

SAINT LUCIA

**THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE**

SUIT NO: 1131 of 2002

BETWEEN

Sophie Barnard

Claimant

v

Simon Gajadhar

Defendant

Appearances

Mrs. M. Anthony Desir for Claimant
Defendant in person

2003: May 13

JUDGMENT

This judgment is confidential to the Court, the parties, their legal advisors and representatives of the Social Support section of the Family Court.

Introduction

[1] **Shanks J:** Mr Gajadhar applies to discharge an injunction originally granted by Charles J on 4th December 2002 on the application of Ms Barnard in order that he can have contact with their daughter, Calypso, who is now six. As the parties were not married this matter is not in the Family Court but, since it affects the

welfare of a child, the Social Support section have been involved in the case and have made helpful reports to the court.

[2] On the hearing of the application I was provided not only with the social inquiry report of Mr Prescod and Ms Dalphinus-King dated 14 April 2003 but also with a psychiatric report from Dr Sharon Harvey dated 31 March 2003 and affidavits made by Mr Gajadhar on 7 and 24 February 2003 and by Ms Barnard on 10 February 2003. At the hearing I also had the benefit of hearing directly from Ms King and I allowed Ms Barnard, although she was represented, to address the court directly, as well as hearing from her attorney and Mr Gajadhar who is acting in person.

The test

[3] It is common ground that the proper test in deciding whether to discharge this injunction and how to proceed from here is what is in the best interests of the child (as Mr Gajadhar appears to accept in the penultimate paragraph of the third page of his first affidavit). It also appears to be common ground that, if possible, it is in the best interests of a child to have a continuing relationship with both parents. I also have no doubt that the psychiatrist is right to suggest at p6 of her report that it is important that Calypso has stability in her life and I take note of the upset that she was caused by the impression she got from the psychiatrist that there was an immediate intention that she should go and live with her father.

The contentions of the parties

[4] Mr Gajadhar's position in his first affidavit was that he wished to have Calypso to stay with him in Soufriere every other weekend from Friday evening to Sunday evening. In court he indicated that as a first stage he would like to see her from 7am to 7pm every Saturday and that he would drive her from Cap Estate where she lives with her mother to Soufriere and back in the course of the day. He indicated in response to questions from me that he would willingly undertake not to make negative remarks about Ms Bernard or to discuss his financial affairs when with Calypso, and that he would undertake to keep up the visits.

[5] Ms Barnard's position in her affidavit was that she wished the court to leave her and her daughter "in peace" (para 11); at the opening of the hearing Ms Desir indicated on her behalf that she had no objection in principle to access being granted and would want a regime similar to that imposed by the consent order of Charles J given in earlier proceedings between the same parties (case no 31/2002) on 28 February 2002; by the end of the hearing however Ms Barnard appeared almost to have returned to her original position, telling me of her grave concern that whatever regime was put in place it would all fall apart as had happened before to the severe detriment of Calypso.

[6] The social inquiry report recommended that if the current injunction was lifted Calypso should begin by spending every other Saturday (but not the night) with

her father: this was because of concerns about the home environment in Soufriere at the moment and the need to build up the relationship gradually and was consistent with the wishes expressed by Calypso herself. In court, Ms King expressed concern at the notion of a long car journey and said that it would be better for visits to be confined to an area familiar to Calypso (Rodney Bay) as had been the position under the 28 February 2002 order. She also said that, at least initially, there should be a supervisor as with the earlier order. As the hearing proceeded the atmosphere between the parties appeared to deteriorate and Ms King expressed the view that for any access arrangements to work there must be civility and co-operation between the parents in order to build up the father/daughter relationship and that a patently bad relationship between them would be bad for the child. In response to a question from me she also stated that, after almost a year of not seeing her father, it ought not to harm her further if she did not see him for a further period of time, provided things were presented to her appropriately.

[7] My strong initial inclination was that it would be right to have another attempt at rebuilding the father/daughter relationship by imposing a regime along the lines of the 28 February 2002 order and to review the position in a few months when weekend visits could be considered. However as the hearing progressed I began to have real doubts about whether Mr Gajadhar, although obviously an intelligent man, fully appreciated that Calypso's needs were paramount and the heavy responsibility that would lie on him in rebuilding the relationship he clearly

desires. In particular I was concerned by his suggestion (which appeared to be serious) that it would be appropriate to pick up Calypso at 7.00 am and return her to her mother at 7.00 pm, I noted that he appeared impatient and irritated with the notion that it would be better for the visits to take place in Rodney Bay and to be supervised initially and that he should have a plan of what he would do with Calypso while looking after her, and I was baffled that he could not see that there was anything at all inappropriate about the letter he had written to her (exhibited as SB1), however much one might sympathise with the emotions expressed there.

- [8] I may have been prepared to give him the benefit of the doubt and at least start a trial period of access if he had not forcefully announced to the court that he would be taking legal action against Ms Barnard in the near future concerning various property and business disputes and that those proceedings were likely to be protracted. I was told by Ms Desir (and there are indications in her affidavit) that Ms Barnard has done her best to settle these disputes. I cannot decide at this stage whether or not this is so (still less who is legally in the right) but the fact that they are outstanding and likely to lead to protracted and bitter litigation does not bode well for the atmosphere of civility and cooperation that is obviously required to make things work in relation to Calypso. I also had the feeling that Mr Gajadhar had more or less closed his mind to the notion of an amicable settlement of these disputes and was relishing the prospect of a fight, accusing Ms Barnard of embezzling \$30,000 from their former business.

[9] All this leads me to the conclusion that Ms Barnard's fears that if a new regime of access is set up now there is a real danger that it will fall apart again are justified. That, it seems to me, would be the worst possible outcome for Calypso and is something to be avoided. I therefore propose to continue the injunction granted by Charles J for the moment.

[10] I stress that this is not the final word of the court on this matter and that it should remain under review. If, in a few months, Mr Gajadhar is able to settle his other disputes with Ms Barnard and demonstrate that he will co-operate fully with her and the Social Support section in relation to Calypso and if he approaches the court with a realistic access regime that gives paramount consideration to the child's needs, he may well be able to persuade the court that it would be appropriate to institute a plan whereby he is given gradually more contact with her.

Murray Shanks
High Court Judge (Ag.)