

COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

FAMILY DIVISION

2014/FAM/div/000672

BETWEEN

J.H

Petitioner

AND

A.H

Respondent

Before: The Hon. Madam Justice Donna D. Newton (Actg.)

Appearances: Mr. Shaka Serville with Ms. Candace Maycock for the Petitioner
The Respondent Pro se

Date of Hearing: 20th March, 2017

RULING

NEWTON, J (Actg.):

1. The Petitioner herein applied for a divorce on the ground of the Respondent's desertion, and a Decree Nisi was granted on the undefended Petition with ancillary matters adjourned to chambers.
2. There is only one issue to be determined and that is custody of the minor child of the marriage who is now six years old.
3. The Plaintiff by his Notice for Ancillary Relief filed on the 12th December 2016 asked the court to grant joint custody of the minor child to the parties with each parent having primary care and control by alternating six month periods at which time the other parent would enjoy liberal staying access.
4. Counsel for the Petitioner submits that the reason for the requested six month period is that it will provide greater stability for the child.
5. He is further requesting that the parent who has care and control for six months will be solely responsible for the day to day expenses of the child. Additionally, he proposes that they share equally the medical, dental, optical, tuition, uniforms, school books and supplies until the child has completed secondary education or attained the age of eighteen years, whichever is later.
6. The Petitioner by his Affidavit of Means filed 28th November 2016 acknowledged paying \$40 per week and \$400 dollars in July and December respectively of each year pursuant to a Maintenance Order in the Magistrates' Court dated 17th March 2013. By this Order he is also obliged to pay one half of the child's educational, medical, dental and optical expenses.
7. He is a self-employed Massage Therapist and Reflexologist who earns an average monthly income of \$1,850.00 with a monthly expenditure of \$1,583.30.
8. He said that the child spends a great deal of time with him (most weekends) and that she has a loving relationship with both parents. That he used to collect her from school but due to his job schedule he is unable to do so.
9. He further stated that they currently have an informal custody and access arrangement but he prefers that it is formalized into a court order. He said that

in addition to making the maintenance payments above he takes his daughter on annual vacations with his “*other*” family members, undertaking the expenses himself, without any assistance from the Respondent.

10. The Respondent on the other hand did not file an Affidavit as to her means but gave sworn evidence that she is employed with Fine Threads, a retail clothing store and earns \$140 per week (\$560 per month) with an average monthly expenditure of \$740. She acknowledged receiving the maintenance payment from the Petitioner even though, as she said, he sometimes “*chops it*” and that her income is supplemented by contributions from her relatives.
11. The Respondent objects to sharing custody at six month intervals as suggested by the Respondent as she is concerned that because of the demand of Respondent’s job he will not be able to properly monitor the child. That she is not comfortable with the suggestion that the child will be left in the care of three males (two teenage sons of the Petitioner’s fiancé and the other the Petitioner’s ten year old son). However, she did not suggest an alternative arrangement.
12. The Court exercises a discretion in matters relating to custody and maintenance of children. When exercising this discretion I am obliged to consider the welfare of the child as paramount and should be guided by the principles as outlined in Section 3 (3) of the Child Protection Act.
13. Having considered the said principles I find that it is not in the best interest of this six year old child that she splits up half of the year with one parent at a time. It is reasonable for the mother to become concerned whether her child is being properly monitored while the Petitioner is at work. He says that sometimes he takes all the children to work on a Saturday morning and while the boys are outside playing basketball the child is inside with him. This cannot be an ideal situation for a six year old. The Petitioner stated alternatively that while he is at work perhaps the Respondent can arrange to babysit the child. It follows therefore that it would serve the child’s interest best, if the parents share custody jointly with day to day care and control to the Respondent and liberal access to the Petitioner. Access being every fortnight from Friday after school to Sunday afternoon. Further, the parties are to share the school vacations equally and alternate the Christmas vacations.
14. The Petitioner is to pay maintenance of \$250 per month commencing 30th April 2017 in addition to \$400 in December when the Christmas vacations fall to the Respondent.

15. The parties are to share equally the medical, dental, optical, and education expenses (including tuition, uniforms, school books and supplies) until the child has completed secondary education or attained the age of eighteen years, whichever is later.
16. With liberty to apply.
17. A Declaration is made pursuant to Section 73 (1) (b) of the Matrimonial Causes Act,
18. There shall be no order as to costs.

DONNA D. NEWTON
JUSTICE (ACTG.)
6th April, 2017

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5