

ANTIGUA AND BARBUDA

IN THE HIGH COURT OF JUSTICE

CLAIM NO. ANUHCV2008/0673

BETWEEN

INDEERA CORNELIUS

Claimant

AND

EUSTACE CORNELIUS

Defendant

Appearances:

Mr. Lawrence Daniels for the Applicant
Mr. Septimus Rhudd for the Respondent

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2009: May 27
June 08
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DECISION

[1] **Blenman J:** Mrs. Indeera Cornelius seeks an injunction to compel her husband Mr. Eustace Cornelius to permit her and their son Clint Cornelius, who is 15 years old, to remain in the matrimonial home situated at Cassada Gardens. Mr. Cornelius opposes her application.

[2] **Background**

Mr. and Mrs. Cornelius were married in 1992 and together they have a son, Clint who attends the Clare Hall Secondary School.

- [3] She contends that together with her husband, she built the matrimonial home which they shared. They had a good relationship until it started to deteriorate due to his habitual absenting himself from the matrimonial home and returning late at night. She became "stressed out" and had to travel to Guyana to seek medical assistance. She left and went to Guyana on vacation and on her return he locked her out of the matrimonial home. She had left their son with his father when she went to Guyana on vacation, but Mr. Cornelius eventually put their son out of the home.
- [4] A closer reading of the application shows that in effect, what Mrs. Cornelius wishes is for the Court to make an order which would have the effect of restoring her and her son into the matrimonial home. I digress to state that the hearing of the application for the injunction was not prosecuted by Mrs. Cornelius with any urgency. In addition, it appears that Mr. Cornelius has served Mrs. Cornelius with divorce proceedings during her filing of this application and the period on which it came on for hearing.
- [5] Also, Mr. Cornelius has put them in an adjoining property which she says is totally unsuitable. It is unhygienic and unfit for habitation. She is concerned for the welfare of her son and has nowhere to live. Indeed, she says that the house is infested with mosquitoes. She complains that she had to occupy the same bed with her son, while the matrimonial home, which consists of two beds and two baths, is in the exclusive occupation of Mr. Cornelius.
- [6] Mr. Cornelius says that there can be no good in restoring Mrs. Cornelius and their son to the matrimonial home since he feels unsafe and uncomfortable to have her in the home. In fact, he complains that she has threatened to poison him. He says that Mrs. Cornelius misled him as to where she was going telling him that she was heading to Barbados only for him to learn it was Guyana. He alleges various unsavoury conduct by his wife which involves a named third party (but has no relevance to the case at bar).
- [7] Mr. Cornelius says that he gave his wife and son a furnished home but that she threw out some of the furniture because she wants to get back into the matrimonial home. Further, he contends that if the Court were compel him to take her in the home, it would be very unsafe since she has

threatened him with personal harm. He has no objection to his son being in the home but complains that Mrs. Cornelius manipulates and influences their son and he is scared that she will use his son in her greater plan to do him harm.

[8] **Issue**

The issue which arises for the Court to resolve is whether the Court should grant the injunction sought.

[9] The Court being mindful of the fact that any order that it makes may well have effect on the child of the marriage, ordered the provision of a Social Inquiry Report. Indeed, the Court was concerned about the welfare of Clint. Ms. Althea Byers Senior Probation Officer has provided the Court with a very comprehensive and informative Probation Report.

[10] **Mr. Lawrence Daniels' submissions**

Learned Counsel Mr. Daniels said on the issue of occupation, Mrs. Cornelius has a right by virtue of her marriage to Mr. Cornelius on the 8th day of May, 1992 to occupy the matrimonial home with the child of the marriage. Mrs. Cornelius has always occupied the matrimonial home with the child of the marriage until Mr. Cornelius unlawfully prevented her from residing and or occupying the matrimonial home on the 3rd day of September, 2008. Mrs. Cornelius in her Affidavit of Urgency filed the 28th November, 2008, in paragraph 11 stated that having arrived home "My husband pushed us out of the yard and locked the gate with a chain and padlock."

[11] Learned Counsel Mr. Daniels said that it is not disputed that Mrs. Cornelius at all material times was in occupation of the matrimonial home and did not leave the matrimonial home as a result of a quarrel or any disturbance. Lord Denning in **Baynham v Baynham (1968)** said at page 1895 paragraph D "previously a wife who herself left the home was not protected. The deserted wife's equity, as it was called, only applied to a wife who was herself in occupation when the husband had deserted her. Here the wife herself left the matrimonial home. If she is to come back, she must obtain the leave of the court. Under section 1 (1) (b) of the Act a wife, if not in occupation, has "a right with leave of the court" to enter into and occupy the dwelling house". Lord Denning comments was mainly concerned with a wife who was either deserted or left the matrimonial home on her own

volition. The Court of Appeal decision in **Watts v Waller (1973) 1 QB 153** looked at the whole issue of rights of occupation in relation to the Matrimonial Act 1967, and stated quite clearly on page 161, paragraph D "An evicted wife can apply for an injunction to restrain the husband from excluding her from the matrimonial home." It therefore follows that Mrs. Cornelius has a right to do so, she will be deprived of the protection when she most needs it, and in any event Mr. Cornelius has no right to exclude her from the matrimonial home.

[12] Mr. Daniels maintained that Mrs. Cornelius has a right to occupy the matrimonial home and that right continues until her death or divorce or until terminated by an Order of the Court. As long as the marriage subsists, Mrs. Cornelius is entitled to occupy and dwell in the matrimonial home with the child of the marriage, whose interest is paramount. In support of his proposition, Mr. Daniels referred the Court to **Barnett v Hassett (1981) 1 WLR 1385** at page 1388 paragraph H, Justice Woods J stated that "the rights to occupy must relate to matrimonial home and only continue during the existence of the marriage". Learned Counsel Mr. Daniels said that the marriage is still in existence and there is no order of the Court which dissolves the marriage.

[13] Learned Counsel Mr. Daniels said that the Court is mandated to give priority to the welfare of a child. The matrimonial home has better amenities and living conditions to accommodate Mrs. Cornelius and the child of the marriage. The very purpose of the matrimonial home was for it to be used for the benefit of the family as a whole and not for the sole benefit of Mr. Cornelius. Therefore, the Court in deciding whether to grant the application ought to take into consideration the conduct of the parties, what is in the best interests of the child emotionally, physically and psychologically, in arriving at its decision. Mr. Daniels asserted that the statutory rights of a spouse who is not in occupation ought to be protected and in this case, Mrs. Cornelius should not be prevented from returning to the matrimonial home in the absence of a Court Order. Her rights to enter and occupy the matrimonial home should be preserved and protected.

[14] Next, learned Counsel Mr. Daniels submitted that Mrs. Cornelius has every right to apply to the Court to prevent Mr. Cornelius from preventing her and the child of the marriage from reoccupying and dwelling in the matrimonial home (in the absence of an Order from the Court preventing Mrs. Cornelius and the child of the marriage from occupying same). Mrs. Cornelius was in occupation

when Mr. Cornelius unlawfully evicted her without any regards to her rights or interests which ought to continue until and unless Mrs. Cornelius dies, divorce or her rights are terminated by an Order of the Court. Therefore, Mrs. Cornelius has a right not to be evicted or excluded without the leave of the Court and the welfare of the child of the marriage is a paramount consideration when looking at the conduct of Mr. Cornelius. He urged the Court to grant Mrs. Cornelius' application.

[15] **Mr. Septimus Rhudd's submissions**

For his part, learned Counsel Mr. Rhudd said that an injunction is an equitable remedy depending entirely on the discretion of the Court. In order to successfully obtain an injunction, it is imperative that the applicant have a cause of action in law entitling him/her to substantive relief. An injunction is not a cause of action but a remedy. "Provided that the applicant has a substantive cause of action, the court's discretion to grant or refuse an injunction is almost unlimited". Mr. Rhudd referred the Court to Injunctions – David Bean 9th Edition page 11. An interim injunction must be ancillary to a substantive claim made in the action. To buttress his arguments, Mr. Rhudd referred to **Series 5 Software v Clarke [1996] 1 All ER 853**, which Laddie J stated that, "where on an application for an interim injunction the Court is able from reading the evidence to form a clear view as to the relative strengths of the parties' cases, it should take view into account in deciding whether to grant or refuse the injunction". Injunctions – David Bean 9th Edition. He held as follows:

"(1) The grant on an interim injunction is a matter of discretion and depends on all the facts of the case.

(2) There are no fixed rules as to when an injunction should or should not be granted. The relief must be kept flexible. Major factors the Court can bear in mind are (b) the balance of convenience, (and) (c) the maintenance of the status quo".

[16] In the case at bar, Mrs. Cornelius is seeking an interim injunction to prevent Mr. Cornelius from keeping her out of the matrimonial home. Mrs. Cornelius has not, however, established a right to be in the matrimonial house in a manner that would ground a substantive action against Mr. Cornelius. She has not sought or obtained a declaration of her interest in the matrimonial property. Learned Counsel Mr. Rhudd said that in order for Mrs. Cornelius to succeed, she is required to show that her conduct has been of a type that allows for a harmonious matrimonial presence. It is the evidence of Mr. Cornelius that the conduct and behaviour of Mr. Cornelius leading up to her

exclusion caused him great concern and has put him in fear for his health and safety. Mr. Cornelius has not merely excluded her, but has gone further and provided alternative accommodation for her. He did not put her in a position where she had no fixed place of abode. In those circumstances, Mr. Rhudd said that Mr. Cornelius is justified in excluding her from the matrimonial home.

- [17] Learned Counsel Mr. Rhudd stated that from Mrs. Cornelius' affidavit, it is apparent that the marriage has broken down irretrievably. This is also borne out in the Social Inquiry Report dated 3rd April, 2009, prepared by the Citizen's Welfare Department. In those circumstances, it would not be prudent to force the parties into a state of cohabitation. It is apparent from an observation of the demeanor of the parties that the marriage cannot be salvaged and the parties will be better off being separated. The Social Inquiry Report also speaks of this.
- [18] Learned Counsel Mr. Rhudd said that Mr. Cornelius has initiated divorce proceedings and the petition has already been filed and served on Mrs. Cornelius. This is the clearest indicator of Mr. Cornelius' desire to bring the matrimonial relationship to an end. The situation can only deteriorate further if the parties are compelled to occupy the same physical space when it is apparent that the relationship is acrimonious.
- [19] On a total consideration of the evidence as presented to the Court by the parties by way of affidavit, Mr. Rhudd said that the present relationship between the parties is such that it would be imprudent to compel Mr. Cornelius to allow Mrs. Cornelius back into the matrimonial home. He has provided alternative accommodation for her. He has provided adequate furnishings and utensils so that it can be comfortably utilised. While the amenities are not on par with what was previously obtained in the matrimonial home, the standards are not as poor as Mrs. Cornelius would wish to make them appear.
- [20] Mr. Rhudd further submitted that Mrs. Cornelius has not on the face of the Affidavit filed by her, provided sufficient evidence to move the Court to exercise its jurisdiction and to grant the injunction sought. In fact, based on the facts that have been disclosed in the several Affidavits filed by the parties, the Court can safely and reasonably conclude that it should exercise its discretion in a way that will keep the parties separate and apart.

[21] Mr. Rhudd asked the Court to pay regard to the contents of the very helpful Social Inquiry Report from Senior Probation Officer, Ms. Althea Byers in coming to its determination.

[22] Subsequently, Mr. Rhudd said that generally, the living conditions are less than desirable. While the physical structure is relatively acceptable, the internal amenities are unsatisfactory. With a minimum of effort, the living conditions can be made more tolerable and acceptable. It is apparent that the amenities are less than satisfactory, especially where the welfare of the child is concerned. Mrs. Cornelius and the child must be uncomfortable in the home as it is at present. There were deficiencies in the sleeping facilities and in respect of the storage of clothing. What is apparent from the visit to the premises is that the house in which Mrs. Cornelius has been placed is physically acceptable. The internal amenities, however, are less than satisfactory. Mr. Cornelius has however agreed to effect suitable repairs to make the living conditions more acceptable.

[23] Mr. Rhudd urged the Court not to grant Mrs. Cornelius the application that she seeks. He said the Court should take into consideration the fact that Mr. Cornelius has indicated a willingness to work towards improving the conditions within the house. In fact, at the time of our visit, he made arrangements to provide additional bedding, a mirror, a dressing table and some bedding materials. He has also agreed to engage a work man to check the plumbing within the house and to do some additional repairs to make the living conditions more tolerable. He has also agreed to address the additional areas which are in need of urgent attention. He undertakes to provide items of furniture to Mrs. Cornelius, namely a bed, dressing table, bedding materials and a mirror. In addition, he would ensure that repairs are done to the doors and windows at his sole expense.

[24] **Court's analysis and conclusions**

I have read the affidavits in their entirety and paid particular regard to the submissions of both learned Counsel. The Court also found Ms. Byers' Social Inquiry Report invaluable and was able to observe the child, Clint Cornelius, and listened to his wishes.

[25] This case is particularly interesting due to the fact that Mrs. Cornelius has filed the application for an injunction even though to date, she has not filed a substantive claim. It is no part of my function

to determine what the facts are especially in so far as the Court has been presented with conflicting positions as to the circumstances that obtain. The fundamental issue for the Court to resolve is whether, based on the affidavit, the Court should grant Mrs. Cornelius the injunction sought. In making this determination, the Court has found **BEAN on Injunction Fifth Edition Chapter 10 – Matrimonial Injunction and Similar Orders** very helpful.

- [26] This is by no means a straight forward case in so far as Mrs. Cornelius has not clearly indicated any basis other than her rights to remain in home, the welfare of the child and that they are living in clearly uninhabitable conditions. Regretfully, neither side has pointed the Court to the relevant principles that the Court should consider in seeking to compel a spouse to allow another to reside in the matrimonial home in circumstances where there is overwhelming evidence that the spouse who is seeking the order may well be the one who is at fault. In addition, it is apparent that there are serious threats by the applicant, both to Mr. Cornelius and her son.
- [27] Bean on Injunctions Fifth Edition Chapter 10 page 15 states that “the injunction is a particularly important remedy in the area of domestic relations. The urgent nature of a crisis in a matrimonial dispute often requires an immediate decision of the Court without a substantive trial on the merits. In the two instances of domestic violence and issues concerning the welfare of children, the criteria for the grant of interlocutory injunctions will be inapplicable. In violence cases, the Court will be concerned to prevent a recurrence of the violence; in cases involving children, their welfare will be the principal concern”.
- [28] It is the law that a substantive claim or petition must be before the Court to provide the basis for the grant of an injunction. Furthermore, it is contrary to established practice for the Court to grant an injunction which does not arise out of the substantive suit. Thus a wife’s application for maintenance on the ground of willful neglect to maintain did not form the basis for an injunction restraining the wife from denying the husband access to the matrimonial home (**Des Salles d’Epinoix v Des Salles d’Epinoix [1967] 1 WLR 553**).
- [29] The two most frequently sought injunctions is injunctions to restrain molestation or excluding the respondent from the home where the parties have been living. In contradistinction, in the case at

bar, the injunction that is sought is to restore Mrs. Cornelius and her son to the matrimonial home. The Court has paid particular regard to the very informative Social Inquiry Report and to the very candid and helpful submissions of both learned Counsel in relation to the condition of the home in which Mrs. Cornelius and her son reside.

[30] The Probation Report paints a very bad picture of Mrs. Cornelius; quite apart from the fact that Mrs. Cornelius has not challenged its contents, I have no doubt that the statements in the report are objective and true.

[31] The Court is always concerned to ensure that the welfare of the child is given adequate consideration. However, this is not the only factor that the Court must take into consideration. Clearly, in the case at bar, in which there is undisputed open hostility between the parties and there is the real possibility of this hostility intensifying if the parties are forced to resume living in the same house, it would not be in the interest or the welfare of the child to place him in that situation. I find the arguments advanced Mr. Rhudd very persuasive. I accept them in preference to those advanced by Mr. Daniels.

[32] Also noteworthy is that fact that Mrs. Cornelius, who is a relatively young woman, is unemployed and Mr. Cornelius, who is of advanced age, is employed. The Court has no doubt that Mr. Cornelius is not averse to his son living in the same home with him, but is fearful of his safety in relation to the alleged threats of poisoning by Mrs. Cornelius. The Court sees this as a real cause for concern. There is some evidence that Mrs. Cornelius has attempted to have her son consume poisonous substance.

[33] Further, in the case at bar, taking into account the totality of the circumstances neither does the interests of justice demand that the Court orders that Mrs. Cornelius be restored to the matrimonial home. For what is it worth, the Court notes that Mr. Cornelius' concern over Mrs. Cornelius' poisoning him is a genuine one.

[34] In view of the totality of circumstances, the Court is not of the view that it should exercise its discretion to grant the injunction sought.

[35] The Court has no doubt that the situation which requires that the Court refuses to grant the application. I am fortified in my view since Mr. Cornelius has given the Court an undertaking which I find very acceptable, namely that he will, within 28 days from the date of this order, take the relevant steps at his sole expense to have the plumbing fixed in the house and the windows repaired. He also undertakes to outfit the home, at his own expense, in which Mrs. Cornelius and her son reside by providing the following items within 28 days from this order: mirror, bed, dressing table, bedding materials. He also agrees to effect repairs to the living room chairs.

[37] **Conclusion**

In view of the foregoing, Mrs. Indeera Cornelius' application for an order to restore her to the matrimonial home is refused. In addition, and based on Mr. Eustace Cornelius' undertaking, I order as follows:

(a) Within twenty-eight (28) days of this Order, Mr. Eustace Cornelius shall at his own expense provide Mrs. Indeera Cornelius with the following items: a bed, mirror and bedding materials. He is also ordered to have repairs effected to the plumbing of the house in which Mrs. Indeera Cornelius lives and the windows of the house fixed.

[38] The Court gratefully acknowledges the assistance of all learned Counsel.

Louise Esther Blenman
High Court Judge
Antigua and Barbuda

P.S. On the date when the Court rendered its decision, both parties informed the Court that the child of the marriage, Clint Cornelius, had moved back into the home and was happily living with his father Mr. Eustace Cornelius.