

IN THE SUPREME COURT OF JUDICATURE

HIGH COURT

Family Division

No. 88 of 2009

BETWEEN:

THE CHILD CARE BOARD

Plaintiff

AND

SONIA ARCHER

First Defendant

JEAN JOHN

Second Defendant

Before the Honourable Madam Justice Margaret Reifer, Judge of the High Court.

2009: June 23, 24, 25, 29

July 08

August 06

Mrs. Beverley Walrond, Q.C. and Mrs. Dawn-Shields-Searle for the Plaintiff.

Mrs. Peta-Gay Lee-Brace for the First Defendant.

Ms. Rita Evans holding papers for Ms. Margot Greene Q.C. for the Second Defendant.

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DECISION

- [1] The Orders to be today made concern the minor Hayden Marcus Archer who was made a ward of the Court on the 20th February 2009. No orders are being sought with respect to Melissa Archer who is seventeen years of age and employed.
- [2] The broad issues to be addressed touch on two main concerns: (1) the care and control of the said Hayden Archer and (2) access to the said Hayden Archer.
- [3] The present action (the first hearing of which was ex parte) was brought by the Child Care Board (the Board) initially against the mother of Hayden Archer, but thereafter the minor's grandmother Jean John was added as a second party.
- [4] The court has had the benefit, by consent of the parties, of a number of documents as listed in the March 12 Report of Dr. MacLachlan and the benefit of the oral evidence of Docs. Marquez, MacLachlan and Belle, affidavits of the parties, as well as oral contributions from Donna Archer, Jean John and from the Child Care Board and Welfare and Probation Departments. An investigation was ordered by the Welfare Department and a written report submitted to the court dated March 26 2009.
- [5] The current issues to be addressed are set out hereunder:

Care and Control

- [6] First Defendant Sonia Archer has made it clear that she will no longer be seeking to obtain the care and control of Hayden. The issue of his care and control concerns the Child Care Board and the Second Defendant, the minor's grandmother.
- [7] Sonia Archer has a long and relevant history. Her release from jail in January 2009 and her 'threat' to grandmother Jean John that she was coming to

get her son Hayden, who had been in the exclusive care and control of his grandmother since 2004, precipitated the Board's application to this court. An Order was made on 20th February vesting temporary care and control of Hayden in the Board. He was promptly placed in one of their children's homes, where he has been residing since that time.

[8] Ms. John has petitioned this court to have the child returned to her.

[9] The issue for the determination of this court is whether Hayden should remain in the care of the Board at their Children's home or alternatively returned to the care of his grandmother.

[10] Despite her humble circumstances, she has demonstrated to this court her ability to meet the emotional, psychological, physical and financial needs of this child with the assistance and support (financial and otherwise) of his sisters, Joy, Donna and Melissa and his aunt Diana. The Board through its attorney has convincingly submitted that "the institutionalization of a child where the child has family able and willing to keep the child is not recommended." Not to be discounted is their finding that there are no complaints on its record concerning the parenting of Hayden by his grandmother, and no independent information justifying their removal of Hayden from the benefits of daily interaction with his siblings, in a family setting.

[11] Significantly, one of the adult children of Sonia Archer, and one who would have been in the care of Jean John on both occasions that Sonia Archer was incarcerated, had nothing negative to say about this experience, and in fact expressed the opinion that her brother should be returned to the care of his grandmother.

[12] Sonia Archer, who has on two occasions entrusted her mother with the care of her children while she was imprisoned for extended periods, has submitted to the court that Hayden should remain in the Children's Home. She has not challenged the Affidavit of Jean John and when offered the opportunity to cross-examine her, did not raise in cross-examination or put to her any matters challenging her ability or capacity to care for Hayden.

[13] Her sole reason for her present objection, is in the opinion of this court self-serving, being apparently rooted in her concern that his residence with her mother will result in her closer contact with her mother, which will serve to aggravate their already stressful relationship. It is apparent that this relationship has in the past proven to be a stressor for Ms. Archer when she resided with her mother. Ms. Archer has chosen not to give evidence on this and other issues in this matter, and this court is left with no basis on which to assess this alleged conflict. It is noted that in his Report of 6th April 2009. Dr. MacLachlan speaks to this issue, and recommends that

"Ms. Archer be referred for individual psychological counseling with

regard to the ongoing impact that the stressful situations involving her past and current relationship with her mother, her other children, and her current general circumstances are likely to be having on her.”

[14] Ms. Archer’s position on this issue, in the opinion of this court clearly does not speak to any selfless consideration by her as to what course of action is in the best interest of her infant son.

[15] He is ten years of age and about to embark on his exam (eleven plus) year. He was five years old when his mother was imprisoned and since that time he has clearly bonded with his siblings (who no doubt as a result of their unusual history appear to be quite close and protective of each other: see Welfare Report of 26th March 2009), his cousins and his grandmother.

[16] This court exercised its discretion and met with the minor Hayden Archer and is satisfied in all the circumstances that an order returning him to the care and control of his grandmother and the society of his sisters, cousins and family generally is in his best interests.

[17] Consequently this court so orders.

Access to Hayden Marcus Archer

[18] This aspect of this matter causes the greater degree of difficulty. The issue here to be determined is:

(1) whether Ms. Sonia Archer should have supervised access to Hayden Archer; and

(2) if yes, supervision by whom and how often.

[19] In the context of Ms. Archer’s rather colourful and troubling history the issue is raised as to whether her access to Hayden raises concerns as to her threat to his well-being, physically and otherwise.

[20] This is where Ms. Archer’s history becomes of critical importance. Ms. Archer is now 45 years of age and has already served two terms of imprisonment as a result of two incidents resulting in the death of two persons, one of whom was her eight year old daughter Ashley.

[21] These incidents cause this court to assess the risk of injury to Hayden Archer as arising from two possible circumstances.

[22] Firstly, Ms. Archer has been diagnosed as an Epileptic caused by a scarring of the brain, and the expert testimony before this court (Dr. Marquez) is to the effect that Ms. Archer’s epilepsy led to the killing her daughter Ashley. It is not curable and she is at lifelong risk of epilepsy. She suffers from an

extreme form of Complex Partial Seizures resulting in 'automatisms', where she performs automatic acts without knowing what she is doing. Such persons tend to repeat the same acts and "... if one of the activities is severe violence, you would see repeat manifestations in the future." (Oral evidence of Dr. Marquez).

[23] Dr. Marquez's evidence reduced (though not totally eliminated) this court's concern about the likelihood of repeat manifestation of these acts of violence. His evidence is that at the time of Ashley's death Ms. Archer's seizures were not being properly controlled. Simply stated, she was on an ineffective medication. Since he prescribed Tegretol in April 2005 Ms. Archer has been seizure-free and once she continues to take her medication she will remain seizure-free.

[24] In response to a query from the court, he outlined the three circumstances in which Tegretol could fail as being -

1. failure to take the medication;
2. Tolerance - a body's need for the medication may increase or decrease; and
3. interaction with other drugs.

[25] Secondly, disturbing allegations have been made by the two older children of Sonia Archer, that they were subjected to serious and violent acts of physical abuse while living with her and they have expressed fears that she will visit the same behaviour on Hayden, if given the chance.

[26] A related issue must also be given consideration. The spectre arises firstly from Ms. Archer's early conviction for a serious crime of violence, which when coupled with the allegations of physical abuse, gives rise to the consideration that Ms. Archer is a person of Violent Character. (It is noted that medical expert Dr. Marquez has stated that neither allegations of threats of violence and actual violence as described by the children, or the circumstances of the death resulting in her first conviction are the consequence of her Epilepsy.)

[27] It is noted that the evidence of Doctors MacLachlan and Belle has satisfied this court that Ms. Archer is NOT suffering from any Mental Disorder. (This was not within Dr. Marquez's zone of expertise).

[28] As always, this court is guided in this exercise by the need to do what is in the best interests of the child.

[29] In making these Orders, this court is guided by:

1. The need to provide Hayden with an opportunity to establish a meaningful and enriching relationship with his mother; and
2. The need to do so in an environment that will ensure that his physical and emotional well-being is not at risk.

[30] Sonia Archer cannot care for her minor son Hayden Archer. I have taken into account in reviewing her history, the medical evidence given to the court and the oral and Affidavit evidence, and am satisfied that there are implicit risks in allowing her to have access to her son. But, I have weighed and balanced this against the benefits to Hayden in establishing and maintaining a relationship with his mother.

[31] In consequence, I have ordered as follows:

IT IS ORDERED AS FOLLOWS:

1. That care and control of the minor Hayden Archer shall be vested in his grandmother Jean John until further order;
2. That Sonia Archer shall have access to the said minor, such access to be supervised by the Psychiatric Hospital by one of their Psychiatric Social Workers or such appropriate officer as they may designate. It is stipulated that such access shall not take place at the Psychiatric Hospital or at the home of Jean John;
3. That such access shall be contingent on her continued care and follow-up with her Neurologist and specifically with her Psychiatrist. Such follow-up to be monitored by her Probation Officer and reported on to the Court;
4. The frequency of these supervised visits shall be determined after consultation with the Psychiatric Hospital but shall be no less than once every three weeks;
5. The Defendant Sonia Archer must undertake not to have contact with Hayden Archer outside of the scheduled supervised visits, in particular she must not visit his school, nor must she visit Ms. John's home or knowingly place herself within close range or contact with Hayden;
6. The Child Care Board shall monitor this process and its effect on Hayden Archer, and shall submit a report at the end of six months which shall address on the advisability of increased access arrangements;
7. The Probation Department shall also monitor this process and shall submit a report at the end of six months to the Court on the progress of Sonia Archer's re-integration into the society with particular reference to her management of her various stressors,

and her compliance with the taking of her medication;

8. That counseling be arranged by the Child Care Board for Hayden (and Melissa if considered necessary), together with Ms. Archer, as recommended at the Child Care Board case conference of January 2009;

9. That a review report be submitted to this Court at the end of the said six month period by Consultant Psychiatrist Dr. Brian MacLachlan.

10. Liberty to apply.

Margaret Reifer
Judge of the High Court.