

TRINIDAD AND TOBAGO

**IN THE HIGH COURT OF JUSTICE
(Family Court Division)**

No. FH00016/2004

Between

NANKISHORE RAMOUTAR

Applicant

And

SUMINTRA RAGHOONANAN

Respondent

Reasons for the Decision

On the June 1st, 2004 the Applicant (Nankishore Ramoutar) applied to the court for an order for custody of his minor daughter (Amrita Nikki Ramoutar born on the 20th October 2000.) The Respondent (Sumintra Raghoonanan) is the child's mother. I think it is useful to set out a brief summary of the history of the application.

- 1st June 2004 - The father sought custody of the child, then aged 3½ years.
- 7th July 2004 - **First hearing** at 1:30 p.m.
Counsel for the father present - respondent in person (both parties in court). Court considers letter dated 6th July 2004 by Mr. Felix Durity (Counsel for the mother) seeking adjournment because he is before Court of Appeal. Court gives directions for filing of affidavits and adjourns the case to the 27th July 2004 at 1:00 p.m.
- 9th July 2004 - Supporting Affidavit of the father filed.
- 20th July 2004 - Opposing Affidavit of the mother filed together with a Notice that the mother will object to the application on two grounds: (a) that the matter is *res judicata*; and (b) that the application is an abuse of process.
- 27th July 2004 - **Second hearing** at 1:00 p.m.

Counsel for both parties present - (both parties in court)

Court orders that a Probation Report be obtained as a matter of urgency and adjourns the case to the 17th September 2004 at 1:00 p.m.

6th September 2004 - Probation Report obtained.

17th September 2004 - **Third hearing** at 1:00 p.m.

Counsel for the father present - respondent in person (both parties in court). Court gives directions for the filing of further affidavits: the applicant is to file and serve a supplemental affidavit by 4:00 p.m. on the 15th October 2004 concerning matters arising after the date of the Magistrate's court order for custody and/or with respect to matters arising prior to that date, provided that in the latter instance, the applicant could not have reasonably known of such matters. The respondent is to file and serve an affidavit in opposition by 4:00 p.m. on the 29th October 2004 and the applicant is to file and serve an affidavit in reply (if necessary) by 4:00 p.m. on 8th November 2004. The case is adjourned to the 10th November 2004 at 9:30 a.m.

10th November 2004 - **Fourth hearing** at 9:30 a.m.

Counsel for the father present - respondent in person (both parties in court). Court makes order that custody of the child remain with the mother in accordance with the order of the Magisterial order dated the 30th April 2004. The applicant is to have access to the said child as follows:

- (a) On alternate weekends from Fridays at 5:00 p.m. to Sundays at 5:00 p.m. with effect from the 19th November 2004;
- (b) One half of all school vacations (one week at a time);
- (c) Alternate public holidays commencing on Divali 2004 (i.e. 11th November 2004) from 9 a.m. to 5:00 p.m.; and

- (d) Visiting access during the school week on Tuesdays and Thursdays from 3:30 p.m. to 6:00 p.m. with effect from 16th November 2004.
- ❖ Applicant pay the sum of \$250.00 per week for the child's maintenance with effect from the 28th October 2004 and thereafter on every Thursday until the child is 18 years old, or until further order.
- ❖ Payments to be made into the respondent's bank account at Republic Bank, Arima.
- ❖ Copies of this order to be sent to the Arima Magistrate's Court.

It is to be noted that the hearing on 10th November was the fourth hearing of the case and that the mother appeared in person on 3 occasions, her Counsel being present at the second hearing only. Further, apart from the reason set out in a letter that was received by the court on the day of the first hearing, no other reason was ever put forward for Counsel's absence from the third and fourth hearings.

The evidence before the court showed that on 30th April 2004 (i.e. a month prior to the filing of the father's application before this court) an order was made by Her Worship Mrs. G. Gonzales at the Arima Magistrate's Court granting custody of the child to the mother. That order further provided that the father pay to the mother \$250.00 per week towards the child's maintenance until age 18 years, or until further order. That order further granted access to the father every other weekend from Saturday at 9:00 a.m. to Sunday at 5:00 p.m. commencing on the 14th May 2004. The father gave verbal notice of appeal of that order, but there was no evidence before me that he ever pursued an appeal. When his application came before me, I made it clear that I would not disturb the Magistrate's order with respect to custody and maintenance unless there were material events that had occurred subsequent to that order warranting this Court's intervention. I indicated that I had no jurisdiction to act as an appellate court to review what the Magistrate had done or to re-consider matters that had occurred prior to her order on 30th April 2004 and that she would have had to consider in making her order.

On the 10th November 2004 (the fourth hearing), I considered that the mother's attorney had been given more than a reasonable opportunity to be present in court, the mother herself being present on every occasion. I heard the remarks of Counsel for the applicant and invited the respondent to address the court if she so wished. She indicated that she would abide by whatever decision the court made.

The 10th November 2004 made it just over 6 months since the making of the Magistrate's order and I considered that there was no evidence that warranted any disturbance of that order with respect to custody and maintenance. However, I considered that a modification of the access arrangements and the mechanism for payment of the weekly maintenance would be more beneficial to the welfare of the child and facilitate the parties. Hence the order made (see above).

In relation to the Magistrate's order, my order modifies the access arrangements by affording the child more access to her father. It also modifies the payment mechanism by making it easier and less time-consuming for the parties to pay and receive the weekly maintenance and to have a reliable, independent record of payments. While, strictly speaking, these modifications are at variance with the Magistrate's order, I did not consider that I was varying that order. Rather, I based my modification of the arrangements on the affidavits before the court, the Probation Officer's Report of the 6th September 2004, and the remarks of the parties. While orders for custody, access and maintenance are normally expressed as if they are final, they can always be varied or amended if circumstances warrant. The relevant date for consideration of any such variation/amendment is the date at which the hearing is completed. I did not consider any of the matters that occurred prior to the 30th day of April 2004 and restricted my consideration to matters occurring after that date only. I also considered that this matter had already received 3 hearings and did not warrant a fifth hearing, having regard to the growing workload of the court and to the relatively simple nature of the matter.

Joseph Tam
Judge