

THE EASTERN CARIBBEAN SUPREME COURT
SAINT VINCENT AND THE GRENADINES

IN THE HIGH COURT OF JUSTICE

SVGHMT2015/0046

BETWEEN:

TOSHIKO PATRICE MARLA O'NEIL NÉE LITTLE
of Belair

PETITIONER

AND

NOLAN CARLTON O'NEIL
of Sion Hill

RESPONDENT

Appearances:

Mr. Stephen Huggins of counsel for the petitioner/applicant.
The respondent unrepresented, absent.

2019: Sept. 23
Nov. 1

JUDGMENT

INTRODUCTION

[1] **Henry, J.:** From available accounts, it appears that Mrs. Toshiko O'Neil and Mr. Nolan O'Neil were once happily married and lived together at Cane Hall in the State of Saint Vincent and the Grenadines. They have since gone their separate ways and have each left the State. Mrs. O'Neil resides in the United States of America while Mr. O'Neil lives in the United Kingdom. Their daughter Gabrielle lives with her mother.

[2] Mrs. O'Neil petitioned this court for a divorce in 2015. A *decree nisi* of divorce was made on October 19th 2015. Understandably, Mrs. O'Neil wishes to move on with her life and have the divorce finalized. She has applied for an order of joint custody of the child of the marriage. She also seeks an order compelling Mr. O'Neil to maintain their daughter. Mr. O'Neil has filed no pleadings

or other documentation in this court in response to the petition for divorce or custody and maintenance issues.

[3] Mrs. O'Neil has provided affidavit evidence that Mr. O'Neil has been served with all of the related applications and affidavit testimony. She contended that Mr. O'Neil has submitted himself to the court's jurisdiction and is bound by any maintenance orders it may make in relation to his daughter. In light of the evidence adduced in this matter and the applicable law, an order for joint custody is made in favour of both parents. No order is made directing Mr. O'Neil to make payments towards Gabrielle's maintenance.

ISSUE

[4] The issue is what order should be made for Gabrielle's custody, care, control and maintenance?

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

[5] Gabrielle was born¹ in Brooklyn, New York in the United States of America. She is 11 years old. Mrs. O'Neil testified that she filed a statement of arrangement² for the child. She attested that she attempted to discuss with Mr. O'Neil those arrangements for their daughter's custody, care, control and maintenance, but that he is unwilling to engage in conversation with her about such matters. She averred that letters outlining her proposals have been sent to him without response. Mrs. O'Neil filed an Amended Statement of Arrangements on 2nd October 2019. She provided no proof that it was served on Mr. O'Neil. It is therefore not taken into account in arriving at this decision.

[6] Mrs. O'Neil deposed³ that she proposes that she and Mr. O'Neil have joint legal custody of their daughter. She testified that they both maintain her. She provided no specifics about the quantum of maintenance contributions made by either of them, about Mr. O'Neil's or her means or Gabrielle's reasonable material or other needs. She averred that Mr. O'Neil was enrolled in the British Navy in 2015. It is not clear whether he is still so engaged. Mrs. O'Neil's affidavit and oral testimony was very sparse.

¹ On October 28th 2008.

² Filed on 21st April 2015.

³ By affidavit filed on 26th February 2016.

[7] She indicated that Mr. O'Neil telephones his daughter occasionally but does not communicate with her (the mother). In the proposed statement of arrangements Mrs. O'Neil gave basic information to the effect that Gabrielle resides with her at Belair, Saint Vincent and the Grenadines; attends the Kingstown Preparatory School; is not suffering from any serious disability or chronic illness; and is not under supervision of a probation officer, children's officer or welfare organization.

[8] Although Mrs. O'Neil and Gabrielle have migrated and their circumstances have since changed, she has provided no current information regarding the child's schooling or other circumstances. Presumably, Gabrielle is attending a school appropriate to her requirements and is receiving the necessary care. Mrs. O'Neil proposed that Gabrielle will continue to live with her; that she and Mr. O'Neil will support the child and that they will share access to her.

[9] In deciding what order to make regarding the custody, care, control and maintenance of a minor child the Court's primary consideration is the child's best interests.⁴ The Court must also take into account a number of other factors. It must bear in mind that each parent has an equal obligation to contribute to their child's maintenance and care, based on their respective means and the child's needs. It must examine each parent's and the child's respective circumstances such as their age, their employment status; income and expenses; health; and the standard of living to which the family was accustomed during the currency of the marriage.⁵

[10] The Court has not been presented with such particulars. It is therefore not placed to critically assess what order to make in respect of Gabrielle's maintenance. Neither party has made any representation to the court that the current arrangements as to physical custody have created any difficulties for either of them or that Mr. O'Neil has encountered any problems with access to her. It seems to me that on the available evidence that the parties have settled into reality where Mrs. O'Neil retains physical custody.

[11] Mrs. O'Neil has made no complaints that Mr. O'Neil is unfit to share legal custody with her. In fact, she advances that as a desirable solution. I have no reasons to differ. An order for joint legal

⁴ The Law of Minors Act Cap. 232 of the Revised Laws of Saint Vincent and the Grenadines, 2009, section 12.

⁵ Cap. 239 of the Revised Laws of Saint Vincent and the Grenadines, Revised Edition 2009, section 34.

custody with physical custody to Mrs. O'Neil appears to fit the justice of this case and is therefore ordered.

[12] Mrs. O'Neil has not complained that Mr. O'Neil's contributions to Gabrielle's care and maintenance are inadequate, infrequent or otherwise problematic. I infer that they are not. In the absence of critical evidence for making a determination as to the measure of contributions to be made by Mr. O'Neil, I make no order regarding maintenance.

[13] It is trite law that an order by a court does not have extra-territorial effect except pursuant to agreements between states to recognize, endorse and give effect to such orders on a reciprocal basis. Mrs. O'Neil identified this route as a way in which to enforce a court order made in this State. She referred to the Civil Procedure Rules 2000 ('CPR') which are not applicable to matrimonial proceedings⁶. Suffice it to say that Gabrielle and her parents are outside of this court's reach in terms of enforcement of any order which the court may make. Accordingly, any legal issues which arise concerning the child's care, control and maintenance while she is living in the United States of America or other place outside of Saint Vincent and the Grenadines are matters which legally will engage a court presiding in that respective country.

[14] It seems to me having regard to all of the circumstances, (not least of which is the paucity of relevant testimony) that the justice of this case is best achieved by making an order for joint custody with physical care and control to Mrs. O'Neil; and no order for maintenance. Either party is at liberty to apply if circumstances change.

ORDER

[15] It is accordingly declared and ordered:

1. Mrs. Toshiko O'Neil and Mr. Nolan O'Neil are granted joint legal custody of the minor child Gabrielle Mya O'Neil until she attains the age of 18 years or sooner dies, primary care and control to Mrs. O'Neil.
2. The parties are to agree the terms and conditions on which Mr. Nolan O'Neil is to have access to the minor child.

⁶ CPR 2.2 (3) (a).

3. No maintenance order is made. Liberty to the parties to apply.

4. The parties shall each bear his or her own costs.

[16] I am grateful to learned counsel for the written submissions.

Esco L. Henry
HIGH COURT JUDGE

By the Court

Registrar