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IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CLAIM NO. HCV 2230 of 2007

BETWEEN MICHELLE ANN STRONG FORRESTER CLAIMANT

AND KEVIN LEIGHTON FORRESTER DEFENDANT

*Mrs. S. Rиден-Foster instructed by
Livingston, Alexander and Levy. for Claimant*

*Mr. G. Goffe instructed by Myers, Fletcher and Gordon
Watching proceedings on behalf of the Respondent..*

**Heard: 25th July, 2008, 7th August, 2008
 23rd April, 2009**

Marsh, J.

The Claimant Michelle Ann Strong-Forrester and the Defendant both Jamaicans, were married in Jamaica on the 2nd day of June, 2001. She is currently resident in Jamaica, and is a Management Consultant. He resides in the United States of America where he is a Clinical Pharmacist and Lecturer at the University of the Southern California. Both parties had resided in the United States between September, 2001 and January, 2007 at the Matrimonial home at 4 Glenridge Lane, Pomona California.

During that period, the marriage produced two boys, who for present purposes shall be referred to a 'Q.C and K. St. C' respectively. Q.C. was born on the 18th day of October, 2002 and 'K. St. C.' on the 3rd day of March, 2005, respectively.

While the Claimant and the Defendant resided together in the United States, the Claimant developed a pattern of bringing the two boys to Jamaica quite often, “to give them some sense of foundation and to be around family members.”

This continued until in January, 2007, the Claimant and the two boys ‘Q.C and K. St. C’ returned to Jamaica and has continued to reside in Jamaica. Irreconcilable differences had developed between the Claimant and the Defendant.

By Relisted Fixed Date Claim Form dated the 28th May, 2007 filed on the 22nd February, 2008, the Claimant sought the following orders:-

- (a). An order that she may have sole custody of the relevant children ‘Q.C and K. St.C.’
- (b). An order that the Defendant do pay to the Claimant the sum of One Hundred and Twenty thousand dollars (\$120,000.00) towards the maintenance of the said relevant children ‘Q.C and K. St. C.’ Such sum to be paid per month commencing on the first day of each month and continuing on each successive month thereafter until further order.
- (c). An order that the Defendant be restrained from recovering the relevant children from the jurisdiction without a Court order or without the Claimant’s consent.
- (d). An order that the relevant immigration authorities be served with this order.
- (e). That the Defendant be given access to the relevant children on such terms and for such periods as this Court deems fit.
- (f). That there be Liberty to Apply.

The Claimant relied on her Affidavit in support of this Fixed Date Claim Form sworn to on the 28th day of May, 2007.

The Defendant has not participated in the instant proceedings but was represented by Mr. G. Goffe, instructed by the firm of Myers, Fletcher and Gordon, who watched the proceedings on his behalf.

The major issues which fall to be resolved in this case are essentially these:-

- (1). Whether it is in the best interest of the two relevant children 'Q.C and K St. C. that they remain under the sole care, custody and control of their mother the Claimant.
- (ii) if the finding at (i) is that sole care, custody and control of the said relevant children be granted to the Claimant, whether the Claimant is entitled to an award of maintenance with respect to the two children Q.C. and K. St. C.
- (iii). if the Claimant is so entitled, what should be the amount of the sum awarded for maintenance of the said relevant children.

Section 18 of the Children Guardianship and Custody Act lays down with admirable economy the principles on which questions relating to custody, upbringing etc. of children are to be decided. It reads as follows:-

“Where in any proceedings before any Court the custody or upbringing of a child or the administration of any property belonging to or held in trust for a child or the application of the interest thereof, is in question, the Court in deciding that question, shall regard the welfare of the child as the first and paramount consideration whether from any other point of view, the claim of the father of any right at common law possessed by the father, in respect of such custody, upbringing or application is superior to that of the mother, or the claim of the mother is superior to that of the father.”

The evidence in support of this application is contained solely in the affidavits of the Applicant Michelle Ann Strong Forrester dated August 16, 2007 with attached exhibits.

The children “Q.C.’ and K. St. C” were born on the 18th day of October, 2002 and pm the 2nd day of March, 2005 respectively. Both are therefore young children. Bearing in mind the clear direction given to Courts considering the custody or upbringing of the child, by Section 18 of the Children (Guardianship and Custody) Act, I recognize that the ‘welfare of the child’ must be my first and paramount consideration.

The major issue here is whether on the evidence I accept, the current situation where the children are in the sole custody, care and control of the Applicant/mother is in the children’s best interest.

Further, if the Applicant succeeds in her application for custody of the children, she is entitled to succeed in her application for maintenance of the children by the Respondent/father and if so what should the quantum of maintenance be.

In the children’s few years of existence, the evidence shows that the mother was the constant factor in the children’s lives. The daily interaction in their care was apparently such that even the Respondent, in an e-mail message to the Applicant had made the observation in reference to the children that “they take up an exorbitant part of your life.....” This was not contested.

The Applicant, save for a brief period when outside domestic assistance was sought, was responsible for all the household chores.

The children are citizens of the U.S.A. but also citizens of Jamaica, holding Jamaican passports also, by reason of their parents’ nationality. Despite their few

years, the children have made many trips to Jamaica and these have provided them with the opportunities for closed bonding with family members of both Applicant and Respondent, resident in Jamaica. The majority of the family members reside in Jamaica, not in the United States.

The children are now enrolled in schools in Jamaica, their first schools.

I am aware of the responsibility of coming to my own conclusions as to what is in the children's best interests and welfare.

However, for assistance, evidence has been supplied of the Expert Report of Dr. Maureen Samms-Vaughan, Professor of Child Health, Development and Behaviour, University Hospital of the West Indies, Consultant Developmental Behavioural Paediatrician, and University of the West Indies. She had, as her terms of reference, the areas which should form her medical report. She was also aware that the paramount principle to guide the Court in these proceedings was what course of action will best serve the children's welfare and interests, having regard to their ages, to remain with their mother, based on the emotional bond between them or for the children to be returned to live with their father in the United States of America. She was made aware that the report was required in a custody application for the children.

Her medical opinion was sought as to the likely psychological and emotional effect that the return of the children to California away from the Applicant and Applicant's mother and extended family in Jamaica to reside with the Respondent, his parents and a nanny would look on the children, if it is in the

best interest of the children that they remain with their mother, and of course with access to the father, to provide only medical reference that would help the court to consider, that is to say if the children are too young and closely bonded with their mother for them to be removed from Jamaica and return without their mother to California, then she should “provide us with the medical assessment of the parties supported by the medical text and reference material which will demonstrate that opinion..”

Further, her opinion and comments from a paediatric stand point were sought concerning the Respondent’s concerns about the delayed speech impediment of ‘K.C’ and whether remedial resources and actions necessary to correct ‘K.C’s hearing and speech impediment are available in Jamaica.

Dr. Samm-Vaughan, after itemizing the sources of information and the texts and material relied on, proceeds to provide an extensive and detailed report.

She began by outlining the background as gleaned from the material available to her. She referred to the parents and their stressors, the status of the children and their case vis a vis their living arrangements in the U.S.A, and in Jamaica. She indicated her observations regarding the children and made distinct conclusions based on her interviews, observations and assessment of affidavits at her disposal of both Applicant and Respondent. She indicated that she arrived at her conclusions, not having interviewed Dr. Kevin Forrester the Respondent.

In my view the important conclusions made by Dr. Samm’s Vaughan are as follows:

Attachment theory requires that for young children custody decisions must ensure close physical attachment to the attachment figure. In her view, the physical attachment figure in the instant situation is the Applicant mother, based on the fact of her repeated presence during the course of the lives of the children.

Removal from this 'primary attachment figure' their mother is likely to cause the children undue stress. This may manifest itself by internalized or externalized behaviour or emotion. Internalized behaviour includes becoming sad and tearful and refusing to communicate, withdrawal from peers and family; external manifestations include telling lies, stealing and disruptive behaviour in class.

Professor Samms-Vaughan also sought to allay the concerns of the Respondent/father regarding the speech delay problem of child 'K.C'. She indicated that there were three qualified Speech and Language although in practice in Jamaica and that their expertise and service are easily accessible.

She mentioned that studies done comparing Jamaican Six years olds attending preparatory schools have shown that these children "performed consistently above the level of the reference U.S. population." She also opined that 'Q' and 'K' can receive in Jamaica health care and education similar to that provided in the United States." In conclusion, it was her recommendation that 'Q' and 'K' should remain with their mother. Frequent visits to the Respondent or by the Respondent will ensure that the children keep in regular contact with their father.

The Applicant mother has demonstrated a willingness to have the children spend holidays with their father and maintain contact with their paternal grandparents.

The children's mother has given uncontested evidence, that the children's close connections are with Jamaica although the place of their birth is the United States. They have spent a significant part of their your lives building with an extended family – comprising various grandparents, aunts, uncles, cousins both maternal and paternal, godparents and a host of other persons.

The children are currently in school in Jamaica at St. Hugh's Preparatory School and at a nursery school respectively. Their progress is enhanced by positive experiences. Field trips are made each week. 'Q' has become settled and quite comfortable in his class and has made a number of friends which include his godmother's child who is also a neighbour. 'K' is now settling in his nursery environment, has friends one of whom is his cousin and playmate.

A comparison between Pantera Elementary School in California and St. Hugh's Preparatory School will reveal that Christian values are not taught at Pantera Elementary School while St. Hugh's Preparatory School is an Anglican School where a Christian foundation is promoted in all its affairs.

The children attend church at Webster Memorial Church where they were christened and at which their parents were married. Church attendance in California was infrequent. The children's spiritual upbringing is supported by this

church which they attend with their mother, and Q received religious instructions at his School, St. Hugh's Preparatory.

Pantera Elementary School has a very small black population only 2% - 3% with the majority being predominantly Asian. There was no community of friends in Pomona, California with similar values or cultural norms within which to raise the children.

In Jamaica, the children are housed in a 3 bedroom two bathroom house, shared by the Applicant and her mother. Both boys share a room. This house is located on ample well fruited land space. The boys have access to fruits from more than twenty of these fruits trees.

The possible arrangements for the children living situation should custody be granted to the father, are that his aging parents would assist in looking after the children. Both parents are in their 70's. It is the contention of the Applicant mother that by virtue of their current ages, Respondent's parents will be in their 80's by the time 'K' reaches the age of 5 years.

The Applicant has indicated that she has no desire to cut the children off from their father. However, her suggestion to the father that the children spend the school months with her and holidays with the Respondent was met with the father's response that he would not in such circumstances return the children to Jamaica.

In the light of this, the Applicant is seeking an order that residential access be granted to the father in Jamaica, to take place at the home of the children's

paternal grandparents and that there be a schedule of telephone access so as to enable the father to maintain telephone contact with his children until further order. The Applicant also sought maintenance in the same Fixed Date Claim form dated the 28th day of May, 2007.

At paragraph 13 (b) of the said Claim she sought

“an order that the Defendant do pay to the Claimant the sum of One Hundred and Twenty Three Thousand Jamaican dollars towards the maintenance of the relevant children Q.C.F and K. St. C. F which to be paid on a monthly basis commencing on the first day of each month thereafter until the further order.”

There was already in place an interim order for Maintenance made on the 4th of February, 2008 by the Hon. Mr. Bertram Morison (Ag.) as he then was.’

This Interim Order was for the defendant to pay the amount of Seventy Thousand Two Hundred and Eighty Five dollars and Eighty Three cents (\$70,283.83) payable on a monthly basis as on the first day of each month and every month thereafter, until further order. Additionally one half school fee and nursery fees were to be paid directly to the providers upon production of supporting invoices.

The Applicant mother relied on her affidavit sworn to on the 19th December, 2007. She indicated that her annual salary amounted to approximately Thirty Five Thousand U.S. dollars per annum. In local currency her monthly take home pay is approximately One hundred and Twenty Six

Thousand (\$126,000) Jamaican dollars. She listed and totaled her monthly expenditure for the children to be \$2,921,400.00.

The Defendant is a clinical pharmacist employed to the University of Southern California where he is employed as an Associate professor of Pharmacy where he earns annually in excess of Ninety thousand United States dollars. The Claimant therefore is possessed of the means to contribute towards the children's financial needs and requirements.

A joint account which both Claimant and Defendant operated in Jamaica was now deplete of funds as the Claimant indicated that she had to access funds to purchase a motor vehicle and to provide food, lunch money, school related expenses and pay medical bills inter alia. This car is used to transport the children to and from school and to other social and church activities.

The Claimant contends that the Defendant has stated, through his attorney at law that he is unwilling to make any financial contribution to the children's maintenance as long as the children are in Jamaica.

The uncontested evidence of the Claimant mother is that child 'K' still attends the nursery, is involved twice weekly in speech therapy sessions and still needed 'pullups' as he was not as yet 'fully potty trained.'. Birthday parties and Sunday expenses relevant to gifts for teachers are not, in her view, frivolous or unnecessary.

The expenses stated for food relate primarily to the children and their caretaker and not to the Claimant and her mother. The Claimant also contends

that despite a promise made to her by the Defendant (in an e-mail dated the 8th October, 2007), to pay for the cost attendant to therapy for the child 'K', she remains the sole provider of the expenses for specialist speech therapy.

The Claimant has expressed her rationale for seeking maintenance from the Defendant is that she is of the opinion that the father should, because of his superior means be required to contribute to the financial needs and requirements of the children. Besides, her own resources have been impacted by the need to expend money to pay for substantial legal fees in defending proceedings both in Jamaica and the State of California.

The Court should make the following findings, it is submitted:- (1) that the Claimant has established the children's needs as amounting to the sum of One Hundred and Sixty Thousand dollars (\$160,000.00) and that she is entitled to claim the sum of One Hundred and Twenty Thousand dollars (\$120,000.00) per month.

The Law

Section 18 of the Children's (Guardianship and Custody Act), already quoted supra, provides the first consideration that a Court dealing with an application such as this, must be guided by the fact that the welfare of the child must be the first and paramount consideration. The Court shall not take into consideration whether the mother's claim is superior to the father's or vice versa.

In a matter between the same parties in the Jamaican Court of Appeal, Harris J.A. in *SCCA No. 101 of 2007, Keith Leighton Forrester vs. Michelle*

Ann Strong Forrester delivered on 2nd May, 2008, in expressing how a Court should carry out its mandate under Section 18 of the said Act expressed herself as hereunder:-

“A Court in its enquiry into the requirements of a child, must with utmost care assess which forum best fits the child’s best interest in its application of the welfare test. The Court is obliged to employ scrupulous care in conducting such an exercise.

The Court must pay due regard to all the circumstances surrounding the child. The best interest of the child supersedes all other considerations. This demands that due consideration be given to matters such as the Child’s happiness, moral and religious upbringing his social and educational influences, his psychological and physical well being and his material surroundings.”

In the Jamaican case Court of Appeal decision *B v. S (1999) 58 WIR 31*. The father’s appeal was dismissed. The Court held that the trial judge had properly considered the desirability of young children being with their mother and the desirability of keeping siblings in the same household. The trial judge had treated the welfare of the children as the first and paramount consideration.

In *Re Austin, Austin v. Austin 1865 55 ER. 634* at page 637 Romilly M. R. opined

“no thing, and no person and no combination of theirs can in my opinion, with regard to a child of tender years, supply the place of a mother and the welfare of a child is so intimately connected with its being under the care of the mother, that no extent of kindness on the part of any other person can supply that place.”

In the Jamaican Court of Appeal, Rowe President in *Edwards v. Edwards (unreported) 4 October R. M. Court Miscellaneous Appeal 1/90* repeated the opinion of Romeley M. R. (supra) with obvious approval.

In *Re v. S. (a minor) (custody) 1991 2 Family Law Report 388 Butler – Sloss L.J.* in delivering the judgment of the Court of Appeal said at page 390-

“The welfare of the child is the first and paramount consideration. Under the Guardianship of Minors Act, 1971, under which this matter is being dealt there is no presumption that one parent should be preferred to another parent at a particular age. It used to be thought many years ago that young children should be with the mother that girls approaching puberty should be with the mother and that boys over a certain age should be with father. Such presumptions, if they ever were such, do not, in my view, exist today. There are dicta of this Court to the effect that it is likely that a young child, particularly perhaps a little girl would be expected to be with her mother, but that is subject paramount consideration. When there is a dispute between parents as to which parent should take responsibility of the care of the child on a day-to-day basis, it is for the Justices or for the Judge to decide which of those parents would be the better parent for the child, who cannot have the best situation since they are not together caring for her. I would just add that it is natural for young children to be with mothers but where it is in dispute, it is a consideration but not a presumption.”

This was agreed to Lord Donaldson M. R. in the same judgment at p. 392 when he said, inter alia,

“ ... as Butler-Sloss L.J. has said it is natural for young children to be with their mothers. Given that situation, if you take enough cases you will almost certainly find that in the majority of them, it is in the interest of the child that he or she should be with the mother. Whether or not that amounts to a presumption, I know not.”

Section 7 (3) of the Children (Guardianship and Custody) Act, declares that

Where the Court under subsection (1) makes an order giving custody of the child to the mother, then whether or not the mother is living with the father the Court may further order that the father shall pay to the mother towards the maintenance of the child, such weekly or other periodic sum as the Court, having regards to the means of the father, may think reasonable. “

It is pursuant to this section 7(3) of the said Act that the Claimant makes her application for maintenance of the two children.

Any order for maintenance made in this jurisdiction against a father resident in the state of California, may be enforced in that state, a reciprocating state for the purposes of the Maintenance Orders (Facilities for Enforcement) Act.

In *Suit no. 2000/E48 Noelia Seow v. Harold Morrison* (an unreported judgment) of the Jamaican Supreme Court delivered on the 20th July, 2001 His Lordship Mr. Justice Harrison put it, succinctly thus-

“it is recognized that the father of a child has a continued responsibility and the Court a continuing jurisdiction to make such orders as it thinks appropriate for the maintenance for the child.”

The Court however, was of the opinion that “the sum for Health, dental, insurance and medical expenses ought to be qualified monthly as this is more prudent and convenient.”

It was the submission of Counsel for the Claimant that the father Kevin Leighton Forrester should bear the bulk of the responsibility for maintaining the children. Her reason why this should be especially so is that there is a vastly

disparate difference between the mother's income and that of the father. The court should therefore make such orders for maintenance for the children, as it considers just and in keeping with the best interest of the children.

It is to be noted that the evidence provided by the Claimant mother to this Court has remained uncontested for the purposes of this Application for custody and maintenance, the father having elected to take no part in these proceedings.

The Claimant has proved to my satisfaction and to the required standard that she is a Jamaican and that albeit that the children were born in the United States, that the children are also holders of Jamaican Citizen Certificates and Jamaican passports as both their parents were born in Jamaica. The Claimant has proven and I accept that she is the primary caregiver of the children and that has been since their birth. Her involvement in their young lives both when they were in the United States, on their trips to Jamaica and now, confirms that the mother was the prime caregiver. Her investment of daily care and interaction in the children's lives, makes her 'a constant factor' in their lives."

Professor Samms-Vaughan's report is illuminating, and the professor has opined that "Physical disruptions to children's lives are considered to be less consequential to their development than emotional disruptions."

In considering the aspect of custody of the children, I have been guided by the dictates of Section 18 of the Children (Guardianship and Custody) Act, already outlined above. I take as my first and paramount consideration the welfare of each of the two children.

Social

The children are now surrounded by family and friends- maternal and paternal members of family, including their maternal and paternal grandparents and a host of cousins and friends. Home for the children is a three bedrooms, 2 bathrooms house and the children share a room. They live on a well fruited lot and have access to a variety of fruits from the fruit trees there. Access to a much larger yard in Jamaica than he had in the USA has made exercise easier, by his running up and down; this had helped considerably the child “Q” who has previously suffered from the effect of constipation. His school also provides large, grassed play areas affording even more opportunities to engage in healthy exercise. Space for free running was only possible when he was taken to a public park (in California). Accessibility to rivers and frequent visits to the beach have provided fresh air and water play.

Educational:

‘Q’ is attending regular school in Jamaica, in a settled educational system at St. Hugh’s Preparatory School. This is his first school as prior to this he was never a part of the American School System. His godmother’s child and close neighbour also attends the same school.

Child ‘K’ is settled in at ‘Crayon College’; a nursery where he has a cousin who also attends there.

St. Hugh’s Preparatory School is a private school for which fees are paid. The school in which ‘Q’ would have been placed is the Pantera Elementary

School, a public school, where the black population does not exceed 3.6% of the school's enrollment; the school population is predominantly Asian.

Religious

Webster Memorial Church is the church to which the children are taken for their religious upbringing. Christian values are imparted at St. Hugh's Preparatory School. The church referred to above is where both Claimant and Defendant were married, the children christened and their pastor is in close contact with the children, as are other members of the church family.

Health

The children are seen when necessary by a paediatrician Dr. Gabay and have regular dental care; Child 'K' had been identified in the United States to be suffering from a 'speech delay'. He was referred to a Speech and Language Pathologist for evaluation and treatment. Paediatric expertise is widely available in Kingston and St. Andrew where there are about half of the total paediatric practitioners in Jamaica. These are located in close proximity to where the Applicant/mother resides with the 2 children.

There are three qualified Speech and Language Pathologists in Kingston, with U.S. qualifications and they provide quality service. Audiology services are also available and accessible in both the public and the private sector. (See Dr. Maureen Samms –Vaughan's report.

The alternative arrangements for the children, were they to be returned to California to live with the Defendant father are in my view, much less than

desirable. Defendant would employ a nanny. The children's paternal grandparents would also be asked to assist in caring for the children. This latter situation would not be in the best interest of the children, as Defendant's parents are retired septuagenarians.

It is patently clear to me that the children, being the ages that they are, are best in the care of their mother. Dr. Maureen Samm-Vaughan's professor of Child Health, Child Development and Behavioural Paediatrician at the University of the West Indies has furnished a report for the Court's assistance in this application for Custody. This report is appended to the Claimant's affidavit.

The Professor opines as follows –

“Removal of the children from their most consistent and therefore primary caregiver, their mother Michelle Strong-Forrester, is likely to cause the children undue stress. This will be compounded by the simultaneous need, in the absence of an appropriate transition period, to adjust to varied and new caregivers (day care-centre caregivers, nanny) as well as to caregivers with whom they have had contact in Jamaica, but whom have never been consistent primary caregivers (grandparents). The grandparents would themselves be adjusting to a new physical environment at the same time as the children are adjusting. This may result in internalizing or externalising behavioural or emotional manifestations. Internalising behaviours include withdrawing from peers and family; becoming sad and tearful and refusing to speak. Externalising behaviours include aggression, lying, stealing and disruptive behaviours in class. ‘Q’, in particular, has shown that he is sensitive to the emotional changes around him and would therefore be in greater risk of manifesting such responses.”

Walker J. A. of the Jamaica Court of Appeal, dealing with the matter of the preferred role of the mother, in the case *B v. S. (1999) 58 WIR 311 at page 314* expressed himself in this manner.

“It cannot, I think be gainsaid that very often a mother can provide better care for her child than can anyone else.”

See also Rowe P. in *Edwards v. Edwards (supra) and Butler Sloss L.J.* earlier above.

Since the welfare of the child concept “encompasses such matters as the child’s happiness, its moral and psychological upbringing, the social and educational influences, its psychological and physical well-being, and its physical and material surroundings.” I have to weigh all the relevant factors of the evidence provided before me. As I have already indicated, the mother’s evidence stood uncontested as the Respondent father took no part in the proceedings before me.

I therefore find as a fact, that the children ‘Q’ and ‘K’ residing in Jamaica with their mother the Applicant are residing with the primary caregiver, their mother. I also find that they are, in Jamaica surrounded by and relating to grandparents maternal and paternal, cousins and a host of extended family members and friends. Although the children have just begun nursery and school in Jamaica, their early education is helping to produce, happy and comfortable children.

Pantera Elementary School, a public school with a small proportion of the school population, black, is less suitable a school than is St. Hugh's Preparatory School in Jamaica, where Christian values are taught as the school is an Anglican School.

The living arrangements for the children are in settings which the children enjoy – grassy areas for exercise and play and well fruited land with a variety of fruits, all available to the children.

I further find that the domestic arrangements of both children sharing a room, in a three bedroom house with 2 bathrooms, is adequate to their current needs.

I accept the mother's evidence that the children "have an improved quality of life in Jamaica. They frequent the beach and the river where they benefit from fresh air and water play."

It is also uncontroverted that the children also go to church at Webster Memorial Church where they receive religious instructions, where they had been christened and where they enjoy an excellent relationship with the pastor. This is the church where the marriage of the Applicant and the Respondent were solemnized.

The children are in reasonably good health and I accept the mother's evidence that they have a qualified paediatrician. I also accept Dr. Samms-Vaughan's evidence that there are Speech and Language Pathologists and Audiology services available.

The arrangements which the Applicant mother indicated as suggested by the Respondent that his aging parent's would assist in care giving for the boys, were they returned to California, could not be in the best interest of the children. These are children of tender years, both under five years. It cannot be in their best interests to be away from their primary caregiver, their mother, who has been constant throughout their life to now.

Having accepted the mother's evidence regarding the arrangements for the children, in Jamaica, I find that guided by the principles laid down by Section 18 of the Children's (Guardianship and Custody) Act, on which questions relating to custody and upbringing of children are to be decided by the Court, I am of the firm belief that custody of the two children must be given to the Applicant mother.

Access

The question of Access now looms large for consideration. The Respondent father lives in California, U.S.A. The Applicant, mother has, in her affidavit, indicated that she has no wish to cut the children off from the Respondent father. However, she has expressed a fear that if the children were sent to their father for a holiday, he may do as threatened, i.e. fail to return the children to this jurisdiction. This is uncontested evidence.

Taking the above into consideration, I will make an order that the Respondent/father have residential access to the children within Jamaica at the home of the children's paternal grandparents' home at such times and for such period as may be agreed between both Applicant and Respondent or as may be

ordered by the Court, if such agreement is not reached. Further, there shall be a schedule of telephone access to be agreed between the Applicant and the Respondent so that contact may be maintained between the children and the Respondent father.

Maintenance

The Applicant has sought an order that “the Defendant do pay to the Claimant the sum of One Hundred and Twenty Thousand Jamaican dollars (\$120,000.00) towards the maintenance of the relevant children.”..... such sum to be paid on a monthly basis commencing on the 1st day of each successive month thereafter until further order. Her unchallenged evidence is that the total expenses incurred by her for the children amount to One Million Nine Hundred and Twenty One Thousand Four Hundred dollars (\$1,921,400.00) per annum. Her stated salary she indicated is Three Million dollars (\$3,000,000.00) annually gross. This unchallenged evidence of the Applicant is that the Respondent earns an annual salary in excess of Ninety Thousand U.S. dollars (\$90,000.00 U.S.). The Jamaican dollar equivalent is approximately Seven Million, Nine Hundred and Fifty Two Thousand Four Hundred (\$7,952,400.00) dollars.

I am satisfied that the amounts outlined by the Applicant as being expended for the children per month are in fact reasonable. In the circumstances the Respondent is therefore ordered to pay to the Applicant mother, as his contribution to the maintenance of the children the sum of One Hundred and Twenty Thousand dollars (Jamaican) or its equivalent in U.S. currency per month, beginning on the

1st day of April, 2009 and on the first day of each succeeding month until otherwise ordered by the Court-

It is further ordered that:-

1. That the Applicant/mother have sole custody of the relevant children 'Q' and 'K'.
2. That the Respondent/father have residential access to the children within Jamaica at the home of the children's paternal grandparents at such time and for such periods as may be agreed between the Applicant and Respondent or as may be ordered by the Court, if such agreement is not reached.
3. There shall be a schedule of telephone access to be agreed between the Applicant and the Respondent, in order to maintain contact between the children and the Respondent father.
4. That the Respondent is restrained from removing the children from this jurisdiction, without the Claimant's written consent or without an order of the Court.
5. That the relevant Immigration Authorities be served with the Order made herein.
6. There shall be liberty to apply.