

BARBADOS

IN THE SUPREME COURT OF JUDICATURE

HIGH COURT

CIVIL DIVISION

CV No.1467 of 2013

**IN THE MATTER of the custody, care
and control of A.R.B, a minor**

**AND IN THE MATTER of the Minors
Act Cap. 215 of the Laws of Barbados**

BETWEEN:

**MARGO ANITA BURNETT
SHEILA INEZ PHILLIPS**

CLAIMANTS

AND

DESMOND REID

DEFENDANT

**Before Dr. The Hon. Madam Justice Sonia L. Richards, Judge of the High
Court.**

2014: 16 April

26 September

2016: 07, 11 July

09 September

Mrs. Dawn M. Shields-Searle, Attorney-at-law for the Claimants.

Mrs. Sharon Edgecombe-Miller, Attorney-at-law for the Defendant.

DECISION

Introduction

- [1] This is an application by two Claimants, the maternal aunt and grandmother of a minor child, asking the Court to grant them, inter alia, care and control of the child.

Background to Application

- [2] The minor child lived at the home of her maternal grandmother from her birth on 19 January 2005, until shortly after her mother's death in April 2013. The mother died as an unmarried lady who was not then cohabiting with the child's father, the Defendant in this case.
- [3] Subsequent to the mother's passing, and with the assistance of members of the Royal Barbados Police Force, the father removed the child from the maternal family home. The child was then eight years of age. As a consequence, the Claimants filed these proceedings in August 2013.
- [4] The Claimants contend that, having lived at the maternal family home most of her life, the minor child missed her mother's relatives and wanted to live with them. They alleged that her father never played an active role in her life, and that his role in her upbringing was "very minor". It is also alleged that, during the mother's lifetime, the child's father did not provide regular

or proper maintenance for the child; that he resisted all efforts to have his name placed on her birth certificate; that the child is not properly cared for by her father; and that it is not in her best interest to remain with her father.

[5] The Claimants also state that any relationship between the child's parents ended in 2008. They are seeking a number of orders from the Court including:

1. that the minor child be made a ward of the Court;
2. that the Claimants be granted care and control of the child, with reasonable access to her father;
3. that the father be restrained from removing or attempting to remove the child either from the care and control of the Claimants or from Barbados;
4. that the father and his servants or agents be restrained from entering upon the premises of the Claimants; and
5. that the Child Care Board investigates the circumstances of the parties and provide a report to the Court.

[6] The father responded that he was involved in a relationship with the child's mother from 1995 until she died. They lived together at his mother's house from 1996 to 1997. After this, they lived together at the home of the child's

maternal grandmother from 1997 to 2007. The relationship continued during the mother's illness until her death.

[7] The father insisted that he paid bills and bought groceries for the minor child and her mother. He supported the child, and purchased her uniforms, books and supplies. He added that "I am the one who took her to school up until the time she came to live with me". He also claimed that, during the latter stages of the mother's illness, he was not allowed to interact with the child; and that the Claimants did nothing to facilitate his relationship with his daughter.

[8] The father emphasized that the Claimants are not the parents of the minor child. Therefore, as her only living parent, he is solely responsible for the care of the child.

The Relevant Law

[9] Section 8 of the Minors Act, Cap.215, provides that:

"Where in any proceeding before the Court, the custody or upbringing of a minor....is in question, the Court, in deciding that question, shall regard the welfare of the minor as the first and paramount consideration....".

[10] Counsel for the parties agree that this Court must determine what is in the paramount interest of the minor child in this case. In making that determination the Court considered the following:

1. the sworn affidavits of the parties which were not tested by cross-examination;
2. three reports submitted by the assigned Welfare Officer on 28 October 2013, 02 June 2014 and 07 July 2016;
3. the oral evidence of the Welfare Officer that was received by the Court on 16 April 2014 and 11 July 2016;
4. an undated report provided by a guidance counsellor, and her oral evidence received on 26 September 2014;
5. letters written by the principals of the Cuthbert Moore and Workman's primary schools, and dated 24 October 2013 and 29 May 2014 respectively; and
6. the oral evidence of the father of the minor child, which was heard on 11 July 2016, in response to the third report of the Welfare Officer, and to her oral evidence given on the same day.

The First Welfare Department Report

[11] This report was submitted to the Court on 28 October 2013. It was compiled after interviews with the protagonists.

[12] The report indicates that the 45 year old father was employed as a truck driver, working from 7.30 a.m. to 4.30 p.m. He also engages in small scale animal husbandry, and the sale of turkey wings and necks. His monthly

income is \$3,228.00, with monthly expenses of \$1,700. He lives in a three bedroom family home with the minor child, another daughter, a 19 year old niece and his 60 year old mother. Family members share the payment of household utilities.

[13] The other daughter mentioned is the same age as the minor child. In fact, the Claimants contend that the discovery of the existence of this daughter contributed to the breakup of the parents of the minor child. And, coincidentally, the mother of the other daughter is also deceased. The two children share a bedroom and a bed. There are no bedroom cupboards or storage areas.

[14] The Claimants live in separate households. However, the maternal aunt lives on the opposite side of the road from the maternal grandmother's house. This grandmother's husband is the only other occupant of the household where the minor child spent her formative years. The sole income is her husband's pension of \$1,600 monthly, with expenditure of \$942.00 monthly. The grandmother is 63 and her husband 72 years of age. Both are diabetic. Their home has four bedrooms, and one bedroom is for the use and occupation of the minor child.

[15] The maternal aunt is 51 years of age and employed as a domestic. She lives in her own home with her 19 year old son. Her monthly income is

\$2,3600.00, with monthly expenditure of \$1,975.48. She works daily from 8.30 am to 4.30 pm weekdays, and sometimes on weekends.

[16] The minor child attended three primary schools in quick succession. Her first school from age 3 was Workman's Primary. After Class 1 she was transferred to St. George Primary. The reason given by the Claimants for this transfer was her mother's illness, and the inability of her maternal grandfather to continue taking her to school. Her father says that he was never consulted about this move. After the child moved to her father's home, he transferred her to Cuthbert Moore Primary. She attended Cuthbert Moore with her paternal sister, and took the Common Entrance examination as a pupil of this school.

[17] The Claimants and the child's father are concerned about their lack of communication. The Welfare Officer observed that these parties "appear to love [the minor child] and have expressed an interest in her well being". It was the Officer's view that this shared commitment to the minor child should be "an impetus for them to work together. However, past and present conflict and the lack of positive communication has been a barrier".

[18] According to the Welfare Officer, the minor child expressed a preference for living with her father and visiting her grandmother on weekends. She had bonded with her father, and bonding was taking place with her paternal

sister. It was noted that the child has had to cope with psycho-social challenges, including the loss of her mother, her move to a new home, and her enrolment in new schools.

[19] The first report offered three recommendations:

1. that the father of the minor child be granted her care and control provided that separate sleeping arrangements are provided for himself and his daughters;
2. that the Claimants be granted liberal access possibly commencing on Friday evenings; and
3. that the father be encouraged to meet with the guidance counsellor to discuss the progress of the minor child.

[20] The condition attached to the first recommendation arose from the fact that the father was sleeping in the same bed with his daughters. His explanation is that he stayed in the bed to comfort them until they fell asleep. He denied sleeping in the same bed. However, both children confirmed that he shared their sleeping area. The Welfare Officer discussed with him the inappropriateness of sharing sleeping accommodation with preadolescent female children.

[21] With respect to the second recommendation, the Claimants had no access to

the minor child until the Court made an order for weekend access on 16 September 2013.

[22] The third recommendation follows the revelation that the father did not keep an appointment with the guidance counsellor who counselled the minor child at the St. George and Cuthbert Moore primary schools.

[23] Annexed to the first report is a letter written by the principal of the Cuthbert Moore Primary. The letter informs that the minor child entered Class 2.2, but she was transferred to Class 2.1 “due to her advanced academic performance in comparison to the other students of that class”. She described a well behaved respectful student with a grasp of the necessary grammar, comprehension and mathematical skills. The principal believed that the minor child “has the ability to perform at her maximum potential but would require the support from the home environment”.

[24] The Cuthbert Moore principal expressed concern that although the child was progressing, she did not have all her exercise books. This was problematic because of the required work load at that level. She mentioned that the child was receiving counselling from the same individual who provided counselling to her at St. George Primary after her mother died. It was said that her father did not attend a scheduled meeting with the Guidance Counsellor.

[25] The Welfare Officer gave oral evidence on 16 April 2014. Her evidence brought to the fore a number of relevant issues pertaining to her report.

These included:

1. the absence of any record of interaction between the minor child and the Claimants;
2. the failure to raise with the child a report made by one of the Claimants that during a weekend visit the child revealed that she wanted to live with them; but that her father had threatened to beat her if she told the Officer that she preferred to be with the Claimants;
3. the absence of a report from the guidance counsellor;
4. the failure to confirm whether the sleeping arrangements had changed between the submission of her report on 28 October 2013 and giving her evidence on 16 April 2014;
5. the failure to interview the minor child since the submission of the report;
6. the absence of recommendations with respect to the resolution of past and present conflict between the parties;
7. the failure to discuss with the child's father the report that she did not have all her exercise books; and

8. the need to re-evaluate the recommendations in view of the information from the Guidance Counsellor that the child was under some sort of duress.

[26] At the conclusion of her testimony, the Welfare Officer informed the Court that:

“In terms of some of the issues raised today, I would say that I am not comfortable with my report. I would need to speak to [the guidance counsellor] and get a report from her. I should be able to make recommendations for a psychologist. I need to speak further with the parties I originally interviewed. I need to make recommendations for counselling and how it can be implemented”.

[27] Pursuant to these statements, a consent order was made for the Welfare Officer to produce a follow up report with recommendations by 12 May 2014.

The Second Welfare Department Report

[28] The second report was forwarded to the Court on 02 June 2014, together with a letter from the principal of Workman’s Primary dated 29 May 2014, and an undated report from the Guidance Counsellor. Before considering the second report from the Welfare Officer, the Court wishes to refer to the principal’s correspondence and to the Guidance Counsellor’s report.

[29] The principal of the first primary school attended by the minor child provided information about the child's family background, her formative years, and her academic profile. According to this principal, during her years at her first primary school, the minor child "presented as a very well-adjusted child who enjoyed an extremely close bond with her mother". Her mother played an active role in the school's PTA until she was sidelined by illness.

[30] The minor child was taken to school by her mother, and when the mother was unable to continue, either her maternal grandfather or a family friend filled the breach. This principal was not familiar with the child's father, and could not recall interacting with him on any matter concerning the child. It was the maternal aunt who became the school's point of contact during the mother's illness. In fact, the mother had informed the school that anything relating to the child's well-being should be communicated to her maternal aunt. The mother had also given a power of attorney to the maternal aunt.

[31] While at Workman's Primary, the minor child was considered to be an average student who made an "earnest effort to succeed" and "who had the potential to improve if provided with the necessary guidance and assistance". She possessed a loving and endearing personality, related well

with staff and students, and was always well groomed and “regular and punctual in attendance”.

[32] Finally the Workman’s principal was of the opinion that:

“the interest of [the minor child] would be better served if she were to be placed in the care of her aunt [the First Claimant]. This in my opinion would allow her to live in the loving, caring environment which she enjoyed while her mother was alive as well as during her mother’s illness. [The minor child] deserves the opportunity to be guided into growing into a well-adjusted productive and poised young lady. I have seen enough of her aunt’s interaction with her and the care directed at her to recommend that the child be placed with her aunt”.

[33] The report of the Guidance Counsellor first became available to the Court under cover of a letter from the Welfare Officer dated 26 May 2014. This was approximately six months after the first report came to hand. The Guidance Counsellor began counselling the minor child at Workmans Primary after her mother’s death. She was able to meet with the maternal aunt before the child moved to her father’s residence, and her father did not turn up to a prearranged meeting. When contacted again the father is alleged to have told the Guidance Counsellor that he had no time; that he did not see the relevance of such a meeting; and that his children were doing fine.

[34] The Guidance Counsellor observed that over time the child's personality changed from cheerful to reserved with a reluctance to speak. These changes also occurred in the classroom, where a once active and eager participant barely spoke with minimum participation. The personality changes were followed by complaints about the child's behaviour at school. She became "naughty, talkative, loud, slightly rude and not as settled as she was before". Academically, she was still performing to standard.

[35] Based on her interaction with the minor child, the guidance counsellor understood that the child was instructed by her father not to speak about matters relating to her family. The child was unable to express her true feelings about her situation "either due to fear or manipulation". The Guidance Counsellor identified a lack of interest on the part of the father which caused her to question his role in the child's internal conflict. She also noted that the father did not apply the same strictures to the child's paternal sibling who also attended sessions with the same Counsellor.

[36] The recommendations from the Guidance Counsellor are that:

“...[the minor child] be placed in an environment which is more structured and offers her more stability. The current structure and stability offered by her father..... is questionable based on the responses of [the minor child] and the conflicting and contradictory stories. Individual counselling is necessary for [the minor

child] due to the many conflicting ideas she may have about her family as well as what she was exposed to. Family counselling is recommended to help the families to resolve their past conflicts in order to move forward and play an effective role in the upbringing of [the minor child]”.

- [37] The Guidance Counsellor also gave oral evidence on 26 September 2014. She noted inaccuracies with some of the dates in her report. However, this did not affect the substance of the report. Counsel for the father suggested to the Guidance Counsellor that she did not contact him. The response was that she indeed had called him at a cell number. In addition, both the school and the Ministry of Education would have sent correspondence as well.
- [38] The Welfare Officer was armed with the views and recommendations of the principal of Workman’s Primary and the Guidance Counsellor when she prepared her second report. The report was prepared after visits to the homes of the parties, and interviews with the parties and the minor child.
- [39] When interviewed, the minor child expressed a wish to reside with her father. However, there is no indication that the minor child was asked about the report from her maternal aunt that her father threatened to beat her if she told the Officer that she wished to live with the Claimants. The Officer had agreed that this was a failing in her first report.

- [40] The child was observed interacting with maternal family members at her aunt's home. She appeared to be happy and relaxed while making pizza and playing with her younger cousins. When observed at her father's home she was involved in a minor dispute with her sister over DVDs. Her sister was heard accusing the minor child of lying during interviews.
- [41] The paternal grandmother and the Guidance Counsellor confirmed that the father was no longer sharing a bedroom or a bed with his daughters.
- [42] There is no indication in this report that the Officer discussed with the father the information that the child did not have all her exercise books for school.
- [43] The Officer made no further recommendations. She concluded at the end of a brief three page report that:

“It is believed that the persons who have submitted the reports would have had a substantial relationship with [the minor child] and greater insight into her circumstances. Their input should therefore be considered in the court's deliberations with respect to care and control and further counselling”.

- [44] Counsel for the parties did not wish to question the Officer about the second report.

The Third Welfare Department Report

- [45] The minor child has continued to live with her father pending the Court's

decision in this matter. In those circumstances the Court considered it prudent to request a progress report prior to the delivery of a decision.

[46] The third report is dated 07 July 2016. The minor child had taken the Common Entrance Examination, and she was assigned a place at the Grantley Adams Secondary school. Annexed to the report were four term reports detailing the minor child's progress from term 3:2014-2015 to term 3:2015-2016. These school reports show a noticeable decline when compared with the report submitted with her father's affidavit filed on 26 September 2013. Her overall mark for term 3 while in class 1 at St. George Primary was 59.3. But at Cuthbert Moore her overall mark ranged between 48 and 51. The final report from Cuthbert Moore contains the comment that the minor child had lost her focus.

[47] The principal at Cuthbert Moore also complained that the deportment of the minor child and her sibling was a cause for concern. The children seemed to be lacking, but it was the minor child who "appeared to be the more untidy of the two children appearing unkempt in hair and clothing". The principal also observed that at times the children did not have class materials.

[48] It will be recalled that the principal at Workman's Primary described the minor child as always being well groomed. Even the Class 1 report from

St. George Primary awarded 'A' grades for personal cleanliness, appearance and deportment. At Cuthbert Moore the grades for these categories declined from grades 'C' to 'D' to 'E'.

- [49] The third report is devoid of any reference to discussions with the father about the lack of class materials. What is noted in the report is that the father had no concerns. Neither the minor child nor her father appear to have been engaged by the Welfare Officer on the negative comments received about her personal cleanliness, appearance or deportment.
- [50] The report concludes that the minor child had adjusted to her father's home environment. The minor child indicated that she was happy with her current living arrangement and prefers that it remains unchanged. The Officer observed that the father's family "seems to have structure and routines for the children which will assist in their growing sense of responsibility and independence".
- [51] The report cautioned that there was a need for better monitoring of the minor child's self-maintenance. The further need for a greater and consistent effort to be paid to her academic work was identified. It was strongly suggested that the father get involved with the child's school so that her progress could be monitored adequately.

[52] On 11 July 2016, both counsel posed questions to the Welfare Officer about the third report. The Officer responded that:

1. she saw no reason for concern about the child's tidiness;
2. she did not identify anything to suggest that the child was lacking;
3. she agreed that there was a marked deterioration in the child's academics and her deportment, but she was unable to assess the cause or causes of the deterioration;
4. better adult supervision of the child's school work was required;
5. lack of books for school continued to be a concern;
6. the school had indicated prior to the third report that there was no interaction with the father; he did not attend PTA meetings; and
7. despite the deterioration in the child's academic performance and personal grooming, her original recommendation that the father be granted care and control of the child remained unchanged.

The Father's Oral Evidence

[53] After the Welfare Officer gave her evidence, counsel for the father sought permission from the Court to file an additional affidavit on behalf of her client. Counsel for the Claimants objected on the basis that this matter was ongoing for some time, and that nothing new was raised in the most recent report. In addition, written submissions had already been forwarded to the

Court by both sides, and the time for introducing new information by affidavit had long gone.

[54] The Court refused the application to file a further affidavit. However, the Court allowed an application to permit the father to give sworn testimony there and then. He confirmed that the previous questionable sleeping arrangement had changed. He now occupied his father's bedroom, his father having moved to live with his sister. He told the Court that he had seen the child's report card, and that he had addressed those issues on several occasions by speaking to the child about her grades. He had asked her on more than one occasion to stop running around and playing when she got to school.

[55] The father informed the Court that he was not at home when his children left for school, or when they came home. His mother was responsible for getting the children ready for school. Although he saw the report cards he made no attempt to contact the principal or a class teacher to find out what was going on. He only attended class level meetings, and had received no notices about PTA meetings. At the class level meetings he would have discussed how his children were progressing at the time, and he did not speak about any reports at these meetings. He was given positive feedback

about their progress. The only complaint he received was that his children were distracted by other boys and girls.

Discussion

- [56] In assessing what is in the paramount interest of the minor child, this Court must carefully assess all the evidence placed before it, while balancing the competing interests of the Claimants and the child's father. The father is to be complimented for his willingness to assume full responsibility for his daughter after her mother died. However, the Court is of the opinion that removing her from the maternal home, and the manner in which the child was removed was not in the child's interest at the time.
- [57] The child had spent her formative years at the maternal home, and she had experienced her mother's death at a young age. Therefore, wrenching her from that home in the midst of ongoing conflict with the Claimants, could only have served to place additional stressors on the child.
- [58] On the other hand, whatever issues existed between the child's parents did not give the Claimants the right to prevent any contact between the child and her father, unless a court had made such an order. The existing animosities between the parties must cause ongoing conflicting emotions in an already emotionally fragile minor.

[59] Having taken the child to live with him, the father's attitude has not helped the child to transition smoothly. The Court accepts that he refused to meet with her Guidance Counsellor, and that he expressed the view that his children did not need any assistance. Neither has he been proactive in the face of her deteriorating academics. The Court accepts that the child is an average student, however it is clear to all that she is not properly supervised in his household.

[60] The father has offered no explanation as to why the child was without the necessary school books or class materials. He does not play an active role in her school life. There is no evidence of an attempt on his part to provide any remedial academic support for the child as she approached the Common Entrance Examination. The Court finds it alarming that he had no concerns when interviewed by the Welfare Officer for her final report.

[61] It does not appear that the female relatives who live at the father's home (the child's grandmother and cousin) have paid attention to the appearance and grooming of either the minor child or her sister. The grandmother, for instance, only plaits their hair on two days in a seven day week.

[62] While the child lived with the maternal relatives, it was obvious to the school authorities that she was well cared for. The statement from the principal at Workman's Primary that she had no recollection of interacting

with the father speaks volumes. When the mother could no longer participate in the school activities, it was the maternal aunt and grandfather who liaised with the schools, not her father. The Claimants clearly had more experience in caring for the minor child.

[63] The Welfare Officer has informed the Court that the child has expressed a wish to live with her father. But there is no evidence from the Officer of a discussion with the child about an alleged directive from her father not to say that she wished to live with the Claimants. The Court is guided by the Officer's conclusion at the end of her second report that the Court should take on board the observations and recommendations of two individuals who interacted with the child for a longer period. These individuals are the principal of Workman's Primary and the Guidance Counsellor.

[64] The principal presented a glowing report of the child and her caregivers while she attended Workman's Primary. The principal had no hesitation in recommending that the child should remain in the maternal household, given the demonstrated love and commitment of the maternal relatives. It cannot be disputed that the maternal household is more conducive to the physical needs of the minor child.

[65] Unlike the Welfare Officer, the Guidance Counsellor concluded that the father's home lacked structure and stability. The Court accepts that the

minor child was allocated chores in her father's household that would equip her with life skills. But her father was either unable or unwilling to engage with her Counsellor or the school authorities; or to provide her with all the necessary resources for school. This was not a failing at the maternal household.

[66] With respect to the child's wish to remain with her father, the Court observes that it is the wish of a conflicted and confused minor who does not want to appear disloyal to her father. And the Court cannot discount the observations made by the Guidance Counsellor about a marked personality change in the minor child. Additionally, there is no evidence of any deep bonding with her dominant fraternal sister. The Guidance Counsellor also pointed to the issuing of different instructions to the children in relation to their participation in the counselling sessions.

[67] An issue was raised about the ages of the Claimants. The child indicated to the Guidance Counsellor that she had changed her mind about living with the Claimants because if her grandparents died there would be no one to care for her. This child has already faced the death of her mother, but it is unfair to further stress her with the possibility of her grandparents dying. Death is a reality that could also visit her father. In any event the maternal aunt, who is younger, is also a joint applicant for care and control of the

minor child. There is no evidence before the Court that either Claimant is compromised in health to the extent that they now cannot care for the minor child.

[68] The father has more disposable income than either of the Claimants. However, if care and control of the minor child is granted to the Claimants, the father would be in a position to assist with maintenance for the child out of his disposable income.

[69] It was alleged that the minor child received no religious instruction while in her father's care. The father denied this in his affidavit, stating that practically every Sunday the child attended the Clifton Hill Moravian Church. There was no independent verification by the Welfare Officer.

Disposal

[70] Having considered all the relevant factors, the Court has concluded that it is in the best interest of the minor child that her care and control be granted to the Claimants. The Court urges the parties to put aside their differences in order to further the best interest of this child.

[71] The Court will now hear submissions with respect to the father's access, maintenance, counselling and any other aspects of the order.

Sonia L. Richards
Judge of the High Court