

IN THE SUPREME COURT OF BELIZE, A.D. 2004

(APPELLANT JURISDICTION)

INFERIOR COURT OF APPEAL NO. 18 OF 2004

APPEAL FROM THE INFERIOR COURT- BELIZE DISTRICT

(ANTHONY LESLIE

APPELLANT

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(AND

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(KARINA NOBLE

RESPONDENT

Mr. Wilfred Elrington SC, for the appellant.

Respondent did not attend.

9.3.2005.

JUDGMENT

1. Mr. Anthony Leslie has appealed to this Court against the order made in the Family Court, by Her Worship Alberta Perez, dismissing his application under *S: 85 of the Families and Children Act, Cap. 173, Laws of Belize*.

The order was made in a well written judgment in case No. C361 of 2004. It was not dated though. The respondent is Karina Noble the mother of Adrian, born on 25.8.2000. She was a live-in girlfriend of the appellant from the year 2000 to the year 2003.

2. The grounds of appeal that I state in summary were these:

- 2.1 The magistrate took extraneous matters, that is, irrelevant matters, into consideration, namely; that the child was out of the jurisdiction, the mother having taken him away, and the child was a citizen of the USA.
 - 2.2 The magistrate failed to take into account the uncompleted social welfare report. The report was not completed because the mother left the jurisdiction.
 - 2.3 The magistrate based her decision on “*wrong principle*” - that the child was outside the jurisdiction, instead of the welfare of the child.
 - 2.4 The magistrate did not take into account that the respondent denied the appellant access to the child, was convicted for contempt of court order allowing the appellant access to the child and sentenced to 3 months imprisonment, and that the respondent unlawfully took the child away from the jurisdiction.
3. The appellant lived with the respondent as man and woman from the year 2000 to 2003. They had the child Adrian born in the relationship. There is no dispute as to paternity. In 2003, they broke up, the respondent went to live with her parents. At first, there was no difficulty in the appellant visiting to see the child. Then difficulty set in and in March 2004, he

obtained access order from the Family Court. The respondent defied the order. She was convicted for contempt of court and sentenced to three months imprisonment. Apparently she had taken the child away allegedly to the USA.

4. The learned magistrate correctly pointed out that under *S: 16 of the Families and Children Act*, the mother of a child born out of wedlock is the guardian of the child and is entitled to custody of the child. That is subject to *S: 33*, and for the purpose of this case, *S: 85* authorising that the father may make application to the court in the district, for an order granting him access or legal custody of the child. Those are the authorities by which the appellant obtained the order for access, and having met resistance, applied for the second order for legal custody. The magistrate refused the order mainly for two reasons; (1) that the child was not within the jurisdiction, and (2) that the social welfare report which was not completed left the evidence also uncompleted. The report was not completed because the respondent went out of the jurisdiction, and took the child with her. Social welfare report could not be made about her life.
5. The grounds that the applicant is required to allege in his application for legal custody are given in *S: 85 of the Families and Children Act*, as follows:

“(a) *that the mother of the child has deserted or abandoned the child in such a manner as to endanger the health or well-being of the child;*

- (a) *that the mother is by reason of intemperate or immoral habits (such as prostitution or drunkenness), or of any other reason, unfit to have custody of the child;*
- (b) *that the mother does not exercise proper care and control of the child;*
- (c) *that the order, if made, will be in the interest of the child, and a social services practitioner employed by the Court has so confirmed; and*
- (d) *any other matter relevant to the application.*

6. Only the grounds at (d) and (e) are applicable to this case. The applicant advanced them at the Family Court, though not in the exact wording.
7. The law, however, requires that even if all or any of the above grounds has been proved, the Court, before making the order, must still be satisfied that: “the order... will be for the welfare of the child, due consideration being for this purpose, given to the wishes of the child, having regard to its age and understanding”. - see subsection 5.
8. The respondent is now a fugitive. In my view it is in the best interest of the child not to include the child in the fugitive life of the mother. It is a dangerous thing to raise a child in the belief that running away from the law

is a good and wise thing to do. It is not a good and wise thing to raise a child on the wrong side of the law. Secondly, it is in the interest of a child that both his parents are allowed access to him unless there is justifiable reason to deny access. Conversely, it is not in the interest of a child that one of his parents, in this case, the father, the appellant, be denied access to him. One of the objectives of *the Families and Children Act* is to minimise the differences between a child born out of wedlock and in wedlock. Thirdly, the incomplete social welfare report suggests that materially it is in the best interest of the child to live with the father, a successful businessman living in a reasonable accommodation. The mother seems to have no employment and did not have a home of her own, she lived with her parents who are said to be violent towards the father of the child.

9. The learned magistrate seemed to have been unduly concerned about the fact that the child was out of the jurisdiction and that any order made in this jurisdiction may remain unenforced. I do not think that should have been taken into account. It was up to the appellant, if he were successful, to take whatever action to bring the information to the attention of the authorities in the USA in a way he thought would assist him.

10. I allow the appeal. I am satisfied that an order made granting legal custody of the child to the applicant will be for the welfare of the child. I make an order under *S: 85 of the Families and Children Act, Cap 173*, granting to the appellant, Anthony Leslie, the legal custody of his child, Adrian, born on 25.8.2000, of the mother, Karina Noble.

11. No order as to costs.

12. Pronounced this Wednesday the 9th day of March, 2005

At the Supreme Court

Belize City

Sam Lungole Awich

Judge

Supreme Court