

THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

SAINT VINCENT AND THE GRENADINES

SVGHMT2009/0101

BETWEEN:

RODRIGUEZ BARRINGTON KING

PETITIONER/RESPONDENT

-AND-

**TEMEIKA MOLEIKA KING
née WILLIAMS**

RESPONDENT/APPLICANT

Appearances: Ms Seunel Fraser for the Petitioner/Respondent, Mrs Kay Bacchus-Browne for the Respondent/Applicant.

2015: Mar. 16
Apr. 1

JUDGMENT

BACKGROUND

[1] **Henry, J. (Ag.):** Mr Rodriguez King and Mrs Temeika King are the parents of 7 year old Barrington Javanté King Jr. (“Javanté”). They were married in 2007 and their marriage was dissolved four years later.ⁱ Nine months before that, both parties agreed that Javanté would live with his father with access to his mother every other weekend. A consent order was made to this effect.ⁱⁱ This arrangement has been in place since then. Mrs King has applied for an order granting her custody of Javanté.ⁱⁱⁱ Mr King opposes this application.

ISSUE

[2] The sole issue is whether Mrs Temeika King should be granted custody of Javanté.

ANALYSIS

[3] The court is empowered to make an order for the custody and education of a child who has not attained age 18.^{iv} In exercising its discretion, the court is governed by the guiding principle that the child's welfare is of paramount importance.^v In this regard, a mother has the same rights and authority of the father.^{vi} In deciding what is in the child's best interest, the court is required to have regard to all the circumstances including the child's emotional, physical, material and mental needs and his recognized right to know and be cared for by both parents.^{vii} In essence the court is concerned with achieving an outcome which would result in optimum stability, security and general well-being for the child in the circumstances of the particular case. This requires the court to conduct an evaluation of the evidence relating to the accommodation, meals, academic instruction, spiritual, medical, emotional needs and other support provided by both parents and any other relevant considerations.

[4] The court also takes account of the parent's behavior towards each other and the child. Having seen and heard the parents, the maternal grandmother and uncle and the child's stepmother, I have no doubt that Javanté is surrounded by and exposed to much love from both sides of his extended family. Regrettably however, there is a considerable amount of acrimony between the parents which seems to be extended the maternal grandmother. I daresay that the existence of such conflict would not be lost on Javanté. This cannot be to his benefit and it is definitely not in his interest. His parents and grandmother would be well advised to desist from this type of behavior for Javanté's sake.

- [5] When Mrs King brought this application, she was seeking monthly periodical payments, property settlement, an adjustment order and custody of the child.^{viii} She has since abandoned her claim for the other remedies and now seeks only custody. Mrs King filed one affidavit of her own in support of the application, two by her mother Joycelyn King and one by her brother Kenneth Williams.^{ix} Mr King filed his own affidavit and one by his new wife.^x They all testified and were cross-examined.
- [6] Mrs King deposed that she was unemployed. In re-examination by her attorney she testified that she started working but no details of her employment were provided to the court. Mr King is self-employed and indicates that he owns his own business. No information was provided to the court regarding the nature of his job. He avers however that he owns his own house, a three bedroom two bathroom concrete house where he lives with his wife, a pre-school teacher and Javanté. From all accounts, he has provided a comfortable home and lifestyle for his family. Mrs King resides in her parents' five bedroom home. She stays in an apartment on the ground floor while her parents live on the first floor with her brother, her other child and two nephews.
- [7] Mr Kenneth Williams indicated that when Javanté visits on weekend, he sleeps with him. His mother and her husband occupy one of the other bedrooms while his two nephews share the other bedroom. The court infers from his testimony that the first floor contains 3 bedrooms and the ground floor where Mrs King stays has two. Mrs King avers that her parents are prepared to maintain Javanté and she would like Javanté and her other son to grow up together. Mrs King stated that she has access to Javanté every other weekend, she is willing to share the school vacation with the respondent and she wishes to have custody of Javanté.
- [8] Mrs Joycelyn Williams echoed Mrs King's undertaking that she and her husband will help to maintain Javanté and she thinks that it would be in his best interest

for his mother to have custody. She claims that Mr King has no interest in looking after his son when he is sick. She explained that she is responsible for bathing Javanté when he comes to her house for his weekend visits. She described an incident one weekend when Javanté contracted chicken pox while at her home. She stated that when Mr King came to collect him soon after, he refused to take him home because he did not want his wife to contract the illness as she is light skinned. One reasonable inference is that Mr King did not wish either his wife or himself to be infected with the disease. I draw this inference and make no adverse findings against Mr King even if he did so, having regard to the scientific data as to complications which may arise in adults who are infected by the virus.

[9] Mrs Williams complains that Mr King does not take sufficiently good enough care of Javanté. She claims that Javanté does not brush his teeth when he is with his father. No dental records or other medical evidence was provided to support this allegation. Further, she complains that Mr King used to beat Mrs King and she is afraid that Mr King will also ill-treat Javanté. Mrs Williams described an incident when Javanté complained to her about pain in his shoulder from a beating he got from his father. He reported this to her she said, while she was bathing him one evening after school. She deposed that this confirms her fears that Mr King will abuse Javanté. She indicated that she did not take Javanté to the doctor as he was not bruised. There is no evidence that Mrs Williams or Mrs King made a report to social services or confronted Mr King about this incident or their fears. The court notes that these are recent allegations not contained in Mrs Williams' first affidavit.

[10] Mrs King herself voiced similar concerns for the first time under cross-examination. I find this late revelation perplexing. Similarly, Mrs King does not appear to share her all of her mother's concerns. In fact, Mrs Williams is the one leading the charge against Mr King based on what are essentially hearsay accounts. Accordingly, I do not place much store in those allegations and infer that they are now being raised to paint Mr King in an unfavourable light

particularly since he has enjoyed exclusive physical custody, care and control of Javanté from birth and no such allegations have been made about his treatment of Javanté until March 2015 days before the hearing. These recent complaints are therefore suspect and in my opinion are without merit.

[11] Mrs Williams also deposed that Javanté loves snacks and would not eat food or cereal unless he is fed. Interestingly, she also stated that Javanté is being fed corn curls for most of his meals at his father's house. This sentiment is echoed by Kenneth Williams in his affidavit. Under cross-examination, neither Mrs Williams nor Mr Williams were able to substantiate these damning assertions. They are accordingly disregarded. Mr Kenneth Williams explained that he is responsible for picking up and dropping off Javanté when he makes his weekend visits. He also accused Mr King of leaving Javanté at home alone when he goes out with his wife. He did not provide any proof of this and under cross-examination stated that sometimes when he goes to collect Javanté, he would meet him next door at his paternal aunt's house waiting outside with his cousins who appear to him to be between 10 and 13 years old. When pressed he said he did not know if anyone was in the aunt's house on those occasions as he did not check. I rather suspect that he did not check because he had no reason to believe that the children were home alone. I totally reject the insinuation and accusation that Mr King and his wife leaves Javanté at home when they go out. There is no basis to support those very serious allegations. Furthermore, there is no evidence that Mr Williams made a report to social services or other authorities which one would have expected him to do if he had such concerns.

[12] Mr Williams also complained that invariably when Javanté is picked up for his weekend visits, he either has a cold or fever. Neither Mrs King, Mrs Williams nor Mr Williams presented a medical report which reflects that Javanté is malnourished or suffers from any medical condition which might be attributable to neglect or abuse by his father. There is no other basis on which the court can make such a finding. It is more than passing strange that notwithstanding their

expressed concerns about Javanté's physical well being, Mrs King, Mrs Williams and Mr Williams have not sought to obtain medical supervision, advice or treatment for Javanté's "prevalent ailment(s)". I am left with the perception that these allegations are merely an attempt by the Williamses to paint Mr King as an unfit parent. This is bolstered by the fact that they are being made at the last hour, the application having being filed since 2011. I reject the insinuation as being totally baseless.

[13] At the court's request, Javanté was brought to court during his lunch break, to enable the court to observe him and to allow him to be questioned about his life at both homes. On entering the courtroom Javanté met his biological mother exiting the room. He barely acknowledged her and made a beeline for his father who was just getting ready to leave. The court noticed also that Mrs King made no attempt to interact with Javanté as he entered the room. The court was left with the distinct impression that their casual encounter characterizes their relationship. This was confirmed to some extent when Javanté told the court that his mother's name is "Lisa"^{xi}. He was unable to indicate what interactions he has with Mrs King, other than that he calls her "Temeika" and "mommy" and that sometimes she cooks for him and his cousins.

[14] He did not appear to understand some of the questions he was asked although they were simple enough. It is apparent that he could use some assistance academically and might also require speech therapy to assist him with enunciation. Javanté is small bodied like his Dad. He did not appear frail, sickly, timid or neglected. Rather he was very neatly dressed, was calm and demonstrated great potential if nurtured appropriately for his age as he continues to develop. He displayed no obvious physical or mental impediments. Although he was not old enough for the court to rely on any expressed preference by him of where he would like to live, it was useful to interact with him on an informal basis to get an appreciation of the child whose life would be affected by the court order.^{xii}

[15] Mr King deposed that he permits Javanté to spend every weekend with Mrs King at her home except when his uncle does not collect him. This he explains he does notwithstanding that the consent order provided for access every other weekend. Mr King described a loving family environment in which Javanté is cared for equally by him and his new wife Delisa Providence-Prince since Javanté was an infant. He deposed that he and his wife take Javanté to church when he is with them on weekends. Mrs King on the other hand, provided no information about what exposure if any Javanté has to her religion. Mr King explained that Mrs King has never contributed to Javanté's maintenance. His wife Mrs Delisa Providence-Prince corroborated much of this account and added that she and her mother help Javanté with his school work. She also affirmed her commitment to continue to assist with caring for Javanté.

[16] I formed the view that Javanté's biological mother has very little interaction with him even when he visits her parent's house on weekends. This impression was confirmed by the tone and tenor of Mr King and her respective affidavits and in their oral testimony. Even the sleeping arrangements described by Kenneth Williams have Javanté and his brother sleeping in his grandparent's quarters and not in his mother's apartment. No explanation is given for this.

[17] Javanté has lived with his father continuously from birth until present. He has clearly formed a bond with his step-mother Delisa Providence-Prince which is akin to child and mother. This tight bond appears to be missing from his relationship with his biological mother but does not prevent them from relating to each other to the extent rendered possible by Mrs King's physical and emotional availability. Javanté enjoys a loving and caring relationship with his maternal grandparents, uncle and cousins. He has fitted into the visiting relationship with that family which has become part of his routine. Based on all of the available materials and testimony, I find that the home which offers better facilities and support for Javanté's accommodation, medical, academic, emotional and spiritual needs is his father's home where he has lived all of his young life. It

would be a dis-service to him and potentially detrimental to disrupt his life and move him away from what is familiar to him.

[18] While I have no evidence that either Mr King or Mrs King is an unfit parent, I have concluded that Javanté's best interests are served by him remaining with his father with liberal access to his mother. Mrs King's wish that her two children grow up together can be easily facilitated during Javanté's regular visits to her home. It is no part of the law that a grandparent's wishes to have her grandson live with her trumps either the mother or the father's right to custody. To make an order for Javanté to be placed in his mother's custody would be making an order of custody in favour of his grandparents. That would be unjust and contrary to the governing principle that the child's welfare is paramount. I accordingly hold that it is in Javanté's best interests that Mr Rodriguez King has primary care, control and sole custody of him with reasonable access to his mother Mrs Temeika King.

ORDER

[19] It is therefore ordered:

1. Mrs Temeika King's application for custody of Barrington Javanté King Jr. is dismissed. Her application for monthly periodical payments, property settlement and an adjustment order are also dismissed.
2. Barrington Rodriguez King is to have sole custody of the child Barrington Javanté King Jr. with primary care and control to him. Reasonable access to Mrs Temeika King to include visitation every other weekend, alternate public holidays and half of Christmas, Easter and summer school holidays, the dates for each school holiday to be varied and agreed between the parties as necessary. It is stipulated that Javanté shall spend every Mother's day with his mother Mrs Temeika King, and each Father's day with his father Mr Rodriguez King.

3. Rodriguez King is to consult with Mrs Temeika King regarding all overseas travel arrangements for Javanté except in cases of emergency.
4. Each party to bear his or her costs.

[20] I wish to thank both counsel for their written submissions

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Esco L. Henry
HIGH COURT JUDGE (Ag.)

ⁱ By Decree Absolute dated June 21, 2011.

ⁱⁱ By Consent Order dated October 1, 2010.

ⁱⁱⁱ By Notice of Application for Ancillary Relief file on March 21, 2011.

^{iv} Pursuant to section 12 (1) of the Law of Minors Act Cap. 232 and section 65 (1) of the Matrimonial Causes Act Cap. 239 of the Revised Laws of Saint Vincent and the Grenadines, 2009 which state respectively:

“12 (1) The court may, on the application of the mother or father of a minor (who may apply without next friend) make such order regarding –
(a) the custody of the minor; and
(b) the right of access to the minor of his mother or father,
as the court may think fit having regard to the welfare of the minor and to the conduct and wishes of the father and mother.”

“65. (1) The Court may make such order as it thinks fit for the custody and education of any child of the family who is under the age of eighteen-

(a) in any proceedings for divorce, ... before or on granting a decree or at any time thereafter (whether, in the case of a decree of divorce ..., before or after the decree is made absolute);

^v Ibid. at section 12 (1) of the Law of Minors Act Cap. 232 of the Revised Laws of Saint Vincent and the Grenadines, 2009. See also J v. C [1970] A.C. 686 per Lord MacDermott where he expounded on a similar provision:

“Reading the words in their ordinary significance ... 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 long 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 parent, risks, choices and other circumstances are taken into account and weighed, the course to be followed will be that which is the most in the interest of the child’s welfare as that term is now to be understood. That is the first consideration because it is of most importance and paramount consideration because it rules on or determines the course to be followed.”

^{vi} See section 4 (1) of the Law of Minors Act which provides:

“4. (1) In relation to the custody or upbringing of a minor, and in relation to the administration of any property belonging to or held in trust for a minor or the application of income of any such property, a mother shall have the same rights and authority as the law allows to a father, and the rights and authority of mother and father shall be equal and exercisable by either without the other.”

^{vii} As reflected in Articles 7 and 9 of the UN Convention the Rights of the Child which was ratified by Saint Vincent and the Grenadines.

^{viii} Ibid. at paragraphs 1, 2, 3, and 4, of the Notice of Application for Ancillary Relief.

^{ix} Affidavit of Temeika King Filed on November 12, 2014 of Joycelyn Williams filed on November 12, 2014 and March 12, 2015 and of Kenneth Williams filed on March 12, 2015.

^x On January 22, 2015.

^{xi} His stepmother is also referred to as “Lisa”.

^{xii} This approach finds expression in Art. 12 of the UN Convention on the Rights of the Child although not enacted into domestic law or given legal force by statute or otherwise.