

IN THE EASTERN CARIBBEAN SUPREME COURT  
IN THE HIGH COURT OF JUSTICE  
COMMONWEALTH OF DOMINICA

(CIVIL) -

DOMHCV2018/0056

BETWEEN:-

RKJ

Claimant

And

ABG

Defendant

Appearances:

Miss Danielle Wilson for the Claimant

Mr Geoffrey L Letang for the Defendant

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2018: March 9, 13,19  
April 16,24  
May 11,16  
August 13,28  
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[1] STEPHENSON J.: This is essentially a custody battle in the Commonwealth of Dominica over little Miss ASKJ born<sup>1</sup> born of the body of a Miss AZB<sup>2</sup> now of blessed memory on the 3<sup>rd</sup> May 2015. The claimant is the **father of the said child (hereinafter referred to as “the father”**. The defendant is the

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<sup>1</sup> ASKJ'S birth initially recorded in the sole name of her mother and her father's name was added to her birth certificate by the usual procedure available for such action

<sup>2</sup> AZB died on the 23 February 2018.

sister of the deceased mother that is she is the maternal aunt of the little girl (hereinafter referred to as “the aunt”).

- [2] This trial was conducted in closed court and the judgment was handed down in chambers. The judgment is to be reported in this anonymised form only. It would be a contempt of court for any person to identify the child or any of the parties or their wider families.
- [3] The question which arises in the case at bar is not what the essential justice of the case requires but what the best interest of the child demands.
- [4] These proceedings commenced with an application for the issue of Habeas Corpus brought by the father of ASKJ.
- [5] The issue to be determined by this court basically boils down as to whether this court should order that ASKJ is to remain in the care and control of her aunt and that she be allowed to return to and reside in Anguilla or whether she should remain in Dominica in the custody care and control of her father.
- [6] ASKJ was born to the father and AZB on the 3<sup>rd</sup> day of May 2015 in Dominica. Her parents were not married. Prior to her birth and after her birth her mother was ill having been diagnosed with Sickle Cell and a heart defect.
- [7] Prior to her death the mother handed care and control of her daughter to the aunt the defendant in this matter, this was due to her aforementioned ill health<sup>3</sup>.
- [8] ASKJ therefore has been in the care and control of her aunt since she was two months and she resided out of Dominica in Anguilla with her and her husband in their family home. The maternal grandmother it would appear spends a significant time in Anguilla with her daughter and granddaughter.
- [9] RKJ, the father, formerly worked at Sea, **prior to and subsequent to his daughter’s birth** and has since January 2018 returned to Dominica where he has obtained employment in two jobs, one with a

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<sup>3</sup> AZB suffered from Sickle Cell Anemia and Heart Disease.

telecommunication company as a technician and one as a Taxi Driver. It is **the father's** contention that he returned to Dominica to take up employment and residence in order to obtain and have custody of his daughter. It is noted that this is a decision he says was taken prior to the **AZB's** death.

[10] The father now seeks sole custody of his daughter and seeks to have the aunt return his daughter to Dominica to him. The aunt contests his application and contends that she and her husband are the most suitable persons to have care and control of ASKJ primarily on the ground that they have been taking care of her solely from the time she was two months old and that they have and intend to continue to look after her best interest and provide care for her and further that the father has played little or no role in the **ASKJ's life** to date.

[11] The aunt contended that her sister gave her an affidavit giving her custody of the infant child. It was agreed in chambers by both Counsel Miss Wilson and Mr Letang that this affidavit died with the mother and is of no legal force at this time.

[12] This matter was first dealt with by an *ex parte* application brought by the father seeking an order for Habeas Corpus against the aunt for her to produce the body of the child to him as he was denied access to her and that the aunt refused to hand over his daughter to him. There was also an injunction order prohibiting the aunt from taking the child out of the jurisdiction<sup>4</sup>.

[13] The child was taken back to Anguilla **prior to the court's order** and was returned to Dominica and on the 16<sup>th</sup> April 2018, the aunt and the infant child ASKJ appeared before the court in chambers.

[14] Every effort has been made by the Court with the assistance of Counsel representing the parties and three Welfare officers, Mr Wallace, Mrs Steadman and Miss Baron to have the parties come to a consent agreement regarding custody and access. It should be noted that on the 16<sup>th</sup> April 2018 and on the 19<sup>th</sup> April 2018 this matter engaged the attention of the Court and the parties along with all four grandparents being present. Each set of grandparents in support of their children both sets wanting this Court to make a custody order in favour of their child.

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<sup>4</sup> Orders were made *ex parte* on the 9<sup>th</sup> March 2018

[15] There has been no settlement between the parties so therefore the Court has to make a decision as to the custody, care and control of Ayanna.

[16] The Court having been now seised of the circumstances and situation as it relates to the child is now required in my view to ensure that adequate and suitable arrangements are made as it regards ASKJ as the Court is concerned primarily with the best interests of the said child.

[17] It was decided to fast track the matter and have a full trial which would allow a full ventilation of the issues and evidence. Each side filed witness statements in addition to the affidavits which were filed in the matter. The court heard from the father, his father and his aunt on behalf of and in support of the claimant. The Court also heard from the Aunt, her mother and family friend on behalf of the defendant.

[18] In coming to its decision, this court has considered the contents of the affidavits filed by both parties with the exhibits and the witness evidence received. The Court has also had sight of and taken into consideration the two Home Study Reports one by the Welfare Department here in Dominica and one by the Welfare Department in Anguilla. Both of these reports have sought to provide this court with the living situation at the father and of her current living situation with her maternal aunt and uncle in Law in Anguilla. The Court notes that both reports speak positively as to the suitability of both homes for the little one. The Psychologists report was also taken into consideration.

[19] The undisputed facts in the case at bar is as follows:

- i. ASKJ is a very young female child having turned three on her last birthday;
- ii. She has been in the custody care and control of her aunt and her husband from the tender age of 2 months;
- iii. The mother of the child is now deceased and before her death **“gave” custody care and control to her sister and her husband who lives outside of Dominica;**<sup>5</sup>
- iv. ASKJ was born out of wedlock, in that her parents were not married so the question of custody is not being dealt in the situation of divorce or separation of the parents of the child;
- v. **The Claimant is ASKJ's biological father and he now lives in Dominica** at the home of his parents;

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<sup>5</sup> It is noted that this arrangement was not made with the consent of the Father as he has stated in his affidavits however it is an arrangement that he agreed with in that he visited with the child while she was **in the defendant's custody.**

- vi. The aunt has provided adequate and suitable care for ASKJ and in fact has established a mother (and father through her husband) relationship with ASKJ, in other words ASKJ has been living in the situation and circumstances of a nuclear family;

[20] This judgment is being delivered at the conclusion of the trial in the matter. I have read and reviewed and analysed the many affidavits from parties, the witness statements and submissions filed by both sides. I have also had the opportunity to hear the viva voce evidence of the parties and their witnesses and have been able to observe their demeanor and attitudes in court and have drawn my conclusions in that regard.

[21] The restatement of some of the facts of this case is limited to those that are considered by the court to be strictly relevant to the determination of the question as to what is the best interest of the child ASKJ.

[22] There were social reports filed by both the welfare departments in Dominica and in Anguilla. The social workers in each island paid home visits to the homes of the parties and provided the court with a report as to the physical environments where ASKJ is expected to be housed. I have also reviewed the report prepared by the consultant Psychiatrist. The persons who prepared the reports did not appear at trial and were not cross examined.

[23] From the evidence led in this case I find the following facts. When the mother was pregnant with ASKJ she initially lived with her parents at Salisbury and then in Anguilla with her sister. (The aunt).

[24] ASKJ was born in May 2015 it therefore means that her mother would have become pregnant in or about the month of August 2014. **A perusal of the mother's passport copies of which were exhibited by the aunt show that the mother travelled to Anguilla in August 2014. She did return to Dominica in December 2014 for what must have been a short period as she was noted to have registered in the Ante Natal Clinic of Anguilla Health Authority in Anguilla in January 2015. The notes reveal that she also attended the clinic in February 2015.**

[25] **It is also noted that the mother's time for her stay in Anguilla was extended in January 2015 to March 2015.**

[26] **All of this evidence was extracted from the copies of the mother's passport and her Ante Natal Clinic cards** which were exhibited by the aunt in support of her evidence that the mother, her sister spent a significant period of her pregnancy in Anguilla and not in Dominica as the father sought to establish in his case.

[27] The father and his witnesses gave evidence that the mother was in conflict with her family when she got pregnant. They sought to persuade this court that the mother spent her entire pregnancy with their family in Kings Hill up until her 8<sup>th</sup> month of pregnancy when she was removed from their home by the **mother's mother**.

[28] It is clear to this court that this was not true. In fact the evidence which has been accepted by this court is that after she became pregnant the mother travelled to Anguilla whilst there she attended clinic and there was cause for her the time she was permitted to be on that Island to be extended. The mother therefore could not have been living with the **father's family as they sought to say**.

[29] **I also accept the aunt's evidence and that of her witnesses that the mother returned to Dominica in the last trimester of her pregnancy and initially went to the home of the father where she stayed for three weeks until her mother returned from Anguilla when she picked her up and took her to her family home in Salisbury to await the birth of her baby.**

[30] **As it regards maintenance. It is the father's case that he has maintained his daughter ASKJ "throughout her life"**<sup>6</sup>. The father contended that he started to make payments from his daughter's birth and that he could not however, under cross examination give an approximation of the payments that he had made to the mother.

[31] Under cross examination the father, who it was observed was very slow and hesitant in answering the questions put to him eventually admitted under cross examination he said that **"from March to August is about five to six months. I have given her only \$150.00 cash to the defendant"**<sup>7</sup>.

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<sup>6</sup> Paragraph 15 of the Father's witness statement

<sup>7</sup> Verbatim evidence of the Father under cross examination

[32] The father admitted when pressed by Counsel Mr Letang under cross examination that in February he did not give the aunt **any money. He also said that “I did not give the defendant any monetary contribution toward the maintenance of the child”**<sup>8</sup>. This witness also said that he gave the aunt pampers, water, snack, juice and cereal for the baby and that he did so three or four times. He later again when pressed by Counsel Letang that he had not given the aunt any groceries in the month of August and he could not recall give groceries in March or April 2018.

[33] It was very clear to this court that the father was not being entirely truthful to this court about maintaining his daughter. Having had the opportunity to observe the **claimant’s witnesses’** demeanor and based on the contents of their evidence that and looking and examining some of the silent evidence produced to the court in forms of documents this court has come to the ineluctable conclusion that these witnesses were not exactly truthful and in the circumstance no regard or weight will be given to their evidence.

[34] In his witness statement the father said that he never consented to his daughter being brought to Anguilla to live with the defendant<sup>9</sup>. **Yet exhibited to the aunt’s affidavit are copies of screen shots of his conversation with the aunt where he went as far as consenting to the adoption of his daughter and interestingly this was before the mother had passed. It is noted that no question was asked there was no challenge by the father regarding these exhibits. This in the court’s mind is another instance of the father not being entirely truthful. This leaves this court to wonder as to what really is his desire.**

[35] All told I have reviewed all the notes of evidence adduced in the case, the affidavits with their exhibits, the witness statements and the documentary evidence and having done so this court has concluded that the aunt’s evidence is to be believed similarly the evidence of the witnesses brought by the aunt.

## THE LAW

[36] A convenient starting point is the Guardianship of Infants Act<sup>10</sup> which makes provision as to guardianship of infants

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<sup>8</sup> *ibid*

<sup>9</sup> See paragraph 16 of the Father’s witness statement

<sup>10</sup> Chapter 37:04 of the Laws of the Commonwealth of Dominica

*“Upon the death of the father where essentially the mother shall be the guardian of the infant either alone when no guardian has been appointed by the father or jointly with any guardian appointed by the father. When no guardian has been appointed by the father, or if the guardian or guardians appointed by the father is or are dead or refuses or refuse to act, the Court may, if it thinks fit, from time to time appoint a guardian or guardians to act jointly with the mother.”<sup>11</sup>*

[37] Learned Counsel Miss Wilson attempted to persuade the Court that pursuant to the terms of the Interpretations and General Clauses Act<sup>12</sup> that the court should substitute the word father with mother. Counsel was however very easily persuaded as to the error of her thinking.

[38] Section 4 of the Act<sup>13</sup> states

*4. (1) The mother of any infant may by deed or will appoint any person or persons to be guardian or guardians of the infant after the death of herself and the father of the infant (if the infant is then unmarried), and, where guardians are appointed by both parents, they shall act jointly.*

*(2) The mother of any infant may by deed or will provisionally nominate some fit person or persons to act after her death as guardian or guardians of the infant jointly with the father of the infant,*

*(3) In the event of guardians being unable to agree upon a question affecting the welfare of an infant, any of them may apply to the Court for its direction, and the Court may make such order or orders regarding the matters in difference as it thinks proper. (emphasis mine)*

*...”*

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<sup>11</sup> Ibid section 3

<sup>12</sup> Chapter 3:01 of the Laws of the Commonwealth of Dominica

<sup>13</sup> ibid



[39] I understand that the section 4(2) of the Act is saying that the mother may leave a will or deed addressing her wishes regarding the custody of her infant child after her death however that custody arrangement will have to be in conjunction with the custody that vests in the father as the section quite **clearly says so** “...The mother of any infant may by deed or will provisionally nominate some fit person or persons to act after her death as guardian or guardians of the infant jointly with the father of the infant”... **(emphasis mine)**

[40] It was agreed by Counsel representing the parties that there was no deed or will left by the mother appointing anyone guardian of the infant.

[41] The section goes onto say

*“... and the Court, after her death, if it is shown to the satisfaction of the Court that the father is for any reason unfitted to be the sole guardian of his children, may confirm the appointment of such guardian or guardians, who shall thereupon be authorised and empowered so to act as aforesaid, or the Court may make such other order in respect of the guardianship as it thinks right.”*

[42] It would appear to this Court that for the father not to be the sole guardian of the child the Court would **have to be persuaded that the father is “unfitted”** to be father. Is that the case in the matter at bar? It is noted that there is no such allegation in the matter at bar.

[43] In what has been called a landmark decision in Family Law proceedings in 1970, in the case of *J –v- C*<sup>14</sup> the court decided on the **issue of the weight to be placed on the child’s welfare in upbringing disputes** between parents and third parties, as the court in that case was called upon to decide on the competing claims of the natural parents and the foster parents of a child. This case also established that section 1 of the UK Guardianship of Infants Act 1925 was not confined to disputes between parents but was applicable to cases between parents and strangers. That is the welfare of the infant is of paramount consideration even in disputes arising between parents and strangers and that parents **rights and interest could be outweighed by the child’s welfare requirements.**

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<sup>14</sup> [1970] AC 668

[44] The questions arise as to where and with whom ASKJ should make her home; specifically should she be raised by her father or by her maternal aunt and her husband with whom she is currently living.

**ASKJ has been in her Aunt's care from the tender age of two months having been placed in her aunt's care by her mother.** The aunt and her husband have played a key and pivotal role in the life of the child. It is clear to this court that ASKJ is extremely attached to her aunt who she happens to call mummy.

[45] It is also clear to this court that from observing the parties that ASKJ is not very familiar with her father. During the course of the hearings ASKJ was allowed to move around the court room freely (both when the court was sitting in the Jury Room and in the new court room). It was noted that she never really reached out to her father. It was observed that she responded to the welfare officers in her case, she even responded to overtures of friendship from the judge on some occasions.

[46] Likewise I could not help but notice that there was little or no effort made by the father or his parents or aunty to reach out and engage the child.

[47] Be that as it may however, it is incumbent on this court to come to a conclusion as to who shall have physical custody of ASKJ. It is absolutely necessary to remember and keep foremost in my mind, that the interest of this child is the most important element of this case.

[48] In considering whether or not to make an order with respect to the child, the court must not make an order unless it considers that to do so would be for the better for the child than making no order at all.<sup>15</sup>

[49] The court is concerned with achieving the best possible solution in each individual case and involves different kinds of value judgments and evaluations.

[50] **In all matters concerning the welfare and the upbringing of children, the court's paramount concern is the welfare of and what is in the Child's best interest. In the case of Re.S (BD) –v- S(DJ) Children's**

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<sup>15</sup> Halsbury's laws of England Volume 9 5<sup>th</sup> Edition at para 278

care and control<sup>16</sup> Omrod LJ said “The question is not what the essential justice of the case requires, **but what the best interest of the child would require**”

[51] This is known as the welfare or paramountcy principle. Our laws in Dominica and indeed in our jurisdiction at large do not make provision regarding the matters to be taken into consideration in matters such as these.

[52] In the case of *McKee v McKee*<sup>17</sup> the Privy Council in discussing the issue of custody and removal of an infant from one country to another said that the stated that “In questions of custody the welfare and happiness of the infant is the paramount consideration, to which all **others yield, ...**”

[53] The Courts in our jurisdiction and in our region<sup>18</sup> have adopted and applied the law and practice in England and the 1989 Children’s Act of the UK which provides a useful list of matters which should be considered by the Court as follows:

1. the ascertainable wishes and feelings of the child concerned (considered in the light of his age and understanding)<sup>5</sup>;
2. her physical, emotional and educational needs;
3. the likely effect on him of any change in his circumstances;
4. her age, sex, background and any characteristics of his which the court considers relevant;
5. any harm which he has suffered or is at risk of suffering;
6. how capable each of his parents, and any other person in relation to whom the court considers the question to be relevant, is of meeting his needs;
7. the range of powers available to the court under the Children Act 1989 in the proceedings in question<sup>6</sup>.

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<sup>16</sup> 1977 Fam 109 at 114, [1977] 1 All E R 656 @ page 660

<sup>17</sup> [1951] AC 352, [1951] 1 All ER 942

<sup>18</sup> *Meyer –v- Meyer* (1962) 4 WIR 220 (Barbados), *Martha Josefina Ramirez Torres v Pedro Miguel Castellanos Basto* (BVIHMT 2012/0041), *Brathwaite Jr. v Brathwaite* (BVIHMT 2011/69), *Alvin Hodge v Marguerite Denise Hodge* 33/2002,

[54] These considerations are known as the 'welfare checklist'. I hasten to say that this Act does not apply per se to Dominica but it does provide a useful list of factors to be considered with aim of ensuring that a decision is made in the best interest of the infant.

[55] In the case of *Brathwaite –v- Brathwaite*<sup>19</sup> Madam Justice Olivetti found guidance in the words of **Justice Susie D’auvergne in the St Lucia Case of Alvin Hodge v Marguerite Denise Hodge**<sup>20</sup>, where the learned judge made reference to the UK Children Act section 3 noting “**much weight is now given to the child’s sex, age, his physical, emotional and educational needs, the likely effect on the child with regard to any change in his circumstances and any harm he or she may be at risk of suffering as a result of the change.**” Thus, it is apparent from these provisions and the authorities cited by both counsel that each case must in the end turn on its own particular circumstances. I too am guided by and adopt these words in my considerations.

[56] I also take into consideration the provisions of the United Nations Convention on the Rights of the Child of which Dominica is a signatory and which has been ratified in this country.

[57] The Convention on the Rights of the Child states that the best interests of the child shall be a primary consideration in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies. <sup>21</sup>

[58] Joint custody is usually considered to be an order that best reflects the best interest of the minor child whose cases are considered by the Courts. The decision as to custody is not made in a vacuum. Due consideration has to be paid to the existing legislation and precedents of law in the subject area.

[59] There is, in my considered view, no perfect solution. There are a number of factors to be considered by the court in making any decision regarding the custody, care and control of a minor child. The case at bar is no different and is in fact fraught with distinct features which makes this decision all the more difficult. It is to be noted that most of the custody decisions coming to the attention of the court is

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<sup>19</sup> Op cit

<sup>20</sup> Case 33/2002 St Lucia

<sup>21</sup>Re: Article 3:1 of the *UN Convention on the Rights of the Child (UN General Assembly; 20 November 1989)*

between the biological parents of the child and where the opposing parties are usually resident in the same country or jurisdiction.

[60] On the issue of jurisdiction there is no doubt that this court is clothed with the jurisdiction to deal with this application because all the parties are citizens of the Commonwealth of Dominica and the father is ordinarily resident in Dominica.

#### DISPOSITION

[61] **I have come to the considered view that to remove ASKJ from her aunt's custody and to place her in her father's custody would be to remove her from all the familial support she has had before and after her mother's death. This to my mind would not be in her best interest.**

[62] Unlike some of the material I have reviewed ASKJ is too young to verbalize her feelings about her **mother's death. I accept the psychologist's** opinion that even though ASKJ is too young to fully **comprehend everything she will be impacted by the death or loss and "that her inability to fully** understand death at this early stage of development **does not mean that she is not impacted by it."**<sup>22</sup>

[63] The father has said that he gave up his job at sea to be here in Dominica for his daughter. I do not necessarily accept this as being true as under cross examination he consistently made statements that were different from the statements he made in his affidavits and witness statements. Further, his actions further belie his commitment to his daughter in that he has failed to consistently make proper provision for her whilst trying to tell this court that he supported her for her entire life. Even his efforts whilst she was here in Dominica have been less than are reasonably acceptable and indeed symptomatic of his commitment or rather his lack of commitment to his daughter.

[64] This is not necessarily so. The court has to consider the fact that ASKJ has been in the care and control of her aunt **and her husband since she was two months old; her aunt's home in Anguilla is the** surrounding that she knows and has become accustomed to. This is one of the crucial factors to be considered.

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<sup>22</sup> Report of Shoyea –Gaye Grant Massicote AA., BSc., Msc. Licenced Clinical Psychologist

[65] There is the supposition and in fact the submission by learned Counsel Miss Wilson that the father has prima facie legal custody of his daughter. There is also the supposition that the father who is the surviving natural parent of the child creates the presumption in his favour. I do not intend to disregard **the father's natural ad biological roles however, I am compelled to consider it along with the other** welfare factors keeping in mind that the decision which is to be made is the one that is in the best interest of ASKJ.

[66] **The fact that ASKJ's mother during her lifetime took steps for her sister and brother in law to have care** and control of her baby is a factor to be taken into consideration also to be given its appropriate weight.

[67] **Another factor to be taken into consideration in determining what is in ASKJ's best interest is looking at** what is the obvious attachment and bond she has with her aunt.

[68] From the facts adduced in this case which facts have not be disproved in anyway, the aunt and her husband have had the guardianship primary care and control of ASKJ since she was two months old.

[69] I make reference to the case of Re: E-R (Child arrangements)<sup>23</sup> which has provided this court with invaluable guidance in considering the case at bar. In this case the terminally ill mother of the child who was born out of wedlock lived with a couple in the last years of her life and she actually left a testamentary document leaving the couple with whom she and the child lived as the testamentary **guardian of the child. The father of the child sought to have custody of the child and the "testamentary guardians" opposed his application.**

[70] The court examined in great detail the factors which ought to be considered by the court in deciding whether or not custody of the child should vest in her biological father. LJ Cobb addressed the issue of attachment which issue was also raised and addressed in the report of the Psychologist in the case at bar.

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<sup>23</sup> [2016] EWHC 805 (Fam)

[71] In the case at bar deciding ASKJ shares a very close bond with her aunt who along with her husband has been providing for her needs as an infant and toddler with support from the maternal grandmother. There is clearly an obvious sense of attachment between the aunt and ASKJ. In fact, like Mr and Mrs H in the Re: E R Case<sup>24</sup> , it can be said that the aunt and her husband have become the psychological parents of ASKJ a fact which this court takes notice of.

[72] Based on the evidence which has been adduced in the trial of this matter and which this court accepts **to be true ASKJ's physical and emotional needs are being well met by her** aunt and her husband. Further, there are basic routines which have been set up and established in her life. There is evidence **before this court of a care plan in that she has been enrolled in preschool and the aunt's affidavit and** the social welfare report from Anguilla speaks to activities which ASKJ has been engaged in and which she has come to know.

[73] The father on the other hand says he has prepared for her physically but he has failed to even suggest to this court as to what plans he has for his daughter which again is evidence of his lukewarm approach to her welfare and well being.

[74] I have no doubt that there are serious and progressive care arrangements in place for little ASKJ by her aunt and her husband.

[75] **To remove ASKJ from her aunt's care would mean a change in surroundings which may well hinder her** developmental progress as a toddler who has to cope with the loss of her mother in her own way. I note that in her report the psychologist Mrs Grant Massicote **said it is imperative for ASKJ's well being** that the bond that she has developed with her aunt and uncle be preserved and that they continue to play an active role in her upbringing. I accept this.

[76] It is noted in her report that Mrs Grant Massicote also addressed the issue of the importance of ASKJ forming a bond with her father, however, based on what has been presented to this court and the attitude of the father, I am not at all impressed that he is really interested to go the full and extra mile to establish a meaningful relationship with his daughter at this important stage in her life.

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<sup>24</sup> Op cit

[77] **In coming to my conclusion as to what is in ASKJ's best interest I have carefully weighed all the** evidence and issues presented by both parties herein the welfare reports and the psychologists report. I have considered the welfare check list as is relevant to the facts and circumstances of this case and I have reached the conclusion that it is in the best interest of ASKJ that she remain with her aunt and her husband and that her aunt be permitted to remove her from Dominica and she can take her to reside in Anguilla.

[78] I do not propose to terminate the parental rights of the father; in fact I wish to stress the fact that it is imperative that the father must be a **part of ASKJ's life. It is my view there should be joint custody of** ASKJ between her father and her aunt and uncle with care and control to the aunt and uncle and liberal access to the father and I will so order.

[79] It is important that ASKJ knows who her father and her paternal relatives are and I strongly urge the parties herein once again to come to a mutual agreement as to access of ASKJ. It is also important that the father has and maintains regular contact with ASKJ. I encourage the father to reach out to his daughter and communicate with her by sending cards and pictures and gifts.

[80] In the event that there is no agreement as to access to ASKJ by the father within 7 days hereof this court orders as follows:

- (i) That ASKJ shall spend every other Christmas with her father commencing Christmas 2019;
- (ii) That ASKJ shall spend one half of her Easter and Summer holidays with her father commencing Easter 2020;
- (iii) That ASKJ shall speak to her father via Skype, WhatsApp or other Video link at least twice a week during Mondays to Friday and once on every weekend.
- (iv) The aunt **is ordered to keep the father abreast of ASKJ's progress by sharing with him her** medical reports, her school reports and information on all significant occurrences in her life including pictures;

[81] The father informed the court that he works two jobs and that he earns the sum of XCD\$85.00 a day plus overtime pay and based on this he shall pay the monthly sum of XCD\$500.00 to the aunt as maintenance for ASKJ and he shall pay one half of all her health expenses. The aunt shall submit to



the father all bills, receipts and or invoices in this regard and the father shall pay one half of all amounts due and owing or that have been paid within 28 days of receiving same. It is suggested to the parties that an account be opened in their joint names at a mutually agreeable bank and that the aunt be issued a debit card that will facilitate her withdrawing the monies deposited therein by the father.

[82] Having granted care and control to the aunt I will make an order her permitting her to remove ASKJ from Dominica and to travel to Anguilla and permitting ASKJ to reside there. There shall be liberty to apply and each party shall bear their own costs.

[83] **During the course of this matter it was noted that ASKJ's Passport has been issued showing her mother's surname as her surname. This court was informed by both parties that the passport was issued prior to the father's name being added to the infant's birth certificate. It is therefore ordered that a new passport is obtained in ASKJ's correct name forthwith. The Registrar is ordered to release the passport to facilitate this application.**

[84] I wish to commend both counsel for the manner in which they conducted this matter and also to note the short length of time it took for this matter to progress from commencement to completion.

[85] This is my judgment.

M E Birnie Stephenson  
High Court Judge

[SEAL]

By the Court

Registrar