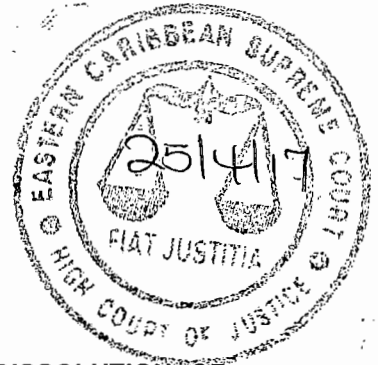


THE EASTERN CARIBBEAN SUPREME COURT
SAINT VINCENT AND THE GRENADINES

IN THE HIGH COURT OF JUSTICE



SVGHMT2015/0085

IN THE MATTER OF THE PETITION OF TAJA CUPID NÉE YOUNG FOR THE DISSOLUTION OF
MARRIAGE

BETWEEN

TAJA CUPID NÉE YOUNG

PETITIONER

and

KASCHAKA CUPID

RESPONDENT

Appearances:

Mr. Jomo Thomas of counsel for the petitioner.

Ms. Nelleen Bute of counsel for the respondent.

2017: Apr. 25

DECISION

INTRODUCTION

[1] **Henry, J.:** Mr. Kaschaka Cupid and Mrs. Taja Cupid are in their mid-30s. They married in 2010¹ and a decree nisi of divorce was pronounced in 2015². It has not been made final. The Cupids are the

¹ 5th June.

² By decree nisi dated 19th October.

parents of two girls – Kaleeja Destinee Shadae aged 6 and Kalaya Rasheeda Zeporah aged 4. Mrs. Cupid ('the mother') petitioned the court³ for an order for joint custody, care and control of the children. She claimed that Mr. Cupid ('the father') had stopped making contributions towards their care.

- [2] Mr. Cupid acknowledged that he discontinued making monetary payments to Mrs. Cupid for the girls' benefit. He reasoned that he wanted to ensure that Mrs. Cupid did not spend those funds on herself. He accepts that he and Mrs. Cupid both have a mutual obligation to maintain the children and he intends to fulfill his responsibility. He contended that Mrs. Cupid has restricted his access to the children and he sought an order for maintenance of the children. On the trial date, he belatedly sought sole custody. The parties are awarded joint custody of the children with primary care and control to the mother and reasonable access to the father.

ISSUES

- [3] The sole issue is what order should be made for Kaleeja's and Kalaya's custody, control, care and maintenance?

ANALYSIS

Issue – What order should be made for Kaleeja's and Kalaya's custody, care, control and maintenance?

- [4] Mrs. Cupid included an application for joint custody, care and control of the minor children in her petition³. She and Mr. Cupid filed affidavits of means in which they chronicled a number of unpleasant interactions between them and other members of their respective families. They included which is disregarded totally.
- [5] The parties were invited to arrange for the children to attend court on 10th April, 2017 which they did. This was solely to gauge whether the children appeared to be suffering from any obvious physical or other trauma arising from the acrimony described in the parents' affidavits. At the hearing, Kaleeja and Kalaya were well groomed and interacted with both parents equally. They presented as normal children

³ Filed on 27th August 2015.

of that age with no signs of physical distress. The parties were encouraged to seek counseling as a family unit to address any underlying emotional issues. They both indicated a willingness to do so.

[6] A trial at a later date, was conducted to determine what arrangements should be made for the children's educational, medical, financial, living and related needs. Both parents relied on their affidavits as their evidence in chief and were cross-examined.

[7] In evaluating their testimonies and making a determination, the court's main concern is the child's best interest.⁴ Neither parent has a superior right or authority to custody or upbringing of a child⁵. The court must take into account the child's financial needs, resources and earning capacity; income, property; physical or mental disability; the manner in which she was being or was expected to be educated or trained by the parents; and the standard of living the family enjoyed before the breakdown of the marriage.⁶

[8] The court must also have regard to the parties' respective ages, incomes, earning capacities, properties and other financial resources; their needs, obligations and responsibilities; whether either suffers from any physical or mental disabilities; their respective contributions to the family's welfare and the length of the marriage. It also looks at the value of any benefit which either party will lose from the breakdown of the marriage.⁶ The court also examines the parties' behavior towards the child and each other to decide what arrangements best cater to the child's needs.

[9] As far as reasonably practicable and just, when making its decision, the court seeks to ensure that the child is placed in the position she would have been had the marriage not broken down,⁶ and if each party had properly discharged his or her financial obligation towards her.

⁴ The Law of Minors Act Cap. 232 of the Revised Laws of Saint Vincent and the Grenadines, 2009.

⁵ Ibid. at section 4 of the Law of Minors Act.

⁶ Matrimonial Causes Act, Cap. 239 of the Revised Laws of Saint Vincent and the Grenadines, 2009 ('the Act'), sections 34(2), 64 and 65; the Law of Minors Act, Cap. 232, of the Revised Laws of Saint Vincent and the Grenadines, 2009, section 12 (1).

Parents' particulars

- [10] Mr. Cupid is 34 years old. He is a civil servant, employed as Assistant Comptroller at the Inland Revenue Department. Mrs. Cupid is also a public servant and works within the Ministry of Education as a social worker. She is 35 years old. Public officers are employed up to at least age 60 unless they resign or are terminated. Both Mr. and Mrs. Cupid are therefore assured of security of tenure unless their current employment ends prematurely. They are expected to contribute to the National Insurance Scheme and from which they will receive benefits at the qualifying age. All things being even, their earning capacity is therefore not in doubt for the foreseeable future.
- [11] Mrs. Cupid currently earns a gross monthly salary of \$4,166.00 while Mr. Cupid grosses \$5263.00 per month. They each own vehicles. Mrs. Cupid is the registered owner of a 1991 Toyota Starlet while Mr. Cupid owns a 2000 Nissan Terrano Regulus Jeep. Mrs. Cupid estimates the value of her vehicle to be roughly \$12,000.00. She ascribed a value of \$50,000.00 to the vehicle owned by Mr. Cupid. Mr. Cupid gave no indication of his vehicle's worth. Mr. Cupid shares ownership of two acres of land with Kitaka Cupid and Nneka Cupid. Mrs. Cupid has no similar holdings.
- [12] Neither Mr. nor Mrs. Cupid provided any details about any bank accounts, investments or other property or resources owned by them. Mrs. Cupid alleged that Mr. Cupid operates a thriving dog breeding business which he denied. He explained that he once kept dogs and sold their offspring, but has since discontinued that activity as they are now too old to reproduce. Mrs. Cupid claimed that her monthly expenses exceed her income by \$2,222.00. She alleged that her outgoings include a monthly sum of \$295.00 paid towards Mr. Cupid's tertiary studies which he has not completed. Mr. Cupid countered that the student loan has been paid off with his assistance and that Mrs. Cupid is in actuality now repaying an earlier loan obtained to pay for wedding related expenses.
- [13] Mrs. Cupid catalogued her monthly expenses in a list exhibited to her affidavit. She claimed that she pays \$750.00 in rent; \$50.00 for telephone; \$150.00 for electricity; \$40.00 towards gas; \$50.00 for water and sewerage; \$130.00 for internet and cable; \$320.00 for vehicle loan; \$110 for insurance and licensing; \$250.00 for fuel and maintenance; \$187.00 for NIS payments and \$106.00 for life insurance;

\$550.00 for groceries and dining out; \$90.00 for entertainment⁷; and \$2395.00 towards student loans, and credit card payments.

[14] She attributed \$530.00 towards the children's needs comprising \$100.00 for medicals; \$50.00 for clothing; \$50.00 for tuition; \$30.00 for school supplies; \$50.00 for lunch; \$200.00 for child care and \$50.00 for toys and games. She did not include a separate figure for their meals. I infer that this sum is incorporated into the family's grocery bill.

[15] Mr. Cupid claimed that his monthly expenses exceed his salary by \$1,061.00. He attributed \$748.00 towards rent; \$321.00 towards a second mortgage or rent; \$100.00 for telephone; \$150.00 for electricity; \$50.00 for water and sewerage; \$460.00 for fuel and maintenance; \$186.00 for NIS, \$121.00 for health insurance and other unspecified insurance; \$400.00 for groceries for the children; \$100.00 for clothing for the children; and \$731.00 towards a personal loan and credit card payments.

[16] Mr. Cupid tendered an assortment of photocopied receipts in respect of groceries, clothing, school and miscellaneous expenses. He did not produce certified copies or originals. They were not stamped as required by law⁸. They were not admitted into evidence and therefore not independently considered as part of the case. Mrs. Cupid did not rely on any such documentary evidence.

[17] I accept that Mrs. Cupid has outstanding student loans and that both parties have credit card debts which they are actively servicing. Neither disputed that the other has such obligations which seem reasonably commensurate for persons of their ages, stage in life and income bracket. They did not disclose any savings although Mr. Cupid alluded to some bank account of Mrs. Cupid's to which he had access for a brief period while she was studying.

[18] I have no reason to doubt that they both maintain bank accounts for the usual transactions attendant with modern lifestyles. They would not have been able to obtain credit card facilities without such accounts. I therefore infer that they do. Their failure to reveal that part of their portfolio attracts a certain

⁷ Videos/DVD, movies and miscellaneous.

⁸ Stamp Act, Cap. 440 of the Revised Laws of Saint Vincent and the Grenadines, 2009.

negative imputation for the simple reason that it appears that they wish to be less than frank with the court. I so infer. While it appears that they might be both a little over-extended financially, they can be expected to pay off those debts within the short to medium term by taking simple steps to bring some of their recurrent expenditure to more realistic levels.

[19] Mr. Cupid acknowledged that he has not contributed financially to the children's maintenance around March 2016. He reasoned that he takes them shopping for groceries each month and is confident that his purchases adequately cover their nutritional requirements for that period. Each parent pays the school fees for one child. They also share the expenses for the girls' clothing. Mr. Cupid recounted that he had sole care, control and responsibility for the children when Mrs. Cupid travelled abroad in 2013 to pursue studies leading to her Masters, and again in 2015 when she was out of the State. Kaleeja was 2 years and nine months at the time and Kalaya was only 10 months. Mrs. Cupid acknowledged that he did. There appears to have been no major issues regarding how he handled the family's affairs during that period. Notably, the father and children travelled to be with Mrs. Cupid at one point. From their collective account the family was functioning as a harmonious unit.

[20] Since the separation the parents' relationship has deteriorated. Both Mr. and Mrs. Cupid referred to hostile interactions between them just before the marriage ended and since then. This is not unusual for former spouses and is usually an expected part of the adjustment. Mr. Cupid is of the opinion that Mrs. Cupid is an unfit mother. He submitted that she once threw a bottle at him in the children's presence and this renders her unfit to have custody. He also alluded to an instance where she visited his workplace and accosted him because he had collected one of the children from school without her prior knowledge and consent.

[21] Mrs. Cupid admitted that she used some choice words against him at that time in the presence of his co-workers and the child. She recalled telling him that he is abusive, does not take care of his children and is trying to give everyone the impression that she is a monster and he is the perfect father. It is regrettably that Mrs. Cupid was unable to restrain herself in those circumstances. While an isolated incident might not unduly affect her child, repetitions of this type of behavior could have serious deleterious effects. Mrs. Cupid was very contrite and expressed a desire to work with Mr. Cupid to

blend the children's and their lives in a seamless and conflict-free manner. She committed herself to working with Mr. Cupid to facilitate the children's holistic development. Mr. Cupid was not as accommodating in his professions.

[22] Mr. Cupid recounts a number of instances where he said that Mrs. Cupid was less than civilized. It seems to me that Mr. Cupid sometimes escalates the situations by goading the children and over-exaggerating. A more even handed approach would serve the family better.

[23] Neither parent reported that they or the girls were suffering from any physical or mental disabilities. I infer that there are no such issues. The family has enjoyed what seems to have been a reasonable comfortable standard of living. From all of the evidence, it seems that they each contributed equally to the family's well-being up until recently when Mr. Cupid withdrew his direct financial support. I am satisfied that he has made attempts to make tangible contributions to the children's needs. However, it might be that his efforts duplicates Mrs. Cupid's in some regards as there was no evidence of collaboration of efforts especially with respect to the purchase of groceries, of which there is no such evidence.

[24] Apart from anecdotal evidence, the parties gave no indication about the standard of living they enjoyed during the marriage or any benefit which either would lose after the breakdown. Mr. Cupid earns somewhat more than Mrs. Cupid. While her current liabilities limit her ability to accumulate substantial reserves, with careful financial planning and management she should be able to correct that in the short term. Mr. Cupid did not elaborate on his current living arrangements and he did not say what if any payments he made towards accommodation. Apart from their oral testimony there was no independent credible evidence which supports or refutes their professed monetary limitations. I conclude that they are evenly matched.

[25] Kaleeja and Kalaya live with their mother in a two bedroom apartment at Prospect. Mr. Cupid resides with his parents at Belair. Mrs. Cupid testified that Mr. Cupid contributed \$400.00 towards the children's maintenance between November 2015 and February 2016. Mr. Cupid confirmed this. Mrs. Cupid alleged that she has had sole financial responsibility for the children's maintenance since February

2016. Mr. Cupid countered that he decided to withhold payment of the \$400.00 to Mrs. Cupid because of the constant annoyance from her that it was inadequate to take care of their needs and her constant travels to the United States because he saw it as his duty as father to ensure that his children are the ones benefitting from his financial contributions.

[26] The older daughter attends Primary School while her sister is enrolled in Day Care. There is no evidence that either of them receives an income or owns any property or other financial resources. I conclude that they do not. They are not likely to be gainfully employed for at least another 12 to 14 years respectively. Mr. and Mrs. Cupid did not express any particular desires regarding aspirations for the girls' educational goals. Like most parents, presumably they will encourage them to attain their highest potential.

[27] It is regrettable that the parties are unable to approach the rearing of their daughter in a more collaborative manner. It almost appears that Kaleeja and Kalaya are at times caught up in a mini emotional tug of war. Such conduct is to be discouraged. I remain optimistic that with appropriate interventions these upheavals will decrease in the near future.

[28] She testified that Mr. Cupid continues to enjoy full and uninterrupted daily access to the children and sleepovers every other weekend. She stated that he has offered them light groceries, snacks and juices periodically. She requested that he be required to make a fair financial contribution towards their maintenance.

[29] Mr. Cupid complained that he does not get to spend sufficient time with either daughter. He accused Mrs. Cupid of preventing him from visiting the children outside of the agreed weekend visits and he expressed a desire to spend more time with them. Mrs. Cupid rejoined that she is equally keen for Mr. Cupid to share more time with the children. This common desire augurs well for the children's well-being and is to be encouraged.

[30] Mr. Cupid criticized Mrs. Cupid for what he described as her insensitivity towards the children's wishes to spend more time with him. He testified that he cried with Kaleeja when she had difficulty separating

from him after such visits. He recounted an occasion when he took the children to his home after picking them up from school. He explained that Mrs. Cupid and her father came to his home to collect the children and refused to leave without them. He testified that Mrs. Cupid and her father started cursing in the children's presence. He characterized this conduct as a lack of respect and self-control by Mrs. Cupid and deficiency as a parent.

[31] Mr. Cupid also described hearing Mrs. Cupid speaking to the children in a verbally abusive and aggressive manner by shouting her 'shut up, shut your damn mouth, you're too noisy.' He stated that he intervened and asked Mrs. Cupid to allow the child to leave with him and as he took her toward the gate Mrs. Cupid threw an empty ginger ale bottle at him. None of this was put to Mrs. Cupid. It is therefore ignored.

[32] Mr. Cupid described other incidents which he claimed paints Mrs. Cupid as a very intemperate, antagonistic, ignorant, despicable, harsh, unkind and selfish. He explained that in February 2016 Mrs. Cupid travelled abroad and left the children in her mother's care without consulting him. He went to the Family Court and eventually took the children. Mrs. Cupid's decision not to consult him if this took place, was a mistake and demonstrated bad judgment. Ideally, she should have consulted him and arrived at a joint solution to their custody and care for that period, and given him the opportunity to care for Kaleeja and Kalaya. This does not make her unfit to be a parent.

[33] Having seen both parties, it is obvious that there is considerable tension between them. Mr. Cupid appeared to be a ball of emotions which he had difficulty keeping in check both in and out of the witness chair. Mrs. Cupid exhibited a measure of calm which reflected acceptance of and resignation to the current state of affairs between them. Counseling would be ameliorative.

[34] Both parties evinced a desire to work together in the best interests of the children. I believe that they are both genuine. They should be able to forge a meaningful and cordial relationship devoid of rancor if they put aside the negativity from the past. While they have experienced turbulent and unsavoury interactions, these incidents do not constitute deal breakers or insurmountable hurdles to stability. If

they both approach the job of raising the children with the level of maturity befitting their age and stage in life they will be able to accomplish this.

- [35] Mrs. Cupid submitted that Mr. Cupid is in a better financial position at the end of the month. She relied on the case of **Carmalie Patricia Browne v Chesley Augustus Browne**⁹ in which an award of \$200.00 was made in respect of each child. She contended that \$400.00 per month for both children is inadequate and that Mr. Cupid should pay between \$350.00 and \$700.00 per month towards each child's maintenance. In her final submissions, she resiled somewhat from that position and requested that at least \$400.00 per child be awarded.
- [36] She argued further that Mr. Cupid should be required to pay her retrospectively for the amount that should have been paid before February 2016. Mrs. Cupid submitted that the children should continue to live with her with liberal access to Mr. Cupid including overnight stay with him every other weekend. She contended that Christmas holidays be alternated between them and summer break weeks shared equally.
- [37] Mr. Cupid argued that while there are several authorities¹⁰ supportive of the view that it is better for small children especially little girls to be brought up by their mother this does not imply that a father cannot raise a girl at such a tender age. He contended that a father can equally provide and assume the role of a mother to minor children and that he has done this when Mrs. Cupid left the state. He urged the court to grant him custody.
- [38] Mr. Cupid contended further that access is the basic right of the child and 'no court should deprive a child of access to either parent unless it was wholly satisfied that it was in the interests of that child that access should cease'.¹¹ He submitted that he has experienced much difficulty getting an opportunity to spend time with his children. He reasoned that Mrs. Cupid has had the children with her the majority of

⁹ SVGHCV1996/346

¹⁰ Including A v A [1965] 8 WIR 247.

¹¹ M v M (child Access) [1973] 2 All ER.

the time but he is now desirous of getting sole custody of the minor children with care and control and liberal access to Mrs. Cupid, during which she will be able to bond with them. He also asked that Mrs. Cupid be ordered to make periodic payments to him for the minor children. Mrs. Cupid has had the benefit of Mr. Cupid's non-financial support of the children even after he stopped making cash payments to her. This cannot be discounted. In the premises, it would not be just to order Mr. Cupid to pay arrears. I hasten to add that Mr. Cupid was presumptuous in determining what should be purchased without consulting with Mrs. Cupid. Such an approach is unacceptable and inimical to harmony and proper domestic management.

[39] I am satisfied that the Kaleeja's and Kalaya's reasonable needs amount respectively to \$500.00 each month and that the parents have the capacity to contribute one half of that amount. Kaleeja and Kalaya are entitled to enjoy a close and fulfilling relationship with their mother and father. This can be facilitated by frequent contact with both. No evidence has been adduced that leads me to conclude that either parent is unfit. They both obviously love their children dearly. In my opinion, their ongoing conflicts arise from underlying hurts and unresolved issues with each other which can be ameliorated through family counseling.

[40] In the circumstances, it seems just and appropriate to make an order for joint custody with primary care and control to the mother and liberal access to the father. Both parents will share equal responsibility for the children's financial and related needs.

ORDER

[41] It is declared and ordered:

1. Mr. Kaschaka Cupid and Mrs. Taja Cupid shall have joint custody of the minor children Kaleeja and Kalaya with primary care and control to Mrs. Cupid. Reasonable access is granted to Mr. Cupid to include visitation every 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.
2. Mr. Kaschaka Cupid shall pay to Mrs. Taja Cupid as maintenance \$250.00 each for Kaleeja and Kalaya until they respectively:

(a) complete their secondary school education or local college; or

(b) attain 18 years;

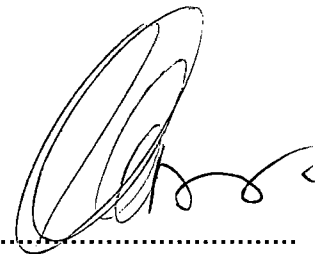
whichever occurs later; such payments to commence on 28th April, 2017, and to continue each and every month thereafter on the last Friday of each month, unless varied or either child sooner dies.

3. (a) Mr. Cupid is directed to reimburse Mrs. Cupid on a case by case basis, 50% of the expenses associated with Kaleeja's and Kalaya's reasonable future medical and educational needs. Mrs. Cupid shall provide Mr. Cupid with copies of all invoices and/or receipts in respect of such expenses, as the basis for computing such reimbursements.

(b) Mr. Cupid's obligation to pay half of the educational and medical expenses for each child includes all such expenses incurred until they respectively attain the age of 18 years.

4. Mr. Kaschaka Cupid shall pay agreed costs of \$750.00 to Mrs. Taja Cupid.

[42] I would like to thank counsel for their submissions.



Esco L. Henry
HIGH COURT JUDGE