



In The Supreme Court of Bermuda

DIVORCE JURISDICTION

2016 No: 100

BETWEEN:-

E. E.Y.

Mother

-and-

D. S.Y.

Father

RULING

(In Chambers)

Education of the child of the family

Date of Hearing: 15th, 16th & 21st August, 2017

Date of Judgment: 21st November 2017

Mrs. Alma Dismont, Marshall Diel & Myers Limited, for the mother

Mr. Jai Pachai, Wakefield Quin Limited, for the father

Introduction

1. This case concerns a very important issue namely the educational welfare of a 14 year old boy, whose mother and father, are in disagreement about which school he should attend for the academic year 2017/2018.
2. The boy's parents divorced recently. Upon the grant of Decree Nisi, the mother and father were granted joint custody of the two children of the family.

3. On the 22nd March 2017, the Mother filed an application seeking, *amongst other things*, that the Court grant specific relief in relation to the boy's schooling.
4. The mother and father each filed affidavits and exhibits coloured with allegations and counter allegations of parental conduct.
5. The mother's application was listed for urgent hearing on 15th August 2017.
6. The hearing lasted some 2 1/2 days during which the Court determined having regard to its overriding objective and duty to actively manage cases which includes identifying the issues at an early stage, that the affidavits filed by the boy's parents did not significantly assist the Court with finding an immediate solution to which school the boy should attend.
7. The Court had before it a comprehensive Social Inquiry Report prepared by the Court Appointed Social Worker, in which the boy's voice and wishes regarding his schooling were clearly set out.
8. Throughout the hearing the high level of conflict between the mother and father was obvious and exemplified by the mother determinedly called the boy 'J' whilst the father unwaveringly called him 'D'. Astonishingly, this troublesome position was only further reinforced during the lengthy submissions of Counsel for the mother and Counsel for the father.
9. In this judgment, I will simply refer to the boy as 'JD'.

Order of Court

10. After carefully listening to the parties and their counsel during the hearing and mindful that any delay in reaching a decision could negatively impact JD's immediate educational well-being, an Order in the following terms was made at the conclusion of the hearing on the 21st August 2017:-
 - i. *During the academic year 2017/2018 JD shall attend School X;*
 - ii. *The Father within 14 days hereof shall obtain and file a letter from School X confirming JD's registration;*
 - iii. *The Parents shall arrange a psycho-educational assessment of JD within 60 days. Such assessment shall address an individual learning plan for JD; the findings of such assessment shall be disclosed to School X and filed with the Court. The Parents*

shall bear the costs of such assessment and report on a 50/50 basis;

- iv. JD shall continue to receive private tutoring with the identified service providers and the Parents shall bear the cost of such tutoring on a 50/50 basis;*
- v. The Parents shall engage in parenting education, counselling and family therapy as recommended by Mrs. Saunders on page 25 of the Social Inquiry Report;*
- vi. The educational welfare of JD shall be reviewed by this court in or about January 2018 at which time:-*
 - a. the Parents shall produce his first term school report, and a report as to his extra-curricular development, and*
 - b. Mrs. Saunders, the Court Social Worker shall produce an updated Social Inquiry Report.*
- vii. Costs reserved.*

11. I now set out the reasons for this Order.

The Law

12. In accordance with Section 46 (1) (a) of the Matrimonial Causes Act 1974, the Court may make such order as it thinks fit for the custody and education of any child of the family who is under the age of eighteen in any proceedings for divorce, nullity or marriage or judicial separation, before or on granting a decree or at any time thereafter (whether, in the case of a decree or divorce or nullity or marriage, before or after the decree is made absolute).

Applicable Principle

13. In determining any question relating to the education of a child the Court is governed by the welfare principle. As always, JD's welfare must be the Court's paramount consideration when determining the application.

The Child 'JD'

14. JD is a 14 year old boy who has a passion for sports. It is reported that he loves both his parents and feels that he has a better relationship with his mother than his father.

15. Prior to his parents separating in the summer of 2016, JD attended a private school in Bermuda. He enjoyed attending this school from aged 5 years to 13 years.
16. Sadly, through no fault of his own, the conflict between his parents tumbled into his school environment. JD became aware that allegations regarding his parents were known to the school. JD began to struggle academically and socially.
17. At the age of 13 years, JD refused to return to this private school and expressed his wish to attend a boarding school in America where one of his friends attended. This boarding school had a football program in which JD was interested.
18. JD's parents immediately honoured his wish and enrolled him for the academic year commencing August/September 2016.
19. In spite of attending the boarding school of his choice, JD continued to struggle academically and socially.
20. In or around December 2016, some four months after commencing the US boarding school of his choice, JD expressed to his mother that he no longer wanted to attend this school, and made known that he had another wish.
21. JD's latest wish was to attend a boarding school in the United Kingdom which boasts a sporting program associated with a well-known premier league football club.
22. In or around January 2017, JD's mother blessed JD's wish and commenced the admission process.
23. One month later, JD's wish materialized in the form of a written placement offer commencing September 2017.
24. In or around April 2017, JD with his wish secured, returned to Bermuda supposedly for a mid-term break from his US boarding school. Shortly after arriving in Bermuda, JD made known to his mother that he had yet another wish.
25. JD's newest wish was that he should never return to the United States of America. This wish became known to this Court during an earlier application wherein the Court directed that JD must return to the United States of America to complete the summer term.

26. Notwithstanding the prior direction of this Court, JD's mother yielded to her son's wish and did not send him back to school. Consequently, JD never completed the school year 2016 – 2017.

The Parents

27. The mother and father are persons of relatively high intelligence. They are both professionally qualified and 'high flyers' in their respective fields.
28. The mother and father equally love JD and have the ability to provide materially for him.
29. The mother's position is that she fully supported JD's decision not to return to the US boarding school, as it was not necessary "in her mind" for him to return as he was not doing well and that in any event there was only one month remaining in the school term.
30. In respect of his immediate education options, it is the mother's position that she is content to let JD choose. Moreover, in light of the discord between her and JD's father, she does not feel that it is in her son's best interest to remain in Bermuda and live between two homes.
31. The mother believes that the UK boarding school chosen by JD is a viable option considering that a number of his friends are doing well at this school and that JD will get to choose his classes.
32. The father's position is that JD needs the support of both parents and acknowledges that both he and JD's mother need to make adjustments in their respective parenting styles.
33. In respect of the UK boarding school, the father is adamant that the school is not a good school for JD.
34. The father relied heavily on an October 2016 report of Her Majesty's Chief Inspector of Education, Children Services and Skills dated October 2016 ('the Ofsted Report'), which judged the chosen UK boarding School as "Requires Improvement".
35. The father focused on the Ofsted Report's key findings in respect of the school which included the following:-

- *“Following a very difficult two years, the new principal is driving improvement with a steely determination. However, teaching, learning and pupils’ progress are not yet consistently good.*
 - *Teaching quality varies within and across subjects. Despite some clear improvements, there are still pupils who are not making enough progress.*
 - *Teachers expectations are not consistently high and too often work is not challenging enough. As a result, too many pupils underachieve, especially the brightest.*
 - *The school does not meet all of the national minimum standards for boarding schools”.*
36. JD’s father simply wants what is best for his son and believes that School X in Bermuda is the best option at this time for JD.

The Court Appointed Social Worker

37. JD’s plight was comprehensively reflected in the Social Inquiry Report and the oral evidence of Mrs. Saunders, the Court Appointed Social Worker at the hearing. I will briefly set out the points which I found most important to the issue before the Court.
38. Mrs. Saunders reported that JD is well aware that his mother does not mind what school he attends. Conversely, she reported that JD is also aware that his father does not support the UK boarding school of his choice.
39. Mrs. Saunders’ clear view was that JD is caught between a mother and father with incompatible parenting philosophies.
40. She described the parenting styles of JD’s mother and father as *“at opposite ends of the spectrum”*. Mrs. Saunders reported that the Mother is described as *“nurturing, passive and rushed”* and that the Father is described as *“structured, stern and aggressive”*.
41. Mrs. Saunders reported that JD’s reasons for choosing the UK boarding school were two fold; namely he had friends already in attendance at the school and the United Kingdom is geographically far so as to limit his father’s regular access to him.

42. In fact, Mrs. Saunders' clear view was that JD's mother's motivation for supporting JD's choice was to remove him *"out of close proximity and easy access of his father as a way to protect him from the intensity of his personality on a regular basis"*.
43. Mrs. Saunders believed that at the core of JD's reasons for wanting to attend the UK boarding school was to be *"away from the mess of his parents."* However, she formed the clear view that JD needs both his mother and father.
44. In respect of JD's level of maturity, Mrs. Saunders' view was that JD is mature enough to express his wishes.
45. Mrs. Saunders conceded that the level of her due diligence on the UK boarding school did not include the Ofsted Report, and had she known of the report she would be concerned to send a child with JD's history to the school.
46. Having reviewed the Ofsted Report during the hearing, Mrs. Saunders expressed reservations regarding JD's level of maturity to succeed at the school given the deficiencies highlighted in the report and JD's history.
47. Mrs. Saunders shared that JD's prior school in Bermuda reported that he *"...has tremendous potential but lacks focus and feels excessive pressure to do well to please others..."* and that, *"When he hits a bump he gives up"*.
48. Mrs. Saunders further shared that the US boarding school described JD as very sociable and respectful towards adults but reported that he *"...was late to or absent from class at times and unprepared at times. He was noted to experience moderate to major difficulty in the following areas: in attending to his work, requires one to one attention, disorganization, homework not handed in, inconsistent work effort, poor sense of time and poor handwriting."*
49. Mrs. Saunders stated that, as recent as July 2017, a local private school tested JD and reported that:-

"He will need extra work and possibly tutoring to prepare for the rigours of IGCSE English. It is not at the level that a student at the end of Year 9 would have achieved. Mechanics are also very weak..."

"He was unable to do most of the Y9 topics from percentages, trigonometry, simultaneous equations, probability, statistics,

Pythagorean Theorem etc.” “He could not do Y10 math with these deficiencies...”

50. Mrs. Saunders was hopeful that JD was capable of doing well, provided he has both his parents providing balanced guidance and support.
51. Mrs. Saunders stated that School X was a good school to her knowledge.
52. Lastly, she reported that JD has a wish that his parents should end their arguing.

Conclusion

53. I have taken all matters raised in the submissions of Counsel into account and have considered the authorities to which the Court has been referred, among them Re P (A Minor) (Education) [1992] 1FLR 321 wherein Butler –Sloss LJ, said:-

“the courts over the last few years have become increasingly aware of the importance of listening to the views of older children and taking into account what children say, not necessarily agreeing with what they want nor , indeed, doing what they want, but paying proper respect to older children who are of an age and the maturity to make their minds up as to what they think is best for them, bearing in mind that older children very often have an appreciation of their own situation which is worthy of consideration...”

54. Counsel for the mother, rightly submitted that such an approach was followed by Hellman, J in *Viera v Viera* [2014] S.C. of Bda, where the Court agreed that a 14 year old girl’s wishes and level of maturity are very important elements in the Court’s consideration of her welfare. Hellman, J in reaching his decision said that:-

“When a court makes decisions about the welfare of older children like Felicia it must take account of their wishes and views. It will not necessarily do what the child wants, but it will listen to her with respect.”

55. Hellman, J gave particular weight to the girl’s views and following Hellman J’s guidance, I have carefully considered JD’s age, his wishes and his level of maturity.

56. I have also considered JD's mother's influence and motivation for supporting his wish to attend this boarding school. I have no doubt that she is motivated to restrict JD's father's access to him. This cannot be in the best interest of JD.
57. JD's father may not be perfect but he is, in my view, an important figure for JD and has much to contribute to his son's development and overall welfare.
58. I believe JD's father will engage in the recommended counselling to better his parenting style, which he accepts requires modification.
59. I further believe that JD's father recognises that JD's immediate and future success in the classroom, on the sports field and in life generally depends on the degree to which he and JD's mother choose to work together to provide guidance, boundaries, incentives and consequences for JD.
60. Whether JD's mother would agree with this, I am not entirely sure.
61. I suspect that JD recognises that he, more often than not, gets his own way with his mother. Therefore, it is not surprising that JD has struggled within the confines of his father's boundaries and those imposed by schools.
62. Notwithstanding having attended the US boarding school of his choice for some nine months during the 2016/2017 school year, there is no evidence of any maturation in JD's thought process.
63. At the core of JD's thought process remains his mother's influence, his desire to follow friends and the desire to avoid his father's boundaries.
64. I cannot ignore these circumstances. Nor can I ignore the consistencies in successive school reports regarding JD's poor scholastic performance and troublesome social behaviours.
65. In all the circumstances, I am not satisfied that JD has an appreciation of his own scholastic needs. Thus, he has not in my judgment attained a level of maturity to make decisions for himself regarding his education at this time. Consequently, JD's wishes do not carry, for me, such weight as to make it necessary for this Court to give him what he wants.
66. Bearing this in mind, I have gone on to consider whether, in fact, the UK boarding school is a "good" school for the purposes of JD's immediate need to be enrolled in a school.

67. I have read the Ofsted Report dated October 2016 and accept its findings. I have also read the Ofsted letter of 1st June 2017 which addressed the first monitoring inspection since the school was judged to require improvement following the inspection in 2016.
68. I concur that whilst improvements have been made, given the school's continued deficiencies and JD's level of maturity, I am not satisfied that the UK boarding school is the best option to meet the welfare of JD at this time.
69. I am satisfied that School X in Bermuda, combined with the private tutoring together with the recommendation of Mrs. Saunders' as to co-parenting, individual counselling and family therapy/parent education, is the only viable option that will adequately meet JD's welfare at this time. Hopefully, these supports will assist JD in reaching his potential.
70. In my judgment, this option will maximize the possibility of JD's immediate and long-term welfare within the dynamics of his parent's personalities.

Afterword

71. Cases relating to children are full of emotional tension. Counsel in such proceedings are strongly urged to consider whether any position advanced will have the effect of eroding the parties' ability and/or desire to co-parent in the future.
72. In this case, whether JD's parents will ever be motivated to co-parent and in so doing grant his wish; that is to put an end to their arguing, only time will tell.

Dated this 21st day of November, 2017

Stoneham, J