

**ON APPEAL FROM THE INFERIOR COURT, SAN PEDRO MAGISTRATE'S COURT,
BELIZE DISTRICT**

ACTION NO. 40 OF 2013

BETWEEN: (CARLOS BELTRAN

APPELLANT

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(AND

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(WENDY LINETTE CARPIO RIVERA

RESPONDENT

BEFORE THE HONOURABLE MADAM JUSTICE MICHELLE ARANA

Mr. Kevin Arthurs for the Appellant

Mr. Oscar Selgado for the Respondent

Hearing Dates: 29th January, 2015

17th April, 2015

1st December, 2015

R U L I N G

1. This is an Appeal by Carlos Beltran, the father of two minor children, against an order by the Magistrate in San Pedro Magistrate's Court giving custody, care and control of the children to Wendy Linette Carpio Rivera, the mother of the children.

The Facts

2. Wendy Rivera and Carlos Beltran lived together for approximately eight years and that common law union produced three children, one male and two females, all minors at this time. The Social Inquiry Report dated 2012 shows that the parties separated in 2011, with Mr. Beltran claiming that the deterioration in the relationship was due to Ms. Rivera's predisposition to fits of extreme jealousy, and Ms. Rivera claiming that the separation was due to Mr. Beltran's infidelity and physical cruelty to her. Ms. Rivera was not legally living in Belize at that time so she decided to return to her home country of Guatemala in the process of trying to regularize her immigration status. She officially relinquished custody of the two female children to Mr. Beltran as shown by Family Court Order dated February 2nd, 2010 (WC1). The parties reconciled briefly and the third child was born in August 2011, a son who is in his mother's custody. Upon her return to Belize in September 2012, she applied for custody, care and control of the two female children and also for maintenance and medical expenses of the children. The Magistrate in San Pedro granted all three orders sought by Ms. Rivera and it is against that decision that Mr. Beltran now appeals.

Grounds of Appeal

3. There were three grounds of appeal filed on May 15th, 2013 on behalf of the Appellant, Carlos Beltran, by his previous Counsel:

- i) That the Learned Trial Magistrate heard the evidence of the Complainant with the Appellant unrepresented and never gave him a chance to cross-examine the Complainant;
- ii) That the Learned Trial Magistrate failed to consider the findings of the Social Inquiry Report and recommendations;
- iii) That the Learned Trial Magistrate failed to consider that she was removing two children from a furnished two-bedroom house with yard that they had been accustomed to for several years to a studio rental apartment.

Ground 1: That the Learned Trial Magistrate heard the evidence of the Complainant with the Appellant unrepresented and never gave him a chance to cross-examine the Complainant.

4. Ground 1 was never pursued in the trial before me. I therefore treat this ground as abandoned, except to state that having perused the transcript of the hearing this allegation appears to be unsubstantiated.

Ground 2 That the Learned Trial Magistrate failed to consider the findings of the Social Enquiry Report and recommendations.

5. This ground was urged upon this court most strenuously in the appeal. Mr. Arthurs on behalf of the Appellant argued that the Magistrate rejected the recommendation of the Social Enquiry Report that custody, care and control

be given to Mr. Beltran. He went on to submit that Section 99 of the Families and Children Act requires that the Magistrate must state reasons for rejecting the recommendations of the Social Enquiry Report.

"99(1) The Family Court or a magistrate's court shall require a written social inquiry report in respect of a child before making a supervision order or care order.

(2) It shall be the duty of the social services practitioner to prepare a social inquiry report and he or she shall comply with the request of the Family Court or a magistrate court whenever required to produce a social inquiry report.

(3) A social services practitioner shall make a home visit and interview the parents or guardians of the child concerned and carry out his investigations concerning the child before making a social inquiry report.

(4) Where the child in respect of whom the social inquiry report is made is considered to be of sufficient age and understanding, he or she shall be interviewed by a social services practitioner.

(5) A social inquiry report shall contain matters relating to the welfare of the child and recommendations as to any action to be taken by the Family Court or a magistrate's court.

(6) The Family Court or a magistrates court shall take the information contained in the social inquiry report into account in so far as it is relevant to the order being made.

(7) If the Family Court or a magistrate's court is not satisfied with any recommendation made by the social services practitioner in the social inquiry report, it shall state and record its reasons for not complying with the recommendation." (emphasis mine)

6. Mr. Arthur's arguments in his written submissions (in section labelled Issue 1) were based mostly on section 99(7) in that he claims that the Magistrate failed to state and record her reasons for rejecting the recommendations of the Social Enquiry Report. He further claims that apart from an extensive legal exploration of Section 16 of the Families and Children Act, the Learned Magistrate failed to provide reasons for non-compliance as required by section 99(7).

Mr. Selgado on behalf of the Respondent argues that the order of the Family Court granting custody, care and control should be upheld. He states that section 16(3) of the Family and Children Act clearly states that the mother of any child born out of wedlock shall have custody of the child, until he attains the age of 18 years.

Having perused the Reasons for Decision given by the Learned Magistrate, I must respectfully disagree with the arguments of Mr. Arthurs. Magistrate Rodriguez has set out in great detail in paragraphs 1 to 22 of her Reasons for Decision the reasons why she has not complied with the recommendations of the Social Enquiry Report. These include:

Para 1) "Nothing in the SIR or the oral evidence speaks adversely to the mother's mental or physical capabilities of rearing all three children."

Para 5) "But the fact that her home is less spacious did not lead me to determine that her accommodations would not be in the best interest of the children in question. The children are equally content at both locations. Their mother has the ambition and maturity to provide for her children and improve her accommodations to suit the girls."

Para 8) "Both children have expressed a desire to be with their mother and that they do not want to go home 1.e. Mr. Beltran's residence."

The Learned Magistrate then went on to point out, rightly in my view, that none of the requirements set out in section 16 of the Families and Children Act in order to deprive a single mother of custody of her child had been borne out by the evidence before her. There was no evidence that Ms. Carpio had deserted or abandoned her children. There was no evidence that she was a woman of immoral or intemperate habits. There was no evidence that she was not exercising proper care and control of her children.

I therefore do not find any merit in this ground of appeal.

Ground 3: That the Learned Trial Magistrate failed to consider that she was removing two children from a furnished two-bedroom house with yard that they had been accustomed to for several years to a studio rental apartment.

7. Mr. Arthurs did not pursue this ground of appeal at trial. I therefore treat it as abandoned.
8. In his written submissions, Mr. Arthurs argued two matters which he labelled as Issue 2 and Issue 3. These were also the points he advanced in oral arguments before me at the trial of the appeal.
9. **Issue 2:** The Learned Trial Magistrate considered and placed heavy reliance on a law that was not applicable. Mr. Arthurs submits that section 16 of the Families and Children Act cited by the Magistrate (on which she declared in her decision that great emphasis must be placed) does not apply after the single mother has already relinquished custody of her own right. He further argues that the case of ***Rosalva Requena v Ernesto Bey*** (unreported) which was cited by the Magistrate in her decision has no application to the instant case as there was no order relinquishing custody in that case. There is no provision in the Families and Children Act for the revocation of a relinquishing order made in the Family Court. Mr. Arthurs further submits that as the Family Court is a creature of statute, the Magistrate had no authority to revoke the relinquishing order since such an application had to be made to the Supreme Court.

Mr. Selgado on behalf of the Respondent argued that the Magistrate did not misdirect herself in law by considering and applying section 16 of the Families and Children Act to the evidence before her. Learned Counsel submitted that the Magistrate rightly relied on *Requena v Bey* (unreported) in reaching her decision, as the court in that matter had to address a similar question to the question in the case at bar. Mr. Selgado said that the court was concerned with whether section 85 of the Families and Children Act had been breached and whether the mother had become so incompetent that she was to be deprived of the care and custody of her children. He submits that the question which the court ought to ask itself in this appeal is whether or not the Magistrate misdirected herself on the evidence that was before her at the time, and it is his contention that she did not, and that the Magistrate ably applied the law to the situation that was before her and made a decision that was in the best interest of the children.

10. **Issue 3:** The Learned Trial Magistrate rejected evidence that ought to have been considered and makes reference to matters not in evidence.

Mr. Arthurs points to statements made by the Magistrate such as:

"I accept her evidence that at the time she and Mr. Beltran ... as she is a native of Guatemala."

"She gave up custody so that she could properly situate herself under the change of circumstances."

"As well as not speaking much English at the time and not having legal counsel it is quite possible that Ms. Carpio did not fully understand her options."

11. The Magistrate is entitled to draw inferences from the Social Enquiry Report which addresses many of the matters arising in these statements. I therefore do not find any merit in this ground of appeal.

Ruling

12. The gravamen of Mr. Arthurs' main submission seems to be that Section 16 of the Families and Children Act does not apply where a mother has legally relinquished custody of her child. I asked counsel for authority to support this particular submission but sadly none was provided to the Court. The Family Court has very wide powers to vary and amend its own orders, especially in dealing with custody matters to suit the changing circumstances of the parents and children involved. Unlike an adoption order, with which counsel tried to draw an analogy, an order relinquishing custody is not set in stone. It appears from the evidence as conceded by both parties that at the time Ms. Rivera surrendered custody of the two children to their father, she was not a legal resident of Belize. At a later date, she regularized her legal

status in Belize and applied for custody of her children. This is a fundamental change in circumstances which the Magistrate was correct to consider in deciding the issue of custody. The Family Court has the power to vary and discharge its own orders without a need to apply to the Supreme Court for variation or discharge. This flexibility is seen in several sections of the Families and Children Act:

Sections 15(6) “The powers conferred by subsection (4) above may be exercised at any time and include powers to discharge or vary any order previously made under the said subsection.”

Section 18(2) “The power of the court under subsection (1) shall, where one of the joint guardians is the surviving parent of the child, include power -

(c) to vary and discharge any order previously made under this section.”

Section 20 (1) “The Court may, upon application of any of the parents of a child, make such order as it may think fit regarding -

*(a) The custody of the child; and
(b) The right of access to the child of either parent; and
(c) Any other matter affecting the child,*

Having regard to the age and the best interests of the child and taking into consideration the conduct and wishes of the parents and the child.”

Section 20(5) “An order under subsection (1) or (2) may be varied or discharged by a subsequent order made on the application of either parent

or, in the case of an order under subsection (1), after the date of either parent on the application of any guardian under this Act."

13. In my view, the relinquishing order in this case would clearly fall under Section 20(1). Upon the application of Ms. Rivera, the Magistrate discharged the previous order where custody had been relinquished to Mr. Beltran by Ms. Rivera and granted Ms. Rivera custody of the two children pursuant to her powers under Section 20(5) of the Families and Children Act.

14. I find that the Magistrate did not misdirect herself in law and rightly exercised her discretion under Section 20 to discharge the relinquishing order and make a new order granting custody to the mother of the children. This ground of appeal is also dismissed.

15. I see no reason to overturn the ruling of the Magistrate. The order of the Family Court granting custody of the children to their mother Wendy Linette Carpio is hereby upheld.

16. During the hearing of this appeal, accusations were made by both parents against each other regarding the alleged abuse/violation of the children by the father and by the male friends of the mother. I have requested that a

Social Enquiry Report be prepared by the Department of Human Services to investigate whether there is any truth or substance to these troubling allegations, as the welfare of the children is of paramount importance to this Court.

17. Appeal dismissed. Costs awarded to the Respondent to be assessed or agreed.

Dated this Tuesday, 1st day of December, 2015.

**Michelle Arana
Supreme Court Judge**