

THE EASTERN CARIBBEAN SUPREME COURT
SAINT VINCENT AND THE GRENADINES

IN THE HIGH COURT OF JUSTICE

SVGHMT2015/0117

BETWEEN

RONNELTA LAURETTE SAM NÉE SNAGG
of Belair

PETITIONER

and

NEROY NIVITE SAM
of Argyle

RESPONDENT

Appearances:

Mr. Cecil Williams of counsel for the petitioner.
Respondent in person, unrepresented.

2017: Apr. 6

JUDGMENT

INTRODUCTION

[1] **Henry, J.:** Mr. Neroy Sam and Mrs. Ronnelta Sam were married in 1999¹. Mrs. Sam commenced divorce proceedings in 2015. A decree nisi was granted² but has not been made absolute. The Sams have two minor children – Romario aged 15 and Romello aged 9. Mrs. Sam is eager to move on with

¹ On 27th June.

² On 25th January, 2016.

her life. She has applied to the court for orders directing Mr. Sam to contribute to the children's general welfare including maintenance and care and that she be awarded sole custody. She also seeks an order finalizing the divorce.

[2] Mr. Sam did not have a lawyer. He represented himself throughout the proceedings. He did not file any affidavits or other documentation. However, he prepared a written statement and was allowed to read it as part of his testimony and tender exhibits. He accepted that he has an obligation to contribute to the children's welfare including their financial needs but expressed doubt that he fathered Romello. He requested that an order be made to determine Romello's paternity. He maintained that he is unable to provide more than \$150.00 monthly for Romario's maintenance and \$100.00 per month for Romello's. He is ordered to contribute the monthly sum of \$250.00 each to Romario's and Romello's care and maintenance.

ISSUES

[3] The issues are:-

1. What orders should be made for the welfare of the minor children?
2. Whether an order should be made for a parentage testing procedure to be conducted to determine if Mr. Sam can be excluded as Romello's father?
3. Whether the decree nisi should be made absolute?

ANALYSIS

Issue 1 – What orders should be made for the welfare of the minor children?

[4] The court is mandated to make orders for the welfare of the minor children of a family, in the event of a divorce³. The term 'welfare' covers all aspects of the child's reasonable physical, financial, social, religious, emotional, mental, educational and familial needs. The court's primary consideration is the child's best interest.⁴ It must also have regard to:

³ Matrimonial Causes Act, Cap. 239 of the Revised Laws of Saint Vincent and the Grenadines, 2009 ('the Act'), sections 64 and 65; and the Law of Minors Act, Cap. 232, of the Revised Laws of Saint Vincent and the Grenadines, 2009, section 12 (1).

⁴ J. v. C. [1970] A.C. 686; and The Law of Minors Act Cap. 232 of the Revised Laws of Saint Vincent and the Grenadines, 2009.

1. the child's financial needs;
2. his or her income, property, other financial resources and earning capacity;
3. any physical or mental disability affecting him or her;
4. the manner in which he or she was being or was expected to be educated or trained by the parties;
and;
5. the standard of living the family enjoyed before the breakdown of the marriage.⁵

[5] In assessing parties' individual obligations towards the child, the court is also required to examine the length of the marriage, and their respective:

1. income, earning capacity, property and other financial resources;
2. age, financial needs, obligations and responsibilities;
3. physical or mental disabilities, if any;
4. contribution to the family's welfare; and, the value of any benefit which either party will lose as a result of the dissolution of the marriage⁵.

[6] In deciding what is in the child's best interest, the court has a duty to consider those matters in an attempt to ensure as much as reasonably practicable and just, that the child is placed in the position he or she would have been if the marriage had not broken down, and each party had properly discharged his or her financial obligation towards the child.⁵ Neither parent has a superior right or authority in respect of the child's custody and upbringing⁶. All the circumstances of the case must be examined, including the parties' behavior towards the child in deciding what arrangements would best cater to the child's needs.

[7] Romario and Romello live with their mother at Belair. Romario attends the St. Vincent Grammar School, often touted as the leading secondary school in St. Vincent and the Grenadines. This attests to his mental acuity. Romello attends the Kingstown Preparatory School, an exemplary primary school in the State. The parents reported no mental or physical disability afflicting either child. The parents

⁵ Ibid. at section 34(2) of the Act.

⁶ Ibid. at section 4 of the Law of Minors Act.

provided no information regarding their progress in school or voiced any grievances. I draw the inference that there are no issues with their schooling.

[8] Some time ago, Mr. Sam was ordered by the Family Court to pay \$497.00 for the children's maintenance and education. The details regarding the date when this happened were not disclosed. Mrs. Sam complained that Mr. Sam's payments are irregularly made and only when a warrant is issued against him. Mr. Sam explained that he stopped making those payments because he could not afford them. He said he did not seek to have the order varied because he was not sure of the procedure. However, he made no attempt to find out how to go about doing so. I infer that he willfully flouted the Family Court's order without regard for the consequences.

[9] Mrs. Sam is seeking an order for monthly maintenance of \$250.00 for each child and reimbursement of ½ of their educational and medical expenses. Mr. Sam expressed reservations about accepting full parental responsibility for Romello, unless a DNA laboratory test establishes paternity. He requested that subject to such result, that an order for joint custody be made in respect of both children. He proposed that their care and control be vested in him from 3.00pm on Friday of each week until 3.00pm of the following Monday and that the mother retains care and control for the rest of the week. He also requested that his contribution to their maintenance be adjusted in proportion to the amount of time the children reside with him.

[10] In addition, Mr. Sam sought liberal access throughout the week to facilitate regular visits from the children to enable him to help them with homework and other matters. He agreed that he should pay one half of their education and medical expenses. This desire is commendable and bodes well for their relationship.

Children's resources and education

[11] Romario and Romello are not employed. Their parents provided no evidence that they own properties or, other financial resources or have the ability to earn income at this stage of their lives. It is anticipated that Romario will graduate from secondary school within the next 24 months and might enter the workforce within the next three to five years. Romello is expected to follow in his brother's footsteps and attend secondary school and possibly college. He is therefore likely to have at least 6

years of further studies before pursuing a career. Their parents gave no indication of what they envisage for their sons after they completed their secondary education.

Family's standard of living

[12] Mr. and Mrs. Sam separated in February 2010, six years before the decree nisi was pronounced. Although theoretically they were married for 16 ½ years, for all practical purposes their union ended after 11 ½ years. Neither party described their lifestyle during that period. According to Mrs. Sam and based on her earnings, she and her sons have no surplus for luxury items. She and the boys have become accustomed to and maintain a modest working class lifestyle. Mr. Sam's living arrangements and finances are more ample.

Parties' income, earning capacity and property

[13] Mr. and Mrs. Sam lived in rented accommodation throughout the marriage and they each occupy separate rented apartments. Mr. Sam has worked an operator's assistant at Haddon Hotel for the past 3 months. Before that he was employed at the Saint Vincent and the Grenadines Brewery. He indicated that his net monthly wages amount to \$1851.67. Mrs. Sam is a senior payroll clerk and earns a gross monthly salary of \$2,575.00. They both contribute to the National Insurance Scheme. Mrs. Sam also makes payments to an employment-based pension scheme. They will each receive monthly retirement benefits from those funds on attaining the qualifying age.

[14] Neither party claimed to be suffering from any mental or physical disability. They are relatively young and looked healthy and vibrant. Mr. Sam is 40 years old while Mrs. Sam is 39. Barring any tragedies or severe illnesses, they are likely to be gainfully employed for the next 20 to 25 years.

[15] Likewise, as the children become financially self-sufficient, Mr. and Mrs. Sam should have more disposable income to invest in acquisition of land and/or other assets. All things being equal, their economic outlook within the next 10 years is positive, provided that they manage their resources in a conservative and fiscally sound manner.

Financial needs, obligations and responsibilities

- [16] Mrs. Sam listed her monthly expenses for rent, deductions for income tax, food, utilities, medical and life insurance, transportation and clothing⁷. They totaled \$2,709.53 including an amount for savings. She did not produce any bills, receipts or invoices, however, none of the items appeared to be inflated or unreasonable. They are accepted as representative of necessary expenditure for her and the two children.
- [17] Mr. Sam testified that his expenses amount to \$2,089.00 monthly which must be discharged from a monthly salary of \$2000.00. They include vehicle expenses⁸, utilities, food, and payment of maintenance for Romario and another child – Kaetaya who is not a child of the family. He testified that he has another child who is 6 months old – possibly Kaetaya. He supplied copies of receipts for rent of a two bedroom apartment which he shares with another adult. The monthly rent is \$800.00 (payable to a Lomax Deans) for which Mr. Sam assumed full responsibility. The court will discount that figure by 50% in recognition that the other occupant has an equal obligation to pay rent.
- [18] Mr. Sam also produced an electricity bill for the month of February 2017, issued in the name of one Lomax Deane. Mr. Sam claimed that he paid ½ of or \$135.00 of the electricity bill but provided no supporting documentation. He stated that he did not have a separate meter at his apartment. The inference is that he pays ½ of the electricity bill attributable to his apartment while the other ‘family’ that shares the meter would cover the other 50%. In any event, even if Mr. Sam paid ½ of that bill, the other adult occupant of his apartment must be responsible for one half of that amount, roughly \$67.00 per month. I so find. Based on the comparative electricity consumption attributed to him and to Mrs. Sam and the children, the reduced figure of \$67.00 in my opinion reflects Mr. Sam’s reasonable level of electricity use each month.

⁷ Rent - \$700.00; PAYE - \$187.00; food - \$400.00; Electricity - \$150.00; water - \$45.00; telephone - \$150.00; medical and life insurance - \$180.15; pension scheme - \$51.50; transportation - \$180.00; loan payment (studies- UWI) - \$210.00; school supplies - \$50.00; clothes - \$50.00; home supplies - \$150.00; savings - \$90.00.

⁸ Vehicle maintenance - \$133.00; Gas for vehicle - \$140.00.

[19] His monthly allocation of \$34.43 for water supply was reasonable and has been accepted as reflective of his needs in that department. Mr. Sam also produced receipts in respect of groceries he allegedly bought. He claimed that his monthly food bill amounts to \$450.00. Not much appears remarkable on those receipts. Notably however, Mr. Sam exhibited a receipt for the purchase of 26.4 pounds of chicken wings on 3rd April, 2017 billed to cash. Another receipt purportedly issued a few days earlier on 28th March, 2017 reflected the purchase of miscut chicken wings. He also supplied receipts for the purchase of two sets of chicken breasts from C.K. Greaves & Co. Ltd. at different times on 4th March 2017 and two packs of chicken drums on the same day.

[20] I do not accept that these receipts reflect Mr. Sam's consumption of those items. Instead, I am of the opinion that he submitted receipts which may not even relate to purchases for his personal needs. Mr. Sam said under cross-examination that he would consume the 26 pounds of chicken wings in one month. If that is indicative of his reasonable needs, it suggests that Mr. Sam can make adequate contributions to his sons' maintenance. I find that his stated outgoings for food to be excessive. When compared to Mrs. Sam's and the boys' food bill, his is problematic as it seems inflated. I therefore adjust the allowance for food by a quarter to \$300.00 per month.

[21] Mr. Sam presented three copies of what he claimed to be his pay slips for January, February and March 2017. He did not submit the originals. The authenticity of those records is questionable. They do not satisfy the evidentiary requirements of the Evidence Act⁹ and were not admitted into evidence. Mr. and Mrs. Sam appear to have no significant financial resources apart from their salaries. They gave no evidence either way.

Contribution to the family's welfare

[22] Mrs. Sam recounted that she bears the brunt of the responsibility for the children. She explained that she sometimes has to take funds from her savings to make ends meet and at times get assistance from friends. She complained that this is exacerbated by Mr. Sam's default in paying the maintenance ordered by the Family Court. He admitted that he failed to make regular payments as ordered and has stopped completely. He justified his action by stating that he could not afford it. He stated that he has

⁹ Cap. 220 of the Revised Laws of Saint Vincent and the Grenadines, 2009.

provided financial assistance for Romario's educational and physical needs. His testimony was devoid of any details of financial contributions to his sons' regular maintenance. When asked if he sought a variation of the order, he replied that he did not do so because he was not sure of the procedure. He admitted that he made no inquiries to find out how to go about it.

[23] Mrs. Sam testified that since the separation in 2010, Mr. Sam rarely sees Romario and Romello and has displayed a lack of interest in their well-being. She considered his apparent lack of interest in their daily lives to be distressing and harmful to their sons. Mr. Sam responded that both children visit him at his workplace where he assists them with homework, school projects or just to spend time with them before they go home on evenings. He indicated that they also visit his home during the school vacations and from time to time for further assistance with school assignments. He explained that he has also taken them for Sunday evening drives and periodically to the beach or to visit their grandparents in the country side. He expressed a desire to have them spend equal amounts of time with him and Mrs. Sam.

[24] Mr. Sam explained that his apartment is equipped with a bedroom that is assigned for the children's use. He claimed that they spend most of the school vacations with him. Mrs. Sam acknowledged that while the boys spend one month of each summer vacation with him and would stay with him when she has to travel abroad or an odd weekend here and there, denied that they spent most vacations with Mr. Sam. She conceded that they are always delighted to spend time with their father and admitted that Romario would sometimes go to his home during the week.

[25] She acknowledged that Mr. Sam gave the children \$100.00 on two separate occasions within the past 6 months, one time in response to a request she made through the children, for help with purchasing groceries. She insisted that during that period Mr. Sam provided no financial support for the children other than those sums. Mr. Sam did not refute this assertion. He seemed unconcerned about the need to make a concerted effort to contribute to their financial upkeep. This attitude is totally unacceptable.

[26] Mr. Sam described himself as a responsible, loving, caring and compassionate father who ensures that the children's emotional, physical and intellectual needs are met. He indicated that he attends parent's day and other activities at their schools and is deeply involved in their development, particularly Romario's as he is now a teenager and an executive member of the Young Leader's Club at his school. He described the bonds between him and the boys as exceptional. I cannot help but

wonder if Romello senses any reservations from Mr. Sam towards him, in light of Mr. Sam's concerns that he might be his father. This was not explored but seems to be an area which all members of the family might need to pursue to forestall any negative spill-offs for Romello and perhaps even Romario, as a result of the inevitable underlying tensions.

[27] Having heard the parties and reviewed their respective accounts, I am inclined to accept Mrs. Sam's version where it conflicts with Mr. Sam's. Mr. Sam has maintained some measure of contact with the children particularly in recent times and favours Romario in this regard. I find that he has been less than forthcoming with financial support. It seems to me that Mrs. Sam has shouldered the greater part of the financial, educational, social and emotional obligations towards Romario and Romello.

[28] It is highly desirable that Mr. Sam becomes more involved in their upbringing. He expressed the desire to do so more in the future. It can only be hoped that he follows through on his stated intention. This would enure to the children's immediate and long term benefit. In this regard, Mrs. Sam indicated that she would accommodate Mr. Sam's wish for liberal access to the children. This is to be encouraged.

Benefits lost by dissolution of the marriage

[29] Neither Mr. nor Mrs. Sam expressed any sentiments that they or the children have been deprived of any benefit as a result of the divorce. It seems to me that the parties have left the marriage on pretty much the same footing on which they entered it. No member of the family appeared to have realized any benefit as a consequence of the marriage nor lost any since the separation or grant of the decree nisi.

Parents' behaviour towards each other and the children

[30] The tension between Mr. and Mrs. Sam during the trial was palpable particularly during Mr. Sam's cross-examination of Mrs. Sam. For the most part, they were civil towards each other. The main bone of contention between them surrounds Mrs. Sam's dissatisfaction with Mr. Sam's efforts to make regular financial contributions to the children's care and control.

[31] Mrs. Sam has demonstrated a commitment to ensuring that Romario and Romello obtain the best education possible. Commendably, while her means are somewhat limited, she has managed to stretch her resources to provide insurance coverage for their medical needs and establish a small

savings account for them. Mr. Sam has played a less than satisfactory role in supporting Mrs. Sam's efforts to secure a stable and secure environment for their children to thrive. His conduct is inexcusable.

[32] A parent is expected to make sacrifices to ensure that his or her children have access to basic necessities such as food and clothing. As the good book says 'Money answers all things'. Mrs. Sam should not have to carry that load on her own. Mr. Sam has a corresponding legal duty to provide for their care.

[33] It does not appear that either Romario or Romello's overall well-being has been unduly stymied by the upheavals in their lives, occasioned by the breakdown of their parents' marriage. If their academic performance is any indication, they seem to have adjusted reasonably well. If they maintain their current thrust they should fare well in life with appropriate assistance from both parents.

[34] Mr. and Mrs. Sam are each obligated by law to contribute towards their children's welfare to the extent practicable, based on their respective capabilities. Mrs. Sam has been and continues to be the major wage earner. Mr. Sam declared that his income does not allow for additional expenditures as it is managed tightly to ensure that he does not live above his means. The foregoing assessment demonstrates otherwise. It is clear to me that he has padded his expenses and if he makes appropriate adjustments to his outgoings would be able to meet Mrs. Sam halfway in this regard. Mrs. Sam and the children are living economically and making do, while Mr. Sam consumes an over-abundance of chicken wings and conceivably other similar goodies to his heart's content. The graphics are disconcerting.

[35] Mr. Sam appears not very inclined to shoulder his share of the financial obligations to Romario and Romello. He submitted that he and Mrs. Sam contribute equally to the minors' welfare and have shared those responsibilities throughout the period of separation. The evidence was largely to the contrary. Thankfully, Romario will soon complete his studies and possibly head to college and would no longer be under either parent's jurisdiction. Until then, Mr. and Mrs. Sam must each contribute to his reasonable needs. Similarly, they have a duty to share all aspects of Romello's care and control.

[36] I am satisfied that Mr. Sam has the means to equally shoulder the financial responsibilities for Romario and Romello. I have difficulty figuring out how Mrs. Sam can feed her family on \$400.00 per month. I am mindful that Romario is a teenager and at the age where food consumption usually goes into overdrive among young men. In view of Mrs. Sam's expenses for food, shelter, utilities and other items a reasonable figure for each child's monthly needs is approximately \$500.00. I am satisfied that Mr. Sam is in a position to contribute half of that amount. Similarly, no compelling reason was advanced why a joint custody order should not be made.

[37] I consider that it is the best interest of both children that both parents Ronnelta Sam and Neroy Sam be granted joint custody of both children with primary care and control to Mrs. Sam; and that Mr. Sam be ordered to pay \$250.00 to Mrs. Sam each month as maintenance for Romario Leonardo and Romello Leone, commencing on 27th April, 2017, and continuing each and every month thereafter on the last Thursday of each month until they each attain the age of 18 years or complete their studies at a secondary or tertiary institution whichever occurs later.

[38] Mr. Sam shall have reasonable access to both minors 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. Romario and Romello shall spend every Mother's Day with Mrs. Sam and every Father's Day with Mr. Sam.

[39] Mr. Sam is directed to reimburse Mrs. Sam on a case by case basis, 50% of the expenses associated with Romario's and Romello's reasonable future medical and educational needs. Mrs. Sam is required to provide Mr. Sam with copies of all invoices and/or receipts in respect of such expenses, as the basis for computing his contributions. Mr. Sam's obligation to contribute towards the children's educational and medical expenses will cease respectively when each child attains 18 years or completes tertiary education whichever occurs later.

[40] Mrs. Sam is required to apply to the Family Court to discharge the order of maintenance made by the court, such application to be filed on or before 19th April, 2017. For the avoidance of doubt, the

maintenance orders made in this judgment supersedes and replaces the one previously made by the Family Court.

Issue 2 – Should an order be made directing that a parentage testing procedure to be conducted to determine if Mr. Sam can be excluded as Romello’s father?

[41] Mr. Sam testified that he had doubts about Romello’s paternity from the time his wife told him that she was pregnant. He said that he did not bring this to the attention of the adjudicator at the Family Court because the opportunity did not arise. He added that the decision was arrived at in his absence. He acknowledged that he was given an opportunity by the court to say why he did not maintain the children, and he explained then that he had to give up the business he was operating at that time because it was not profitable. He asked that an order for a paternity test be made in respect of Romello and that Mrs. Sam be ordered to pay half of the associated expense. Mrs. Sam consented to the paternity order but prayed that the cost be defrayed by Mr. Sam.

[42] The court is empowered to make an order and give directions for a parentage testing procedure to be carried out.¹⁰ However, it must first ensure that the child to whom the direction relates has been counseled about the effects of the procedure, if he is mature enough and if it is in his best interest to make such an order. No evidence of either matter has been led before the court. Those pre-conditions having not being satisfied, I make no order for a parentage testing procedure to be conducted in respect of Romello Sam. Mr. Sam is at liberty to renew his request by application in accordance with the Act.

Issue 3 – Should the decree nisi be made absolute?

[43] I am satisfied that Romario Leonardo and Romello Leone are the only children of the family and that the arrangements made by this judgment for their welfare are satisfactory; and the best that can be achieved in the circumstances. Since the making of the decree nisi, it does not appear from the records that cause has been shown why it should not be made absolute. If that is so, it would be just and expedient to order that the decree nisi pronounced in this case be made absolute provided that there is no other bar to such an order.

¹⁰ Status of Children Act, No. 21 of 2011, ('the Act'), section 9.

[44] The matter of finalization of the decree necessitates that the judicial officer satisfies himself or herself that no appeal, application for re-hearing or other intervention has been made and remains outstanding¹¹. It is not possible to ascertain those matters without making inquiries. Accordingly, I propose to refer that aspect of the application to the Registrar of the High Court (the Registrar') to do so. The Registrar is directed to process and issue the prescribed Certificate of Decree Absolute on being satisfied that all conditionalities have been met.

ORDER

[45] It is declared and ordered:

1. Mrs. Ronnelta Sam and Mr. Neroy Sam shall have joint custody of the minor children Romario Leonardo and Romello Leone with primary care and control to Mrs. Sam. Reasonable access is granted to Mr. Neroy Sam, 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 Romario Leonardo and Romello Leone shall spend every Mother's Day with their mother Mrs. Ronnelta Sam, and each Father's Day with their father Mr. Neroy Sam.
2. Mr. Sam pay to Mrs. Sam \$250.00 each month as maintenance for:
 - (a) Romario until he completes his studies at St. Vincent Grammar School or subsequent tertiary education at a local college, or until he attains 18 years, whichever occurs later; and
 - (b) Romello until he completes his studies at a secondary school or local college or until he attains 18 years, whichever occurs later;such payments to commence on 27th April, 2017, and to continue each and every month thereafter on the last Thursday of each month.
3. (a) Mr. Sam is directed to reimburse Mrs. Sam on a case by case basis, 50% of the expenses associated with Romario's and Romello's reasonable future medical and educational needs. Mrs. Sam is required to provide Mr. Sam with copies of all invoices and/or receipts in respect of such expenses, as the basis for computing his contributions.

¹¹ Matrimonial Causes Rules, 1977, S. I. No. 344, rule 65.

- (b) Mr. Sam's obligation to pay half of the educational and medical expenses includes all such expenses incurred in respect of both minor children until they respectively attain the age of 18 years or complete tertiary education whichever occurs later.
4. Mrs. Sam is required to apply to the Family Court to discharge the order of maintenance made by the court, such application to be filed on or before 19th April, 2017.
5. Mrs. Sam's application for a decree absolute is referred to the Registrar for determination. The Registrar is directed to process and issue the prescribed Decree Absolute Certificate if all conditionalities have been met.
6. Mrs. Ronnelta Sam and Mr. Neroy Sam shall bear his or her own costs.

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Esco L. Henry
HIGH COURT JUDGE