

REPUBLIC OF TRINIDAD AND TOBAGO

**IN THE HIGH COURT OF JUSTICE
FAMILY AND CHILDREN DIVISION
CHILDREN COURT**

C-South-AP-1694-2019-1

**IN THE MATTER OF THE FAMILY LAW
(GUARDIANSHIP OF MINORS, DOMICILE AND MAINTENANCE)
ACT CHAPTER 46:08**

AND

IN THE MATTER OF THE CHILDREN'S AUTHORITY ACT, CHAP. 46:10

AND

**IN THE MATTER OF AN APPLICATION CONCERNING CHILD
ZR BORN ON 2ND JANUARY 2013**

BETWEEN

THE CHILDREN'S AUTHORITY OF TRINIDAD AND TOBAGO

APPLICANT

AND

JR

FIRST RESPONDENT

AND

KB

SECOND RESPONDENT

Before the Honourable Madame Justice Gonzales

Date of delivery: November 22, 2019

APPEARANCES:

Ms. Singh and Ms. Ramjattan for the
Applicant Ms Soogrim for the Interested
Party

RULING

1 This is an application to join a grandmother as a party in care proceedings brought by the Children's Authority of Trinidad and Tobago, "the Authority" against the mother the First Respondent and putative father of the child the Second Respondent.

2 At the directions hearing, it was clear that the Respondent Mother had some mental health issues and the Court directed that she make an application for Legal Aid. The Respondent Mother informed that her mother (the grandmother) had retained an Attorney-at-Law for her but the Attorney had not appeared. No Attorney appeared on the second hearing and by the third hearing on 15th May 2019, Ms. Varsha Soogrim having been approached by the grandmother on behalf of the Respondent Mother was granted leave to appear amicus curiae in the matter and then appointed Legal Aid for the Respondent Mother by the Court. Ms Soogrim was to file an affidavit in response on behalf of the Respondent Mother by the 12th June 2019. This she failed to do, neither did she appear.

3 At a further hearing, without going into detail, the Respondent Mother informed the court that she was seeking a new attorney. No application was made by Ms. Soogrim to remove herself from the record.

4 On 10th October 2019, Ms. Soogrim filed an application on behalf of the grandmother seeking to be joined as a party or interested party and seeking an Order in favour of the grandmother for sole custody of the child, pursuant to Section 13 of the Family Law (Guardianship of Minors, Domicile and Maintenance) Act Chapter 46:08 and an order for custody under Section 48 (6) of the Matrimonial Proceedings and Property Act Chapter 45:51.

THE GRANDMOTHERS APPLICATION

5 In support of her application the grandmother contended that the Respondent Mother has been abusive to her and the child. She wants to care for the child to the exclusion of the Respondent

Mother. She is the sole available, blood relative of the child and the child should be placed in the care of a family member. She is in good health and can and should be allowed to care for the child. If the child is to be placed with her she would ensure that he is protected from the Respondent Mother. She also avers that the name of the child is ZB and not ZR as the Authority contends.

THE REPLY OF THE AUTHORITY

6 The Authority is objecting to the application on the ground that the Court has no jurisdiction to grant the orders applied for under section 25 of the Children Authority Act. They also contend that the grandmother has failed to make herself available, to be considered a fit person and thus they are unable to respond to the any assertion that she is in good enough health or in any position to take care of the child. Under the Children Authority Act, they are required to name the parents of the child as respondents and they have done so. All the proper and necessary parties are before the Court.

7 The issue the Court had to determine was whether the grandmother should be joined as party to the proceedings

THE LAW

8 The Court has a wide discretion to add parties to proceedings pursuant to Part 19 of the Civil Proceedings Rules 2016.

Part 19.2 (2)

A party may add a new party to proceedings without permission at any time before a case management conference.

Part 19.2(3) the Court may add a new party to the proceedings if-

(a) it is desirable to add the new party so that the Court can resolve all the matters in dispute in the proceedings or

(b) there is an issue involving the new party which is connected to matters in dispute in proceedings and it is desirable to add the new party so that the Court can resolve that issue.

Part 19.5 (2)

An application for permission to add, substitute or remove a party may be made by—

(a) an existing party; or

(b) a person who wishes to become a party.

Analysis

9 It is not clear under what rule or sub rule the applicant is bringing this application. The Court notes that in filing this application, the applicant purported to add herself in the intitlement as an interested party. On this basis the applicant may have been purporting to act pursuant to rule 19.2 (2) which provides that a party may add another party at any time before the case management conference.

10 While there has been no case management conference in these proceedings, the issue of representation for the Respondent Mother still being unsettled, the grandmother is not a party to the proceedings. There is no basis therefore for the purported amendment of the intitlement to include herself as a party, as only parties to the action can add a new party before the case management conference without permission from the Court. At the time of her filing, the grandmother was neither an applicant nor respondent, in any event even if she were a party, adding herself would have been otiose in the circumstances.

11 The application to join the grandmother as a party therefore must have been made pursuant to Rule 19.5 (2) (b) of the Civil Proceedings Rules which provides that an application for permission to add, substitute or remove a party may be made by a person who wishes to become a party. In such a case, only if permission is granted by the Court can the intitlement of the proceedings be amended pursuant to the Order of the Court.

12 Part 19.2 (3) allows the Court to add a new party to proceedings if it is *desirable* to add the new party so that the Court can resolve all the matters in dispute in the proceedings or there is an issue involving the new party which is connected to the matters in dispute in the proceedings and it is *desirable* to add the new party so that the court can resolve that issue.

WHAT IS IN DISPUTE IN THESE PROCEEDINGS.

13 The only issue in dispute in these proceedings is whether the child is a child in need of care and protection. There is nothing in the pleadings of the grandmother that suggests that the child is not a child in need of care and protection. She pleads nothing that is not already before the court and in that sense she cannot assist the court in determining the issue.

IS THERE AN ISSUE INVOLVING THE NEW PARTY WHICH IS CONNECTED TO THE MATTER IN DISPUTE

14 In a very broad sense it can be said that there is an issue involving the new party which is connected to the matter in dispute. The matter in dispute being whether the child is a child in need of care and protection, if the court finds that he is, then the court has to be satisfied as to how he will be cared for and this is inextricably bound up in the issue of who will care for him. The issue raised by the

applicant is who is to care for the child, she contending that in all the circumstances she is the only fit and proper person.

IS IT DESIRABLE TO ADD TO ADD THE NEW PARTY SO THAT THE COURT CAN RESOLVE THAT ISSUE

15 In the case of **United Film Distributors v Chhabria**¹ which was an appeal against an order granting leave to serve proceedings on defendants who were not in the jurisdiction, dismissing the appeal, the Court found that the Court's power to permit service out of the jurisdiction was no less wide than the Courts wide powers to add or substitute a party under CPR 19.1(2)(akin to rule 19.2 of the local Civil Proceedings Rules) and that the defendants were necessary and proper parties. BlackBurne LJ said:

“Rule 19.1(2) of the Civil Procedure Rules provides that the court may order a person to be added as a new party if (a) it is desirable to add the new party so that the court can resolve all the matters in dispute in the proceedings or (b) there is an issue involving the new party and an existing party which is connected to the matters in dispute in the proceedings, and it is desirable to add the new party so that the court can resolve that issue. The court's power to add or substitute a party is wide. Although the expression “necessary or proper party” to the claim does not appear in that rule it can scarcely be supposed that the court would order a person to be added or substituted as a party on the ground that it is “desirable” to do so if that person were not either a necessary or a proper party to the claim in question”

16 In **Re Vandervells Trust**² Viscount Dilhorne stated

“I cannot construe the language of the rule as meaning that a party can be added whenever it is just or convenient to do so. That could have been simply stated if the rule was intended to mean that. However wide an interpretation is given, it must be an interpretation of the language used. The rule does not give power to add a party whenever it is just or convenient to do so. It gives power to do so only if he ought to have been joined as a party or if his presence is necessary for the effectual and complete determination and adjudication upon all matters in dispute in the cause or matter.” The Court therefore considered whether it was necessary for the grandmother to be present to effectively adjudicate upon the issue to be resolved.

17 The grandmother is seeking to be granted custody of the child pursuant to section 13 of the Family law (Guardianship of Minors, Domicile and Maintenance) Act. That section provides:

¹ [2001] ALL ER (D) 329

² 1971 AC 912@ 935

“The court may upon application of the father or mother of a minor (who may apply without next friend) or of a stranger make such order regarding

(a) the legal custody of the minor and

(b) the right of access to the minor of the applicant or of any other person, as the court thinks fit having regard to the welfare of the minor and to the conduct and wishes of the mother or the father or of the stranger.”

18 This court has no jurisdiction to grant orders of that type under the Children Authority Act, the legislation under which the substantive application was brought. Under section 25 of the Act the court is empowered to make certain orders none of which relate to custody. The respective jurisdictions of the Children Court and Family Court are set out in section 3 of the Family and Children Division Act No 6 of 2016.

A “children matter” includes

(a) children charge matter;

(b) children care matter;

(c) children drug matter;

(d) children mental health matter;

(e) matter which is not a family matter within the meaning of this Act, but the primary issue in the matter is the care and protection of a child;

(f) matter, in relation to a child, where there is an application for and issuance of a Protection Order and its enforcement under the Domestic Violence Act, and where the child is a victim or an affected bystander; and

(g) matter in which a child is required to appear in Court;

A “family matter” means any cause, matter or legal proceeding—

(a) concerning—

(i) any applications under the Matrimonial Proceedings

and Property Act;

(ii) maintenance;

(iii) guardianship;

(iv) wardship;

- (v) custody and access;
 - (vi) applications for orders made to the Family Court under section 25 of the Children’s Authority Act;
 - (vii) adoption;
 - (viii) civil child abduction;
 - (ix) succession and inheritance, excluding probate and the administration of estates;
 - and
 - (x) any matter in relation to the application for and issuance of a Protection Order and its enforcement under the Domestic Violence Act other than those which are children matters; and
- (b) arising out of the written laws listed in Schedule 1 or any other written law and which is connected with, or arises out of a matrimonial, familial or other domestic relationship and is not a matter in which a child is charged or arrested;

The catch all phrase in section 25(m) of the Children Act, that the Court can make *“any other order or interim order as the Court thinks fit”*, must be construed in light of the jurisdiction of the court, which is to deal with children matters. A children matter includes *“any matter which is not a family matter within the meaning of the Act but the primary issue in the matter is the care and protection of a child”*. An application regarding custody is specifically defined as a family matter. The grandmother’s application is primarily concerned with who would care for the child as opposed to how the child should be cared for which is germane to all care matters. The grandmother’s application is not a care and protection matter and does not assist the court in determining whether the child is a child in need of care and protection.

19 The grandmother is also seeking an order to be made under section 48(6) of the Matrimonial Property Act. That section deals specifically with custody in the context of the breakdown of a marriage. These proceedings do not arise on the breakdown of a marriage and even if it did such an order is for the Family Court, for the reasons stated before, this Court has no jurisdiction to deal with family matters.

20 The primary issue in care matters is whether the child is being properly cared for, which would often give rise to the ancillary matter (if the court finds that the child is not being properly cared for) of who would care for the child. In custody matters, the main issue is who would care for the child taking into account what is in the best interest of the child.

21 In care matters, any person wishing to care for a child may present themselves to the Authority to be considered a suitable party for caring for the child. It is the Authority alone who makes

a decision and puts that decision before the court to satisfy the Court that the child is now being properly cared for. If a person wanting to care for a child is not found to be a fit person, and that person is aggrieved by such finding their recourse is to seek judicial review of the decision of the Authority, not to gain custody, but to determine as in all other cases of judicial review whether the Authority, a public body, took into account all that it needed to or failed to take into account factors that it should have, when making its decision. **B v United Kingdom (App. no. 9840/82)**³ which dealt specifically with a parent's recourse (before the legislation in the UK was amended), where she was being denied access by the local authority provides guidance. The position before the amendment is the same as in our jurisdiction, with the local authority being the sole body to determine access to a child in care. No doubt the position is the same for any other grievance against a local authority and in our case the Children Authority of Trinidad and Tobago.

22 The grandmother has no arguable claim, right or interest against the Authority. Child care and protection matters are not adversarial in nature, but proceed on the basis of what is in the best regarding the wellbeing of the child. If the grandmother is aggrieved by the Authority's refusal to have her appointed a fit person she can seek judicial review of that decision. In these circumstances the application to join the grandmother in these proceedings to apply for sole custody are ill founded and I find it unnecessary and undesirable to join in such circumstances. The application for joinder is therefore dismissed.

Gail Gonzales

Judge

³[1987] ECHR 9840/82