1976
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ANNA TAKI MAKRIDES (NOW ANNA EFSTRATIOU) v. TAKIS MAKRIDES

[TRIANTAFYLLIDES, P., STAVRINIDES, MALACHTOS, JJ.]

ANNA TAKI MAKRIDES (NOW ANNA EFSTRATIOU),

Appellant,

v.

TAKIS MAKRIDES,

Respondent

(*Civil Appeal No.* 5513).

Children—Custody—Access—Taking children out of the jurisdiction—Leave—Approach of the Court to the matter—Welfare of the children the paramount consideration—Application for leave by parent having custody—Mother having custody—Securing employment in Greece—Two other children from her previous marriage who at all times have lived together with children involved also in Greece—It would be to the detriment of the welfare of the minors involved if, at a very early stage of their lives, they are separated from their mother, and, also, from their two half-sisters—Application granted subject to terms

Children—Custody Order—Principles on which Court of Appeal intervenes with custody order

Court of Appeal—Children—Custody—Principles on which Court of Appeal intervenes with custody order made by Court below

This was an appeal against the dismissal of an application by the appellant mother for leave to take the two children of the parties out of the jurisdiction of the Court, to Athens in Greece, in order that they may reside there with her The custody of the children had been given to the mother by means of an earlier order of the Court

The appellant-mother, who has been an employee at the S B A. Episkopi earning £145 per month, in the face of an almost certain possibility of her becoming redundant, submitted her resignation which became effective as from the 31st October, 1975

After her resignation she secured employment in Athens at an approximate salary of £170.-, she rented a flat there and has even removed all her furniture to Greece. She had, also, two

daughters from a previous marriage, and arranged for their emigration to Greece; at the time of the trial they were attending school there. She, moreover, enrolled the two children involved in these proceedings to a school in Greece prior to obtaining the order of the Court for their emigration.

Held, (1) in a matter of this nature, even though a trial Court has seen the parties and their witnesses, and, also, has not erred in principle, an appellate Court may, nevertheless, intervene if it is of the opinion that the result reached at the trial is "wrong" (see, *In re F. (infant)* [1976] 1 All E.R. 417).

(2) Having particularly taken into account that the mother has two other minor children from a previous marriage and that all four children from both her marriages have at all times lived together, with their mother, we think that it would be to the detriment of the welfare of the minors involved in the present case, if at a very early stage of their lives, they are separated from their mother and, also, from their two half-sisters.

(3) We should allow this appeal and permit the mother to take the two children of the parties to Athens, so that they may reside with her there, subject to certain terms regarding the right of access of the respondent father (see pp. 20–21 of the judgment *post*).

Appeal allowed.

Cases referred to:

In Re F. (infant) [1976] 1 All E.R. 417;

J. and Another v. *C. and Others* [1970] A.C. 668;

In Re L. (Minors) [1974] 1 W.L.R. 250;

P. (LM) (otherwise E.) v. *P. (GE)* [1970] 3 All E.R. 659 at p. 662;

Nash v. *Nash* [1973] 2 All E.R. 704.

Appeal.

Appeal by applicant against the judgment of the District Court of Limassol (Hadjitsangaris, S.D.J.) dated the 23rd October, 1975 (Application No. 59/71) by virtue of which applicant's application for leave to take the two minor children of the parties outside the jurisdiction of the Court was dismissed.

A. Lemis, for the appellant.

G. Talianos, for the respondent.

Cur. adv. vult.

The judgment of the Court was delivered by:-

TRIANTAFYLLIDES, P.: In a judgment just delivered in another case (C.A. 5543)* we have stated the history of the proceedings in relation to the custody of the children of the parties; we have referred, too, to certain relevant facts, which we need not repeat in the present judgment.

We are dealing now with an appeal against the dismissal of an application by the appellant mother for leave to take the two children of the parties out of the jurisdiction of the Court, to Athens in Greece, in order that they may reside there with her.

In the order granting custody of the children to the appellant it is stated that the children are not to leave Cyprus without the consent of the respondent father, which is not to be unreasonably withheld; in the present instance the father has refused his consent and, as a result, the mother had to apply, as aforesaid, to the Court below.

The learned trial Judge has found as follows the circumstances which have led to the decision of the mother to leave Cyprus and move to Athens:-

> "The applicant has been an employee at the S.B.A. Episkopi, holding a clerical post and earning £145 per month. In the face of an almost certain possibility of her becoming redundant by next February, she submitted her resignation which becomes effective as from the 31/10/75; in the meantime she has made drastic arrangements for her emigration. In fact the applicant visited Athens twice this summer and secured employment there at an approximate salary of £170, she rented a flat in Athens at approximately £67 per month and has even removed all her furniture to Greece. Applicant is responsible for the emigration of her two daughters from the previous marriage to Greece where they are attending school and she went as far as to enrol the two children, Yiannis and Yiotis to a school in Greece prior to obtaining the order of the Court for their emigration. Applicant's parents have also moved to Greece".

He, then, proceeded to state the following in his judgment, as regards the merits of the mother's application:-

* Vide p. 6 in this Part *ante*.

"The pertinent question before me is whether I should allow the mother, the person who has primarily custody of the children to remove them beyond the jurisdiction of the Court where it is neither easy nor convenient for the father to have access to his children.

I believe that no one can seriously argue that this separation of father from his children will not have as a consequence the enstrangement to a degree of father and children and may in the long run reduce the father's interest in the well being of his children. Such assurances as the applicant has given in her evidence and in her affidavit, to bring the children to Cyprus every summer, are not a true substitute to the contact the father should have with his children. Furthermore, they are assurances of a kind that the Court cannot easily enforce; moreover, such assurances must be viewed with scepticism in the light of the past behaviour of the applicant who was on a previous occasion found guilty of disobedience to an order of the Court in that she prevented the access of the father to his children.

.....

It is always in the interests of a child that both parents should have easy access to him, a fact that stimulates the parents' interests in the well being of their children. We are not here concerned with parental rights but with the well being of children which is a very delicate area, which the Court must approach with caution.

In *Re T (orse H)* [1963] Ch. 238 at p. 242, Buckley J. made the following statement:-

> 'In the case of a divided family of this sort, it is always one of the aims of the Court to maintain the child's contact, respect and affection with and for both of its parents, so far as the circumstances will permit' ".

We have anxiously and carefully weighed all material factors in this case, in deciding whether or not to allow this appeal. We have, in this respect, borne in mind that in a matter of this nature, even though a trial Court has seen the parties and their witnesses, and, also, has not erred in principle, an Appellate Court may, nevertheless, intervene if it is of the opinion that the result reached at the trial is "wrong" (see, *inter alia*, *In Re*

F. (infant) reported in the London "Times"* on November 18, 1975).

The paramount consideration is, of course, the welfare of infants (see, *inter alia, J. and Another* v. *C. and Others* [1970] A.C. 668).

In *In Re L. (Minors)*, [1974] 1 W.L.R. 250, Buckley L.J. referred to *J.* v. *C., supra*, and stated the following (at p. 263):-

> "Beyond doubt *J.* v. *C.* [1970] A.C. 668 establishes, if authority were needed, that where in a wardship case the Court considers the facts and fully investigates the merits of a dispute, the welfare of the child concerned is not the only consideration but is the first and paramount consideration to be taken into account, whether the dispute be between a parent and a parent, or between parents and a stranger in blood or between one such stranger and another.
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> .....
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> Every matter having relevance to the welfare of the child should be taken into account and placed in the balance. Other matters, which may not directly relate to the child's welfare but are relevant to the situation, may be proper to be taken into account and given such weight as the Court may think fit, subject always to the welfare of the child being treated as paramount. The interests, wishes and conduct of parents and of other members of the child's family and, indeed, of other persons, may fall under either of these heads".

Two English cases appear to be quite relevant to the main issue arising in the case now before us:

In *P. (LM) (otherwise E.)* v. *P. (GE)*, [1970] 3 All E.R. 659, the Court allowed, against the wishes of the father, the mother, who had married in the meantime, to take their minor child to New Zealand where the stepfather was intending to settle; Sachs L.J. said the following (at p. 662):-

> "When a marriage breaks up, then a situation normally arises when the child of that marriage, instead of being in the joint custody of both parents, must of necessity become one who is in the custody of a single parent. Once that position has arisen and the custody is working well, this Court should not lightly interfere with such reasonable

* Now reported in [1976] 1 All E.R. 417.

way of life as is selected by that parent to whom custody has been rightly given. Any such interference may, as Winn L.J. has pointed out, produce considerable strains which would be unfair not only to the parent whose way of life is interfered with but also to any new marriage of that parent. In that way it might well in due course reflect on the welfare of the child. The way in which the parent who properly has custody of a child may choose in a reasonable manner to order his or her way of life is one of those things which the parent who has not been given custody may well have to bear, even though one has every sympathy with the latter on some of the results".

In *Nash* v. *Nash*, [1973] 2 All E.R. 704, the headnote reads as follows:–

"The parties were married in March 1967 and had a daughter later that year. In May 1968 the mother left the father taking the child with her. In December 1969 she was awarded custody of the child by a Court of summary jurisdiction and in November 1972 she was given leave to file a petition for divorce. She herself had a degree in art and taught for a while at a comprehensive school. She had wanted to teach art at university level but when her attempts to obtain a post of that kind in the United Kingdom failed she left the comprehensive school and took a job in an antique shop in London. In 1972 she was offered a two year appointment as an art teacher at a university in South Africa. The father, who was concerned in educational matters and wrote about education, disapproved strongly of the apartheid policy of the South African government. He feared that if the child went with the mother to South Africa (i) the child might become infected and even indoctrinated with the country's racialist doctrines; (ii) that the mother, who had said that she was not interested in such matters, would take no steps to warn the child against those doctrines; (iii) that he might not be admitted into the country to see the child because of his strong views on its racialism expressed in his writings. The mother, who had said that she would not go to South Africa if prevented from taking up the appointment, applied for, and was granted, leave to take the child out of the jurisdiction. When asked about her attitude to apartheid she had said: 'I feel completely open about it. I shall Judge for myself when I get there. I do not think one

can always appreciate a country's present circumstances from newspaper reports. I think it is better to go and see for yourself'. She had also said she would not influence the child; she would let her make up her own mind. The father appealed".

In that case, where *P.* v. *P.*, *supra*, was referred to with approval, the Court allowed a child to be taken by the mother, who had its custody, out of the jurisdiction, all the way from England to South Africa.

In the present case we have reached the conclusion that we should allow this appeal and permit the mother to take the two children of the parties to Athens, so that they may reside with her there. We have particularly taken into account that the mother has two other minor children from a previous marriage and that all four children from both her marriages have at all times lived together, with their mother; we think that it would be to the detriment of the welfare of the minors involved in the present case if, at a very early stage of their lives, they are separated from their mother and, also, from their two half-sisters.

The appellant mother is allowed to take the children with her to Athens on the following terms:-

(a) That the right of access of the respondent father to his children, as defined by the custody order now in force, shall remain unaffected, so that it may be enjoyed by him whenever he happens to be in Athens.

(b) That the children should be brought annually to Cyprus for a period of not less than two weeks and not more than a month, during the summer school vacations, between July 15 and August 31, as and when required by the respondent father, in order to stay with him.

(c) That, on behalf of the appellant mother, an undertaking should be given by a responsible person in Cyprus, to the satisfaction of the Registrar of the District Court of Limassol, and in the appropriate form, to the effect that the children will be brought back to Cyprus annually, as above, or at whatever time the Court may so order.

It is to be understood, of course, that under section 24 of the Guardianship of Infants and Prodigals Law, Cap. 277, the respondent father has the right to apply, at any time, for the discharge or variation of the order which we are making today.

We have decided that there shall be no order as to the costs of this appeal.

Appeal allowed. No order as to costs.