

IN THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE
(Family sub-Division)

FH02708/2017

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

AND

IN THE MATTER OF AH, A MINOR BORN ON THE 30TH MAY 2016

Between

SH

Applicant

And

FG

Respondent

Before: The Honourable Madam Justice Allyson Ramkerrysingh

Appearances:

Mrs Joan Byrne (*Instructed by Mr. Nicholas Campbell*) for the Applicant
Mr Lemuel Murphy for the Respondent

J U D G M E N T

Introduction and Summary

1. I did not intend to prepare a written judgment in this matter, but I feel constrained to do so now, for soon after my ex-tempore delivery, Mrs. Byrne pointed out that the substantive issues had not been tried, by which time of course, my decision was a fait accompli. This effectively meant that the judgment may well be considered premature, in the sense that it was delivered without a trial, but having said that, it is unlikely that a trial would have resulted in a different outcome, given the evidence before me.
2. Nonetheless, I feel duty-bound to explain to the Attorneys and the parties, the circumstances that led to this state of affairs, which I have addressed in paragraphs 5 et al, the length of which I apologise for in advance. Before doing so, a summary of my decision follows, detailed reasons for which are given in subsequent paragraphs.
3. I have read and considered the evidence filed on behalf of the parties and have had the benefit of reading the Probation Officer's report. I am satisfied that the Applicant and the Respondent are both equally capable of caring for their child (A), and it is my judgment that it is in A's best interest that he share his time equally between his parents as far as possible. The evidence of the Applicant/Father (F) does not raise anything that satisfies me that the Respondent/Mother (M) should be deprived of custody, nor should the child's access to her be unduly restricted. Having read F's affidavit and in particular the reasons he proffered, juxtaposed against M's evidence, I am similarly not swayed by his justification for filing the Certificate of Urgency in the first place.
4. When he appeared before me, there was a hostile tone to F's behaviour and, combined with what I gleaned from the evidence as a whole, I am of the view that he is more likely to control M's parental involvement, if he were placed as the custodial parent. It is therefore my judgment that legal custody be vested in M, but I am satisfied that F can effectively share all the other responsibilities of custody jointly with her.

Chronology and Procedural Outline

5. The substantive application filed in November 2017 lay in abeyance for quite some time and was eventually overshadowed by an Attachment of Earnings Application (AE application) filed in January 2019, which itself was long awaiting determination for various reasons, leaving the Form 10 and injunction unresolved, as late as January 2020. By the hearing of the AE application in October 2019, the Form 10 and COU had been one month short of two years before me, since the Interim Order was made in November 2017, without movement. So that by May 2020, I wrongly believed that the trial of the Application Relating to Children had already been conducted and only submissions stood in the way of its determination.

6. F filed a Certificate of Urgency (COU), Application Relating to Children (Form 10) and supporting and corroborating affidavits on 15 November 2017 seeking, "*immediate interim custody care and control*" of A, who was then 1 ½ years old. An injunction was granted on 16 November 2017 with interim orders for custody in favour of F and alternate weekend access for M. Directions were given for her to respond and the case was assigned to a Probation Officer. The matter was adjourned to 26 February 2018.

7. On 6 December 2017, M was given more time to file her response and 15 January 2018 and 26 February 2018, were set aside as the dates to hear the injunction and any other applications. F filed a Financial Application (Form 8) on 6 December 2017, but by 15 January 2018, M had still not complied with the November 2017 directions and I further extended the time for filing to the following day and issued fresh directions for her to file a Form 9. Thereafter, it seemed hopeful that the parties would have resolved their dispute. They were referred for co-parenting counselling and for the next two hearings (6 February 2018 and 11 April 2018) the parties were directed to hold Settlement Talks. The date of 26 February 2018 was vacated.

8. On 13 July 2018 an interim order was made for M to pay maintenance in the monthly amount of \$1200, as F had complained that he was finding it increasingly difficult to cope with meeting A's expenses. From this point the matter took a decidedly financial turn. M fell into arrears on the interim order and F filed an AE application on 14 January 2019 which came up for hearing on 1 May 2019, 8 October 2019, 25 October 2019 and 27 January 2020. I wanted to hear the attorneys on the question of the quanta for the normal deduction and protected earnings rates and directed them to file submissions on this issue by 27 March 2020, with any reply by 24 April 2020. I adjourned the decision of the AE to 8 May 2020.
9. Preparation of the judgment began sometime in early April 2020. At that point I was of the belief, mistakenly as it turned, that the trial of the originating application had already been conducted and all that remained was the filing of submissions on the issues arising out of F's Form 10 application. I focused on the Form 10 and COU, which to my mind was due for judgment, having wrongly thought that over the course of the many hearings and the age of the matter that the trial of the substantive issues had been concluded and awaiting judgment.
10. The Return Date being 8 May 2020 meant that it was necessarily vacated by virtue of the Covid-19 Pandemic PD[\[1\]](#). On 8 May 2020 the matter was adjourned to 2 October 2020 but by then the judgment was already in its final stages and I instructed my Judicial Support Officer to enquire about the submissions in the application, meaning the substantive application which in hindsight was erroneous under the circumstances. Without the submissions (which neither side, quite rightly, had not filed), on the 2 October 2020 I proceeded to deliver the judgment prepared some six months prior, (as I now can appreciate) a bewildered looking virtual Bar, who respectfully allowed me to get to the end of my delivery, before Mrs. Byrne politely interjected to remind me that there has been no trial of the main issues.

11. I readily accept that the judgment was given without a trial and acknowledge that this was an oversight on my part, but not detrimental to the parties. I am of the firm view that a trial would not have made any difference to the result, because of the evidence presented. The evidence alone is more than sufficient to make a proper determination and I am of the view that neither party has been prejudiced and the final order is just and fair to both. Nevertheless, I take full blame for unintentionally “jumping the gun”, so to speak.

The Application and Affidavits

12. F’s Certificate of Urgency, Application Relating to Children and supporting affidavit filed on 15 November 2017, seeks injunctive relief against M as follows that:

- a. M be prohibited from entering or remaining upon premises at 2 Pearl Parkway, Diamond Vale Diego Martin or any other place where F may be residing with the child (referred to herein as “A”);
- b. M be, inter alia, restrained from assaulting F and A;
- c. F be granted custody care and control of A;
- d. Interim custody care and control be granted to F and that M be prevented from removing the child from F’s custody care and control.

13. F is also relying on an affidavit filed by his mother on 15 November 2017, as well as his Reply affidavit filed on 12 January 2018. On 6 February 2018 F filed a Financial Application and supporting affidavits on 6 December 2017, 6 April 2018 and 3 January 2019 respectively. He also filed an AE application on 14 January 2019 and two supplemental affidavits on 31 January 2019 and 19 September 2019.

14. M filed her affidavit in response to F’s first affidavit on 18 December 2017. She filed a Form 9 on 24 May 2018 and a supplemental affidavit filed on 31 January 2019.

Background/Facts

15. The parties' relationship began sometime in July 2015. M moved in with F two months after and she became pregnant with A in September of the same year. In order to save money, they relocated to F's mother's rented apartment in Diamond Vale and A was born in May the following year. When they met, M was already the mother of T, a child from a previous relationship who lived with M's mother in Arima. After the parties moved to Diamond Vale, T came to live with them, in anticipation of the parties and the children moving to their own accommodation independent of F's mother. But that never materialised.

16. According to F, the parties argued about M's continual late arrival home after work. He said that she always returned home six or seven hours after completing her shift and that when he spoke to her about it she became angry. He claimed that the situation worsened after A's birth. M was a shift worker employed with Pizza Hut as a manager, but contended that F met her after work to take her home and if she was delayed because other managers were late coming on for their shifts, he would wait for her in the hostess station, until she was able to leave. In late October 2017 she began using the Pizza Hut delivery drivers to drop her home.

17. F asserted that he was A's main carer and complained that even when M was not at work, she was hardly at home and did not spend time with the child. He also said that he had to wash all of A's clothes and felt that he and his mother had to bear the burden of caring for A and T, when M was not at home.

18. M denied that F was A's main caregiver, saying that she cared for A throughout her maternity leave, but that his mother did not treat her well, preventing her from using the washer to launder A's clothes or from preparing meals for the child. She proclaimed that when she took A out, F's mother would call him and he in turn would order her to return

to the apartment with the child. She alleged that all meals she prepared for A or items she purchased for him were discarded by F and his mother. All in all, M felt that F and his mother tended to dominate caring for A to her exclusion, thereby restricting her parenting of the child. Later in the affidavit M avers that this dominance extended to T as well and that he complained that in her absence F and his mother would ill-treat him. During his interview with the Probation Officer, F admitted to spanking T. M eventually moved T out to live with his father.

19. The relationship came to a violent end on 11 November 2017, after a row between F and his mother and M, which resulted in M being forcibly put out of the apartment, leaving A and all her personal belongings behind. F said that she had "*stayed out until 1:00 am*" the night before and the following morning asked him for her apartment key which she said was missing, to which he replied that she had to make a decision either to be in the family or to move out. She grabbed A and her handbag and was preparing to leave, but his mother tried to stop her. A scuffle ensued between M and F's mother and F intervened and prevented her from leaving with A, by holding on to her neck. M left without A or her personal effects which she subsequently retrieved and A has remained in F's care ever since.

20. M's version of these facts is as follows: She arrived at the Diamond Vale apartment from the Pizza Hut outlet in Trincity shortly after midnight, after finishing work at 11:30 pm. She was let in by F on her arrival. The following morning she discovered that her key was missing from her handbag and asked F about it. She said that she noticed F's mother acting suspiciously and called her own mother. She was uncertain whether she would be able to re-enter the apartment again if she left, so she picked A up and proceeded to leave with him. F was alerted of her attempted departure with the child by his mother, who tried to prise A from M's grasp. They fought and F began choking M, which allowed F's mother to take A from her. F then pushed her out of the apartment,

she fell and he and his mother ran inside and closed the gate behind them, leaving M locked outside. F admitted to the Probation Officer, Mrs. Dennie-Charles, his role in the altercation and that he had choked M and shoved her out of the apartment and locked the gate.

21. Currently, M continues to work with Pizza Hut in a managerial position, but her hours of work are now from 7:00 am to 3:00 pm. Her monthly salary comprises a basic salary of \$5125 plus \$672 for travelling. She is also entitled to basic incentive and service charge payments, which fluctuate from month to month and are dependent on the performance of the outlet. She is supported in caring for A and T, by her sister and cousin and very interestingly, F's sister.
22. Much of the remainder of both parties' evidence related to expenses for A and contributions made during the relationship. These financial disagreements comprised the preponderance of the evidence. F claimed that he paid for the majority of A's day-care fees, medical and general upkeep expenses. M's evidence also shows that she makes some contribution in this regard.
23. The Interim Order whereby M was ordered to pay \$1200 per month fell into arrears and was only liquidated in part. The evidence of M's employers, Prestige Holdings, suggests that this amount is somewhat onerous and has to be adjusted. The arrears that have accrued so far will form part of the AE order on the next hearing date.

The Probation Officer's Report[\[2\]](#)

24. F revealed to Mrs. Dennie-Charles, that his reason for seeking legal custody stemmed from M's work schedule as a shift worker and her two "*side jobs*", which he thought did not allow her adequate time to care for the child. This is consistent with what he has said in his affidavit. M informed Mrs. Dennie- Charles that she now works from 7:00 am

to 3:00 pm Monday to Sunday and that her side-line businesses have since been sold. She produced an agreement to support her statement about the sale.

25. The report also revealed that each party has a support system: F has the support of his parents, while M relies on her cousin and F's sister when necessary. Her cousin SM is a self-employed seamstress living in Cascade. F's sister JH works as a Home Care Aide and owns the Diamond Vale apartment where F's mother lived. JH did not file an affidavit in this case, but her remarks to Mrs. Dennis-Charles mirrored M's evidence, as it related to F's domineering attitude in parenting A. JH who also lived on the Diamond Vale property, but presumably in a separate apartment, reported to Mrs. Dennie-Charles that:

"The Applicant behaved as he was Subject's only parent and failed to allow Respondent to care for Subject. She further informed that Respondent was not allowed to go out with Subject unless she was accompanied by Applicant." [3]

I appreciate that JH's statements do not constitute evidence, but coming from F's sister, they do lend some strength and credibility to M's case. Mrs. Dennie-Charles ended her report by stating that her investigations reveal that:

"Parties are both equipped with adequate support systems, housing and financial stability to care for Subject."

The evidence supports that conclusion and it is a position with which I entirely agree.

Considering the Evidence

26. By his first affidavit filed in support of the COU and generally in support of the Form 10, F focuses largely on his expenditure on pre and post-natal expenses for A. He also mentions his other expenses for which he says he often has to rely on his mother for

assistance. Throughout his narrative he has said nothing that touches on M's ability to care for the child, except that he had to take care of A at nights, which coincides with M's evidence and his, that she worked at nights, so it is not unreasonable for him to take over these responsibilities during those hours.

27. I have spent some time giving details of the November incident^[4] that led to the break-up, although I am of the view that, as unsavoury as that event was, it does not lend much probative value to the issue of custody and access. This incident was the reason that prompted the filing of the COU and the Form 10, but even from F's standpoint he is not innocent in the affair. Moreover, this isolated episode ought not to negatively impact on either of the parties' parenting of their son.

28. It is evident that the parties had disagreements, but these centred around money, and what F saw as M's unexplained absences from the home. He gave no details to support his implication that she was shirking her parental responsibilities in favour of enjoying some leisurely nighttime activity, but what he has stated in this regard is shaky. Paragraph 6 of the affidavit filed on 15 November 2017 states:

"The Respondent (sic) works shift hours at Pizza Hut. She would always return home 6 or 7 hours late after she finished her shift without any explanation to me^[5]. ... This became worse after the birth of A (sic). The Respondent's (sic) employers provide drivers to drop them home during the night hours."

The only interpretation one can get from this paragraph, is that M returns home six or seven hours after her shift has ended, even though drivers are provided to take employees home. By this evidence, F strongly suggests that instead of going home straight after work, M gallivanted for six or seven hours, without his knowing where she was, rather than return home to take up her responsibilities for A's care.

29. Crucially M counters this statement in paragraph 7 of her December 18 2017 affidavit saying that:

"I do work shift hours. On some occasions, I would run late if other managers were late in taking up their shifts. The Applicant always picked me up from work[6]. My colleagues were aware of this and would always inform me of his arrival. Whenever I would run late the Applicant would remain in the hostess station and wait for me to be relieved of my duties. The Pizza Hut drivers only began dropping me home in late October 2017 after I had informed the Applicant that I was moving out."

F inadvertently corroborated M's evidence by responding to this paragraph in his January 2018 affidavit saying:

"... the Respondent only started coming home with the driver early in November 2017 and not October because the Respondent started treating me as if I was her driver and I stopped picking her up at nights."

This is the crux of F's case, but his reply is in direct contrast to his original statement that M always returned home late without an explanation to him. Clearly F knew about M's whereabouts and by his answer admits, for the first time, that he collected her from work. This puts his evidence of her frolicking after work and evading her parental duties on thin ice. In my view, F was attempting to mislead the court by casting M as an irresponsible, care-free individual, who placed little emphasis on parenting. But the evidence does not support this picture.

30. It is evident that M and F's mother did not get along. There were bound to be clashes when F brought a pregnant M to reside in his mother's space, followed shortly after by A's arrival. It is unsurprising that the situation was so tense and ended so

abruptly. However, as stormy as the November incident was and as disagreeable as the relationship was, none of what I have read is enough to make one party stand out against the other, as far as parenting is concerned. None of the evidence before me negatively impacts M's parenting skills, or on her right to be treated on an equal basis as F.

31. Whether or not M contributed to A's pre and post-natal expenses, or paid the rent and other expenses when the parties were together, does not mean that it is in A's best interest that he should be deprived of meaningful participation in his life, of one of his parents in favour of the other.
32. At present both parties work during the day. They are more or less in the same income bracket although M has the potential to earn considerably more, depending on the performance of the branch she manages. Accordingly, they are on equal footing to meet the child's needs. F is fortunate in that he lives with his mother and has in-house support readily available to him, but that does not place him in a superior position to M, whose support consists of her cousin and F's sister.
33. From the evidence I am satisfied that both parties can offer A similar, if not the same way of life and standard of living and I see no reason why they each should not be treated equally. To my mind, neither party has succeeded in discrediting the other's parenting ability, (although it is my opinion that M was not attempting to do so), which strengthens my conviction that these parents are equally capable of parenting this child. What differentiates them in my view is the hostile manner that F has portrayed against M, which was described in the affidavits and confirmed by F to Mrs. Dennie-Charles and which I have observed during the course of the proceedings. It is that brusque conduct displayed by F, that makes me doubt whether or not he would act fairly if he were to be made the custodial parent.

34. I would be much more at ease with the custody rights being vested in M, as it is my view from the observations of the parties in court and from the evidence filed, that she would be less likely to use her custodial rights to victimise F.
35. On a peripheral point I note that T has also spent time with F and it is regrettable that this initial generosity showed by F and his mother, to allow T into their home while the relationship lasted, could not have ended on a better note.
36. Having said that and having carefully considered the evidence, it is my judgment that A would benefit from spending as much time with one parent as the other and for each party to participate in his life as fully as possible and as the circumstances allow. Such an equilibrium would undoubtedly provide A with the best of both worlds and in my judgment reflect his best interests.
37. I therefore order that:
- a. Legal custody of the child be granted to the Respondent.
 - b. The Applicant shall share in all other aspects of parenting (other than actual custody) and shall share those aspects along with the Respondent.
 - c. Each party shall have access to the child:
 - i. During the school term for two consecutive weeks beginning with 1st October to 16th October to the Respondent with the time for handover being 5pm;
 - ii. For half of the long school (July and August) holiday inclusive of weekends with the month of July 2021 with the Applicant;
 - iii. For half of the Christmas school holiday save that half of Boxing Day, Christmas Day, Old Year's Day and New Year's Day shall be spent half with each party;

- iv. Half of the Easter school holidays;
 - v. Part of the child's birthday;
 - vi. Any other times as agreed.
- d. Each party shall be responsible for the maintenance and general upkeep of the child when he is in his/her care.
- e. Both parties shall be responsible for the child's educational expenses, which shall include books, uniforms, extra-curricular activities including extra lessons, school materials and supplies, internet/wi-fi service and all other school related expenses as well as all medical, dental and optical expenses in equal shares.
- f. The Injunction granted on 16th November 2017 is discharged with no order as to costs.
- g. The Interim Order dated 12th July 2018 is discharged.
- h. Each party shall bear his own costs.

38. All that is left is to complete the calculations of the rates on the AE application so that M's accrued arrears on the interim order can be liquidated.

Allyson Ramkerrysingh
Judge

Dated 30th September 2020

[1] Covid-19 Pandemic PD; Trinidad and Tobago Gazette; Vol 59 No 57; 27.04.2020

[2] Report dated 26.01.2018

[3] Probation Officer's Report; 26.01.2018; para 22

[4] paras 19, 20

[5] My emphasis

[6] My emphasis