



In The Supreme Court of Bermuda

CIVIL JURISDICTION

2017 No: 342

BETWEEN:

T.S.M.

Plaintiff

-V-

T.T.

S.C.

Defendants

CHAMBERS RULING (EX TEMPORE)

Date of Hearing: Thursday 21 September 2017 (ex parte) and
Wednesday 27 September 2017 (inter partes)

Date of Ruling: Wednesday 27 September 2017

Plaintiff: Paternal Grandmother (In person)

Defendants: Biological Mother and Biological Father (In person)

*Removal of Child from Jurisdiction (Section 22 of the Minors Act 1950)
Custody Care and Control (Section 36C of the Children Act 1989)*

Introductory

1. This matter has come before the Court on a summons application for care, control and custody of a male child of 5 years in age (“the child”). The applicant is the paternal grandmother and she also seeks an order of the Court prohibiting the child from being removed from the jurisdiction.
2. On Thursday 21 September 2017 the application was summarily heard by the Court on an ex parte basis, the summons having been filed with the Court earlier on the same day.
3. The matter was adjourned to be heard on an inter parte basis and proceeded on Wednesday 27 September 2017. Both the biological mother and the biological father (collectively “the parents”) appeared and gave evidence in opposition to the application as *de facto* Respondents.

The Facts

4. Through the evidence, the Court learned that the parents intend to relocate with the child to Manchester, UK. The parents are a couple of 8 years of history between themselves, some of which was unarguably tumultuous in less recent years.
5. While the applicant raised concerns about the competence of the parents to care for their child, I found the parents to appear genuinely interested and invested in the welfare of their son. The Respondent Mother told the Court that she and the Respondent Father have a good and happy relationship with each other and the child. This was consistent with the Respondent Father’s evidence.
6. On the evidence of the Respondent Father, he purchased airline tickets to leave the jurisdiction tomorrow morning with the child at 8:30am on the New York flight aboard American Airlines with a view to connecting to the UK a few days thereafter.
7. He informed the Court that he has paid a 6 month deposit on rental accommodation which consists of a two-bedroom apartment where he and the child will live. The Respondent Mother intends to join the two of them with their younger child of toddler age in December of this year. There and then, the Respondents intend to cohabit as a happy family.
8. The Court was informed through the evidence of the parents that it is the parents’ mutual intention to educate their child in a primary school near the location where they plan to live

overseas. The Respondent father told the Court of his efforts and progress in securing a particular school for the child to attend.

The Law

9. Section 22 of the Minors act 1950 empowers a Judge to prohibit the taking or sending of a minor child out of Bermuda. The paternal grandmother is an “interested person” for the purpose of section 22 as she has a *bona fide* interest in the welfare of the child.
10. A necessary ground of the application requires the Court to find that it would be prejudicial to the welfare of the child to be taken or sent out of Bermuda.
11. Section 36C of the Children Act 1998 provides that the father and the mother of a child have a statutory entitlement to custody. The parents of the child have parental responsibility and legal guardianship unless otherwise ordered by the Court. This extends to a right to care and control over the child and a right to direct the child’s education.

Decision

12. I find that there is no credible evidence which leads me to be concerned for the welfare of the child in his parents care. On my assessment of the evidence, the parents are taking steps to improve their quality of life and ability to provide for their two children.
13. While the Plaintiff Grandmother raised concerns regarding the child’s healthcare and the parents’ capacity to look after their child, I find that her evidence is not such which would cause or invite me to interfere with the parents’ rights to care for the child. To grant the application before the Court would be to unreasonably remove the child from his biological parents and younger sibling.
14. For these reasons, the application for an order prohibiting the child’s removal from Bermuda is refused. Equally, I refuse the Plaintiff’s application for custody, care and control.

Dated this 27 day of September 2017

SHADE SUBAIR WILLIAMS
ACTING PUISNE JUDGE OF THE SUPREME COURT

