

1. A. Custody proceedings - custody of infant girl born out of wedlock awarded to father by Resident Magistrate - whether decision unreasonable - whether decision cannot be supported having regard to the evidence. Correct principle applied - welfare of child.

[CA - "we do not consider his JAMAICA (RMS) findings ought to be disturbed - appeal - dismissed."] ✓ comp

IN THE COURT OF APPEAL

MISCELLANEOUS APPEAL NO: 5/88

No case referred to

BEFORE: The Hon. Mr. Justice Campbell, J.A.  
The Hon. Mr. Justice Forte, J.A.  
The Hon. Mr. Justice Downer, J.A.

BETWEEN	MARLENE SIMPSON	APPLICANT
AND	WINSTON CONDAPPA	RESPONDENT

Ms. Antoniette Haughton for Applicant

Keith Brooks for Respondent

21st November, 1988

CAMPBELL, J.A.

This is an appeal from a judgment of the learned Resident Magistrate given in the Resident Magistrate's Court, Richmond St. Mary on February 10, 1988. It concerned custody of an infant girl "X", the father is Mr. Winston Condappa the mother one Miss Marlene Simpson. The father took out custody proceedings claiming custody of this infant girl. She was born on the 29th of October, 1981 out of wedlock. The father is presently engaged to be married to a lady who has given evidence that she is prepared to look after the child. The Probation Officer carried out his investigations and from his report it appears that as to the housing accommodation and the ability to maintain the child, have her sent to school and looked after at home, he was in a better position than the mother. Regrettably, the mother's evidence was very scanty. The evidence is so short that it may be summarised, namely, that the child is presently living with her at Bellfield, she goes to St. Cyprian Prep School and that she the mother is able to look after the child properly, and that she was not giving

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up the child. Under cross-examination it was established that she was not working and she admitted that she had a baby eight months old with a boyfriend who sometimes visit her at her one bedroom apartment. The learned Resident Magistrate considered the evidence adduced, and as he said, he gave careful consideration to the best interest of the child bearing in mind the principle that the welfare of the child is of paramount consideration. He accordingly granted custody to the applicant father.

Before us Miss Haughton submitted that the decision of the learned Resident Magistrate is unreasonable and such decision cannot be supported having regard to the evidence. She strenuously urged that, particularly in the case of a young girl, more consideration should be given to the mother having custody than the father. We appreciate that the child being a young girl is a fact that should be considered but having regard to the evidence which was led, and the findings of the learned Resident Magistrate which was well supported on the evidence, we cannot say that he did not apply the correct principle namely the welfare of the child and that in granting custody to the father he erred in any way. For these reasons we do not consider that his findings can or ought to be disturbed, the appeal is accordingly dismissed.