IN THE SUPREME COURT OF BELIZE, A.D. 2007
INFERIOR APPEAL NO. 1 OF 2007

	(KARINA CODD	APPELLANT
	(	
BETWEEN	(AND	
	(	
	(ANTHONY LESLIE	RESPONDENT

Coram: Hon Justice Sir John Muria

Advocates:
Mrs. A. Arthurs-Martin for Appellant
Mr. M. Peyrefitte for Respondent

REASONS FOR DECISION

1. **Muria J:** Counsel for both parties had indicated to the court that the parties had reached a solution to this dispute. The appeal was therefore allowed. It was agreed, however, that written submissions be given to assist the court in furnishing its reasons for its decision, even if it is only for guidance.

2. The appellant, Karina Codd and respondent, Anthony Leslie, were living together as husband and wife. They were not legally married. Their union was one of a *de facto* relationship out of which the child, AKL, was born.

3. On 16 April 2004 the respondent applied for, and was granted interim access order over the child AKL under section 85(1) of the ***Families and Children Act (Cap. 173)***. The order was effective as of 1 May 2004 on which date the respondent sought to have access to the child.

4. Apparently, the respondent, accompanied by the police and an Intake Welfare Officer, visited the appellant's home three times on 1 May 2004. Only the grandmother was at home but the mother (appellant) and the child were not. It was later revealed that the appellant had left the country and went to the United States, taking the child with her.

5. The respondent brought contempt proceedings pursuant to section 269 of the ***Criminal Code (Cap. 101)*** against the appellant. The Family Court dealt with the contempt of court application *ex-parte* and found the appellant guilty of contempt of court and sentenced her, in her absence, to three months imprisonment.

6. This appeal is against that decision made by the Family Court. The Court only received written submission from Counsel for the appellant. The

court did not receive any submission on behalf of the respondent, perhaps due the fact that the matter had been resolved.

7. This case raises an important point on the question of enforcement of the interim access order granted to the father, following a breach of the said order by the appellant mother who has the custody of the child. In determining the point, I have to agree with the contention advanced by Mrs. Ashanti Arthurs-Martin of Counsel for the appellant that this court has to consider the powers of the Family Court as provided under the ***Family Court Act (Cap. 93)***. This is because the Family Court is a creature of statute and its powers must be found within the statute that creates it.

8. As quite properly pointed by Counsel, this appeal is not about whether the appellant breached the access order or how that order was made. This appeal concerns the power of the Family Court to enforce its order by means of contempt of court proceedings pursuant to section 269 of the ***Criminal Code Act*** (Cap. 101). It is to this concern and the issues raised therewith that I now turn.

9. Mrs. Arthurs-Martin relied on four (4) grounds of appeal which can be paraphrased as follows:

    a. The decision of the Family Court was unreasonable
    b. The decision was erroneous in point of law or based on a wrong principle.
    c. The decision was such that the Court below viewing the circumstances reasonably could not properly have so decided.
    d. The sentence of three (3) months imprisonment was two severe.

10. The above grounds are fully set out in the Notice of Grounds of Appeal filed on behalf of the appellant.

11. Mrs. Arthurs Martin, first commenced her argument for the appellant's case on ground two. This ground is vital in this appeal as it goes to the jurisdiction of the Family Court in Belize to deal with a breach of its order. The provision relied upon by the learned Magistrate of the Family Court is section 14 of the ***Family Courts Act Cap. 93)*** which provides:

"14. An order passed by a Family Court shall have the same force and effect as an order of a magistrate's court and may be executed accordingly."

12. That provision was relied upon by the Magistrate as empowering the Family Court to exercise the powers under section 269 of the ***Criminal Code (Cap. 101)*** which provides as follows:

"269. Every person who being bound by law to obey any order, warrant summons or process made or issued by any court or magistrate, willfully neglects without reasonable excuse to obey the same in any material particular shall, without prejudice to any other punishment or penalty provided by law, be liable on summary conviction to imprisonment for three months."

13. Counsel's submission is that the learned Magistrate of the Family Court had exceeded her power and therefore had no jurisdiction to resort to section 269 of the ***Criminal Code*** for the purpose of enforcing her order which was made pursuant to section 85(1) of the ***Families and Children Act (Cap. 173).*** The powers conferred on the Family Court are statutory and so are confined to matters specified under the statutes conferring jurisdiction on the Family Court.

14. I feel that Counsel's submission on this point is unassailable. Counsel is quite correct to point out that section 6 of the ***Family Courts Act (Cap. 93)*** clearly spells out the ambit of the jurisdiction of the Family Court. It provides:

> *"Notwithstanding anything to the contrary contained in any other law, a Family Court shall have jurisdiction to try or otherwise deal with such of the offences, cause or matters as are provided for in any of the enactments for the time being specified in the schedule to this Act:*
>
> *Provided that the Attorney General may, subject to the jurisdiction conferred on a Family Court by this Act, from time to time, by Order published in the Gazette, add to or alter the said Schedule."*

15. The schedule referred to, lists the following enactments, namely:

e. *Juvenile Offenders Act*
f. *Married Persons (Protection) Act (except the sections where the jurisdiction is expressly given to the Supreme Court)*

g. *Domestic Violence Act*

h. *Probation of Offenders Act*

i. *Families and Children Act (except the sections where the jurisdiction is expressly given to the Supreme Court).*

16. Plainly, the ***Criminal Code*** is not included in the above list. The Family Court would require to be clothed with specific authority before it can turn to the provisions of the Criminal Code for aid. There is, therefore, no room for the application of section 269 of the ***Criminal Code*** by the Family Court in the present case.

17. By resorting to section 269 of the ***Criminal Code***, the learned Magistrate fell into error. Having found that the learned Magistrate of the Family Court did not have the jurisdiction to issue committal order under section 269 of the ***Criminal Code*** against the appellant, this appeal is effectively disposed of.

18. However, there is only one other matter which I need to briefly deal with, and that is the questions of unreasonableness of the decision to commit the appellant to prison for three (3) months for contempt of court.

Assuming, arguendo, that a proper procedure had been followed, apart from section 269 of the ***Criminal Code***, and the appellant was found to be in contempt of court, the case law books are replete with authorities that an imprisonment sentence in a case such as this where children and family relationship are involved, is the last resort. Attempts at exhausting other avenues of enforcing the order of the court must be had first before resorting to punitive, measures, and even, before turning to contempt proceedings.

19. The classic statement of what may be called the reasonable approach is that stated by Wood J. in ***Patterson -v- Walcott [1984] FLR*** 408, 417 where he said:

> *"After the break up of a family or of a personal relationship in which children are involved, a court is dealing not only with emotions which need to be smoothed and controlled, but also with the problems of re-establishing relationships between adults and children. Such situations need firm but understanding treatment. I only wish to stress that when dealing with problems of access every other course should be considered or attempted before*

issuing proceedings for contempt. These should be regarded as the weapon of the last resort."

20. The sentiments of Wood J in that case were re-echoed in ***Thomason –v- Thomason [1985] FLR 214*** where it was held that:

> *"Questions of punishment for past behaviour, or concepts of the damage to the dignity of the court if an order is disobeyed, should not enter into consideration in a domestic jurisdiction. The object of the exercise is to enforce the breached order for access in the sense of getting it working, or putting something more workable in its place. Whilst there may be cases where the Draconian powers of the court to imprison or fine may have to be invoked, they should be regarded as the weapon of the last resort."*

21. The other case law authorities also helpfully referred to by Counsel for the appellant are ***Re M (Contract Order: Committal)*** [1997] FLR 810; and ***I -v- D (Access Order: Enforcement)*** [1988] 2 FLR 286; See also ***Regina -v- D*** [1984] FLR 300 where the father removed the child from the jurisdiction in breach of the order of the Court. The court

acknowledged that to take a ward of court out of the jurisdiction without consent is a criminal contempt of court triable on indictment. For contempt of Court order in such a case ought not to have been taken while other remedies were available. The firm view of the court can be seen from the words of Watkins LJ at p. 316:

> *"Whilst it appears to be permissible, or was, for a contempt of court in a wardship proceeding to be tried on indictment, we think it highly undesirable – in the light of the remedies now available and giving regard to the nature of the proceedings – that that form of proceedings should be resorted to. For a very long time now, decisions in all contempt cases have been made by judges who are best equipped to tell whether a contempt has been committed and may very well be able to do so on affidavit evidence alone.*
> *It is not, we think, in the best interests of anyone, that a by now almost ancient way of proceeding should be resurrected, even if it be thought proper to do it `so that all matters can be dealt with at once'. That is no sufficient reason, in our view, for doing that which, as we have plainly indicated, is now unacceptable."*

22. There is no suggestion that the learned Magistrate's sentencing discretion has been fettered. If, having properly found the appellant guilty of contempt of court, and sentence was to be imposed upon her, the learned Magistrate ought to have taken into consideration other forms of punishment, and the likely effect upon the child, by the appellant having to serve a prison sentence. The doors to sentencing options ought not to be closed when the court is dealing with cases of contempt arising out of wardship or other proceedings affecting custody, care and control of children.

23. The record shows that little or no consideration had been paid to the sentencing options in this case and even to other available remedies in view of the nature of the proceedings. Had the learned Magistrate done so, she would have found that there are other remedies or sentencing options available, apart from a sentence of imprisonment which is clearly not reasonable in this case.

24. As I have said there are other grounds raised in the appeal but I do not think I need to deal with them in the light of what I have said above this judgment.

25. The appeal, as indicated in paragraph 1, is allowed. The order and sentence of the learned Magistrate of the Family Court are set aside.

Sir John Muria
Justice of Supreme Court

7 July 2010