to older children who are at an age and have the maturity to make their minds up as to what they think is best for them, bearing in mind that older children very often have an appreciation of their own situation which is worthy of consideration by, and the respect of, the adults, and particularly the courts: see *Re P (a Minor) (Education)* (1992) 1 FLR 316. This enjoiner to consider the child's wishes and feelings is reflective on the international obligation under the UN Convention on the Rights of the Child 1989 which Saint Lucia has ratified.
27. But the child's view is not determinative. As *Butler-Sloss LJ* put it in *Re (Minors) (Wardship: Care and Control)* (1992) 2 FCR 681 at page 687:

"How far the wishes of children should be a determinative factor in their future placement must of course vary on the particular facts of each case. Those views must be considered and may, but not necessarily must, carry more weight as the children grow older."

28. In *Elaine Gail Henry v Albert Donald Henry (Civil Appeal No. 14 of 1999)(unreported) C.A. Bahamas*, on the question of whether a child of 13 has attained the age and degree of maturity, *Gonsalves-Sabola P.* said:

"A child is after all a human person with its own independent mentality, personality, dignity and wishes which ought to be given proper respect except where nonage is so palpably manifest as to create a judicial perception that the child's wishes spring from infantile whims rather than a sufficiently rational preference of one habitual residence over another.

There should be no automatic disqualification of a specific chronological age...it is all a matter of degree."

29. In the instant case, Gabrielle is now 9 years of age. In three months time, she will be 10. Victoria is 6 and in a few days, she will be 7. Both children are still under 10 years of age but I would not describe them as "very young children" and to some extent, I am able to take into consideration their wishes if only as an indication as to what will be for their happiness and therefore for their welfare. As Lord Esher said in *Reg v Gyngall (1893) 2 QB 232 at page 245*:

"...But the Court ought to consider what the wishes of the child are in considering what will produce its happiness in a serious and important matter...."

30. It is the wish of Gabrielle to remain in Saint Lucia with her father. In her own words, she said:

"I want to stay with daddy because I get more attention. My mother has got a boyfriend. My mother is always angry with me. I have more friends in Saint Lucia."

31. On the other hand, the younger child, Victoria expressed a desire to return to Jamaica to live with her mother. She misses her toys, dollies and her mother.

32. Then there is the physical and material well being of these children. Physical needs can include the need for adequate accommodation, but as *Woods J.* said in *Stephenson v Stephenson (1985) FLR 1140 at page 1148*, in most cases, "disadvantages of a material sort must be of little weight." The Court's major concern is for the child's security and

- happiness, not his material prospects. But 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 the child's care and upbringing is of considerable importance.
33. In terms of the physical and material well being of Gabrielle and Victoria, it seems to me that at the moment, Mr. Grant is better able to provide a more comfortable home for the children to reside. He lives in a three-bedroom rented house in a residential area in Saint Lucia and he earns a decent salary of EC\$8,000.00. Mrs. Grant, on the other hand, occupies a two-bedroom apartment in a middle-income area in Kingston, Jamaica. She seemed to be experiencing financial difficulties as she earns a salary of \$25,000.00 Jamaican dollars (approximately EC\$1,300.00). In addition, she receives from the Petitioner an allowance of EC\$264.53 weekly for the general upkeep of the children.
34. In terms of flexibility of time, Mr. Grant alleges that he is able to arrange his work schedule to devote quality time for his two daughters. The children are picked up from school and taken directly home whereas in Jamaica, they are picked up from school and are shuttled to the residence of their paternal grandparents before going to their home. Mrs. Grant works on a part-time basis with Air Jamaica and her working hours are flexible. Her five-hour shift commences at 11.00 a.m. and ends at 4.30 p.m. On weekends, she works from 4.15 a.m. to 10.00 a.m. to spend more day-saving time with her children.
35. Mr. Grant's job entails promotion and marketing of products, meeting with suppliers and retailers and supervising a staff of 30 employees. He admitted that his job entails long working hours and he is sometimes required to travel throughout the region promoting their products, meeting with suppliers and distributors and attending seminars. When he has to travel, the children will be with Minerva, the housekeeper who presently is employed three days a week. And of course, his current girlfriend, Siobhan Beaubrun will be available whenever the necessity arises.
36. In Jamaica, the children are taken to their paternal grandparents' home after school. The paternal grandparents live close by the school. The maternal grandparents are also

available. It is not difficult for me to conclude that the support system for these two young girls are better in Jamaica than in Saint Lucia.

37. Although Mr. Grant is better able to provide for the children now, I am concerned about his instability in holding jobs for lengthy periods and his insecurity in Saint Lucia. Mr. Grant, a Jamaican National is employed on a contract with Cox & Company. His work permit is renewed every year. His residence on the island is therefore governed by Work Permit Regulations. According to his girlfriend, Ms. Siobhan Beaubrun, Chief Financial Officer at Cox & Company, the security of Mr. Grant's job is based on "as long as the economy is booming." Given the present global economic environment, Mr. Grant's job appears to be insecure vis-a- vis the children's stay and schooling on the island.

38. This brings me to the educational facilities and opportunities open to these children in Jamaica on the one hand and Saint Lucia on the other. It is reasonable to conclude that educational facilities in Jamaica may be greater than in Saint Lucia. I do not think that I can assume that the standard of education will necessarily be higher. I think that children schooled in Jamaica are on the same level as children schooled in Saint Lucia. This is evident from the reports tendered.

39. Mrs. St. Rose argued that in considering questions of education and or emotional needs, the court should be concerned with the dangers of uprooting a child from school where satisfactory progress is being made (or indeed this having occurred, of uprooting him once again to return him). In *Re A and another (minor) (abduction: acquiescence) (No.2) (1993)* All ER 272, *Straughton J.* at page 280 g-j said:

"They have no doubt been adapting themselves to their new home to the different country and to their new school. These children, aged six and five have already have four major moves in their lives....The Judge was entitled to conclude...that it would be wrong for the court to order that they should be moved once more to Australia with the possibility of yet a further move back again. That as it seems to me was an important feature in the judge's judgment and I think she was right to attach importance to it."

40. I now turn to the emotional needs of the children. The trauma which children suffer as a consequence of broken homes is too familiar to require any additional elaboration. In my view, anything that can be done to minimize that trauma must be for the welfare of the children. These children especially Gabrielle have already suffered the consequences of their parents' separation. Prior to this matter, there was an informal arrangement between the parties which was working well until Mr. Grant disrupted it. Over the last four months, the lives of these children have been in a state of uncertainty.
41. Mr. Grant's complaint is that Mrs. Grant is involved in numerous romantic relationships and as such, she has no time for the children. I did not find so. On the contrary, I found Mrs. Grant to be a perfectly good mother who cares for her children. She works on a part-time basis in order to spend more time with her children. She sometimes buys meals for the kids which could be considered as 'treats'. She disciplines them when the necessity arises. And as a mother, she is entitled to do so. There is allegation of favouritism towards Victoria. She denies it. She says that she is a little more concerned for Victoria since she is younger. There is nothing materially wrong with a parent showing a little more concern for a younger child. That is not favouritism.
42. On the other hand, I found that the children especially Gabrielle prefers her father because he has consciously or unconsciously influenced them with the promise of a horse for Christmas and other grandiose promises. He appears to be less a disciplinarian than Mrs. Grant. According to Ms. Eugene, the children seemed to have unsupervised internet access. They have made a movie on themselves with the use of the computer that was stationed in their father's bedroom. Some of the scenes in the movie were 'pornographic' in nature. The pictures consisted of Gabrielle 'mooning' with her buttocks exposed in different positions, lip singing with a microphone with sexual expressions to include a sudden gush of saliva from her mouth as if to illustrate an orgasmic experience. Other pictures included protruding tongues and lips that gave the appearance of sexuality. Victoria is said to have taken the photographs while Gabrielle performed. This movie was shown to Mr. Grant and he retorted "I am tired of seeing all that butt" and he immediately proceeded to delete some of the pictures that Ms. Eugene had not seen.

43. These two children have been in her care and control since birth except when they were “legally kidnapped” in July of this year. The children are Jamaican Nationals. They have no legal status and right in Saint Lucia. Their stay on the island is governed by their father’s work permit which is conditional upon the state of the economy. In my considered opinion, this is too risky a situation to subject these two little children.
44. As was so evident in this case, each party attempted to suggest that the other is an unfit parent and ought not to be awarded custody of the children. Having observed the parties and their witnesses, I have no reason to believe that either is in any sense of the word an unfit parent. I am satisfied that they are equally willing and able to bestow on their children the love, affection and care which they require.

CONCLUSION

45. As I said earlier, perhaps the most agonizing cases are those where the court has to decide which of two perfectly loving and caring parents should have custody. As Megarry J. pointed out in *Re F (An Infant) F v F (1969) 2 Ch. 238 at page 241:*

“The problem cannot be solved arithmetically or quantitatively by using some sort of ‘points system.’

46. In this regard, some factors will weigh heavily on the side of one claimant while others will favour the other but it is clear that in reaching the conclusion, the court has to consider all of the circumstances of the case and in the light of the evidence adduced, make the best decision it can.
47. First of all, it is undesirable that children should be split when they are close together in age and obviously fond of one another. Victoria idolizes Gabrielle. Therefore, one thing is clear: these two children should not be separated as it would be injurious to their welfare. I am at one with *Jessel, M.R.* in saying as he did in *Re Besant (1979) 11 Ch.D. 508 at page 512:*

“As a man of the world, and speaking as a father, I am satisfied that solidarity children are not so happy, and not likely to make good men and women, as children brought up in the society of brothers and sisters in early life.”

48. The difficulty that this case presents is that the Petitioner lives in Saint Lucia and the Respondent in Jamaica. In *Clarke-Hunt v Newcombe* (supra), it was held that it was in the younger boy's interests to be with his mother and as it was inappropriate to separate the brothers, custody of both boys was granted to the mother. In the instant case, Victoria, the younger child expressed a desire to be with her mother.

49. Another factor that has certainly been influential has been the notion that it is better for small children and especially little girls, to be brought up by their mother and this is a matter which must have some weight in this case in view of the ages and gender of the children. It is not however, the only matter of weight.

50. . In *Re S (a Minor) (custody)* (1991) 2 FLR 388 at page 390, Butler- Sloss LJ said:

“There are dicta to the effect that it is likely that a young child, particularly perhaps a little girl would be expected to be with her mother, but this is subject to the overriding fact on that welfare of the child is the paramount consideration. When there is a dispute between parents as to which parent should take responsibility of the care of the children on a day to day basis, it is for the justices or for the judge to decide which of those parents would be the better parent for the child who cannot have the best situation since they are not together caring for her. I would just add that it is natural for young children to be with their mother but where it is in dispute, it is a consideration but not a presumption.”

51. I wish to echo the sentiments of Lord Evershed in *Re B (an infant)* (1962) 1 All ER 872:

“This case has caused me the greatest possible anxiety.”

52. In the end, bearing in mind the submissions of Counsel and the evidence of the parties and their respective witnesses as well as the report of the court-appointed expert, I make the following order:

1. That the Petitioner and the Respondent do have joint custody of the two minor children of the marriage GABRIELLE ELIZABETH ALEXANDRIA GRANT and VICTORIA ASHLEIGH ELIZABETH GRANT with care and control to the Respondent and reasonable access to the Petitioner.
 2. That the status quo which existed prior to the Order of 30th day of August 2002 be restored so that the two minor children of the marriage, GABRIELLE ELIZABETH ALEXANDRIA GRANT and VICTORIA ASHLEIGH ELIZABETH GRANT be returned to the custody of the Respondent, Ceri-Ann Grant in Jamaica.
 3. Liberty to apply.
 4. That there be No Order as to Costs.
53. I would like to commend all of the lawyers and in particular, Mrs. St. Rose and Mrs. Anthony-Desir for their sterling presentation and immeasurable assistance to this court. For this, I am indeed grateful. I would also grateful to Ms. Clementia Eugene, Intake Counsellor, Family Court for her enlightening and comprehensive report.
54. Lastly, there is one further observation that I feel impelled to make. Now that all the drama and pathos are finally over, I would hope that good sense and judgment would prevail and that the welfare of these two beautiful children should be and should remain the primary concern of Mr. and Mrs. Grant. With counseling, both parents and daughters should be able to cope with the trauma and trepidation which enveloped them over the last four months.

INDRA HARIPRASHAD-CHARLES
High Court Judge

