

IN THE FAMILY AND JUVENILE COURT B, FORMER COMMERCIAL COURT
BUILDING- ACCRA HELD ON THURSDAY, THE 27TH DAY OF APRIL, 2023.
BEFORE HER HONOUR MRS. MATILDA RIBIERO, CIRCUIT COURT JUDGE,
SITTING AS AN ADDITIONAL MAGISTRATE WITH MADAM FELICIA TAGOE
AND MR. JOSEPH ATTIGAH AS PANEL MEMBERS

SUIT NO...A6/218/23

EMMANUEL ALARTY THOMPSON (NII OKAI TSOWULU)
OF No. 1 NII OKAI SHEPERD COURT APPLICANT
VICOLIS - ACCRA

Versus

REBECCA OSEI-AMPONSAH RESPONDENT
OF LANE 10
ONYINASE - ACCRA

Applicant: Present

Respondent: Absent

Danielle Karikari-Darko holding brief of Elikem Adisenu-Doe Esq. for Respondent,
present.

No legal representation for Applicant.

JUDGMENT

The parties herein are the biological parents of the two children in issue, Delvin Nii
Adama Thompson aged 11years and Ailsa Naa Ayikailey Thompson also aged 9years

(hereinafter referred to as “the issues”). Applicant the father filed a Maintenance and Custody Application on the 17th day of November, 2022 and prayed for:

1. Custody of the 2 issues with reasonable access to Respondent.
2. Any other order(s) that this Honourable Court may deem fit.

The gravamen of Applicant’s case before the Court as contained in the 20 paragraph Affidavit in support of the Application and the 50-paragraph response to Respondent’s Affidavit in Opposition is that the issues were living with Respondent following the parties’ separation. That the issues are not living with Respondent but rather with Respondent’s aged parents who he describes as weak, sick and frail. According to him Respondent and her parents have denied him access to the issues. He says that the constant denial of access to the children by the Respondent has practically limited his ability to perform his fatherly responsibilities towards his children. He alleged that Applicant wrote to the issues’ school not to allow him access to the issues, not to accept fees from him and also changed the name of the father of the issues to that of her father.

Respondent on the other hand filed a response to Applicant’s application on the 30th day of November 2022 indicating her opposition to the Applicant’s application before the Court. In her 33-paragraph affidavit, she indicated that she has over the years provided a good and safe environment at home for the development of the issues and catered for their clothing, food and health needs with very little support from the Applicant. She denied denying Applicant access to the children. She rather alleged that Applicant rarely makes any attempt to check on the issues and on days he came for them, he returned them looking unkempt and unhealthy. She alleged further that Applicant has woefully failed at performing his parental obligations towards the proper upbringing of the children and therefore does not merit the intervention of the court to award him custody of the issues when he has failed to perform his parental duties all these years. Respondent indicated further that she had to write to the issue’s school not to allow any other person

apart from her and her parents from picking up the issues because Applicant used to pick up the issues from school without notice to her and returned them late at night when they had to go to school the next day and these actions kept her traumatized and wondering the whereabouts of the issues. She counter claimed as follows:

1. An order for the Respondent to be granted custody of the children with reasonable access to the Applicant.
2. An order directed at the Applicant to pay half of the children's school fees and feeding fees.
3. An order directed at the Applicant to pay monthly amount of GHC1,500.00 towards the maintenance of both children.

And further prayed for the Court to dismiss Applicant's application for custody as same was unmeritorious.

The parties were given the opportunity to settle the matter amicably by resort to the Court Connected Alternative Dispute Resolution (CC-ADR) mechanism, but they could not agree so the matter was referred back to Court for determination.

The questions that come up for determination by the Court from the reliefs sought by the parties are:

1. Whether or not the Applicant is entitled to have custody of the issues. In order words, which of the parties is entitled to have custody of the issues since both of them are claiming custody.
2. Whether or not Respondent is entitled to her prayer for Applicant to pay half of the issues' school fees, feeding fees and maintain the issues with GHC1,500.00 a month.

It however appears that the main issue for determination is the custody of the issues since Applicant admitted Respondent's prayer for him to pay half of the issues' school fees, feeding fees and maintain them with GHC1,500.00 monthly. During proceedings on the 19th day of January 2023 when the court enquired from him his response to Respondent's prayer, He stated that *"I will take care of everything"* So since he has admitted same, it is no longer an issue for determination by this Court.

In determining which of the parties is entitled to have custody of the two issues, the law enjoins this Court to consider the best interest and welfare of the issues. **Section 2(2) of the Children's Act 1998 (Act 560)** provides that;

"The best interest of the child shall be the primary consideration by any court, person, institution or other body in any matter concerned with a child"

This principle of law has been applied in cases like **Happee v Happee 1974 [2 GLR] 186, Attu v Attu [1984-86] 2 GLR 743, and Asem v. Asem [1969] CC 40, CA** by the courts in the determination of which of two parents should have custody of a child(ren) in issue.

How do we determine what is in the best interest of a child(ren)? **Section 45 of the Children's Act 1998 (Act 560)** which is the primary authority on the issue of child custody provides us with some guidelines. It states that:

"A Family Tribunal shall consider the best interest of the child and the importance of a young child being with his mother when making an order for custody or access.

(2) Subject to subsection (1) a Family Tribunal shall also consider—

(a) the age of the child;

(b) that it is preferable for a child to be with his parents except if his rights are persistently being abused by his parents;

(c) the views of the child if the views have been independently given;

(d) that it is desirable to keep siblings together;

(e) the need for continuity in the care and control of the child; and

(f) any other matter that the Family Tribunal may consider relevant”(emphasis supplied)

The law is generally skewed in favour of the mother when it comes to custody of young children as provided by **section 45(1) of Act 560** supra and cases like **Braun v. Mallet [1975] 1GLR 81** and **Aikins v Aikins [1979] GLR 223**, where custody of very young children was awarded to the biological mothers because the court found that it was in their best interest to be taken care of by the mothers who are naturally endowed with the care of young children.

Before proceeding to evaluate the evidence on the record, it must be stated here that both parties made numerous allegations and averments regarding the party that enrolled the issues in school, who paid fees and for what period, the authenticity of receipts issued for the payment of fees, the contributions made by each party towards the maintenance and development of the issues etc. Which matters are not relevant to the issue for determination by the court; which is, which of the parties should have custody of the two children in issue? Both parties annexed numerous school fees receipts in support of their case but as earlier mentioned, these are not relevant to the determination of the issue before the court. **Section 51 (3) of the Evidence Act, 1975 (NRCD 323)** states that “*No evidence is admissible except relevant evidence.*” Even with relevant evidence, the court may exercise its discretion to exclude same as provided for under **section 52 of the Evidence Act** which provides thus “*The court in its discretion may exclude relevant evidence if the probative value of the evidence is substantially outweighed by—*

(a) considerations of undue delay, waste of time, or needless presentation of cumulative evidence; or

(b) the risk that admission of the evidence will create substantial danger of unfair prejudice or substantial danger of confusing the issues; or

(c) the risk, in a civil action, where a stay is not possible or appropriate, that admission of the evidence will unfairly surprise a party who has not had reasonable ground to anticipate that such evidence would be offered.”

Applicant also filed some witness statements together with his response filed on the 12th of December 2022. I wish to state here that this Court is a specialized District Court, a Family Tribunal and proceedings here are guided by **section 37 of the Children’s Act 1998 (Act 560)** which provides as follows:

“Section 37—Procedure at Family Tribunal.

The proceedings at a Family Tribunal shall be as informal as possible and shall be by enquiry and not by adversarial procedures”

The Court therefore proceeded to make the necessary enquiry to determine the issue at hand. On the 19th day of January 2023, an order was made for a Social Enquiry Report (SER) to assist the Court determine the matter in the best interest of the issues. This is because as held in the cases of **Braun v. Mallet [1975] 1GLR 81** and **Ansah v. Ansah [1982-83] GLR 1127**, the Court must consider all the circumstance of the parties and the issues herein, consider the facts from every angle, giving due weight to every relevant factor before determining the custody issue presented to the Court.

The evidence on record including the SER and as confirmed by Respondent’s Exhibits ROA 4 and ‘ROA 5’ shows that Respondent was posted to Dunkwa-on-Offin on the 26th day of October 2016 and subsequently transferred to Accra in January 2021. Whilst she worked in Dunkwa-on-offin, the issues lived with Respondent’s parents in Accra. Before going to Dunkwa in 2016 she and the children lived mainly with her parents in her

parents' house and used to visit and spend some time at Applicant's place. The last time the issues visited the Applicant was in 2017. The issues have lived with Respondent in the home of the maternal grandparents most of their lives. They are therefore used to and comfortable in her care. Respondent together with Applicant enrolled the issues in the current school and Applicant paid fees at the early stages until he started having financial challenges. In 2018, Respondent wrote to the issue's school being Crown & Glory School informing them that she was the one with full responsibility for the children and asked the school not to allow anyone to take the issues away except their grandparent's, Mr. & Mrs. Amponsah until further notice (see Respondent's exhibits ROA 3 and ROA 7). She also instructed the school to change the name of the father of the children from that of the Applicant to that of their maternal grandfather (Maxwell Osei Amponsah). The school fees receipts of the issues show only the name of the father (Respondent's father) of the issues and not that of the person making payment. Respondent recently (later part of 2022) started visiting the issues, giving money for their maintenance, and paying their school fees. The school confirmed that because of the change of name of the father of the issues in their system, it is possible to have two receipts with the same serial number but with two different payees.

The Applicant lives with his cousin in a two-bedroom house with basic amenities at Ablekuma Olebu a suburb of Accra whilst Respondent lives with the issues, his father and a house help in a three-bedroom house with basic amenities at Gbawe. Applicant is a travel consultant and works from home at his own convenience whilst Respondent works with Audit Service. She lives home for work between 7:00am and 7:30am and returns home between 4pm and 5pm.

It appears from the evidence on the record that until recently, Applicant did not have unfettered access to the issues since 2017. He resorted to having access to the issues in school and picking them up from school sometimes but because of Respondent's letter to

the school (see Respondent's Exhibit ROA 7) he was denied that opportunity as well. It is the considered view of the Court that it is unreasonable and certainly not in the best interest of the issues to be denied access to their father. It is important that children access and bond with both parents except where doing so will not inure to their best interest. **Section 57 of Act 560** provides that "*A non-custodian parent in respect of whom an application is made to a Family Tribunal for an order of parentage, custody, access or maintenance under this Part shall have access to the child who is the subject of the order*". It was also opined in the case of **Happee v. Happee [1974] 2 GLR 186** that "*The idea of giving access to a parent in such matters seems to spring from the general notion that there is a basic right in a parent to the companionship of his child but I would prefer to call it a basic right in the child rather than in the parent. The significance of this is simply that no court should deprive a child of access to his parents unless there are strong reasons to the contrary*"

The issues are aged 12 years (male) and 9 years (female). They both expressed their desire to be in the custody of Respondent because she provides their needs adequately. **Section 11 of Act 560** states that:

*"No person shall deprive a child capable of forming views the right to express an opinion, to be listened to and to participate in decisions which affect his well-being, the opinion of the **child being given due weight in accordance with the age and maturity of the child**" (emphasis supplied). **Section 45(2) (c) of Act 560** also provides that the court shall consider "*the views of the child if the views have been independently given*" when making an order for custody and access.*

This Court cannot therefore ignore the views expressed by these issues having given it due weight in accordance with their ages.

Now the court upon considering the law on child custody and access, the evidence on the record, the social enquiry report which provided a detailed report on the circumstances

of the parties and the issues herein and having most importantly considered the welfare and best interest of the issues herein enters judgment as follows:

Custody: Custody of the two issues herein Delvin Adama Thompson and Ailsa Naa Ayikailey Thompson shall remain with Respondent their biological mother. The Court is of the considered view that it is necessary to ensure continuity in the care and control of the issues (**see section 45(2)(e) of Act 560**). The issues herein have at all material times, been under the care and custody of Respondent and her parents. The Court sees no reason to disturb their otherwise stable growth and development except to order that Applicant being the biological father should have reasonable access to them. Uprooting the issues from the environment they have been accustomed/used to for the most part of their lives will not be in their best interest. Most importantly, the evidence shows that the issues are not being cared for by their aged, sick and frail maternal grandparents as Applicant wants this Court to believe but by Respondent their mother since January 2021. The issues have both expressed their desire to be in the custody of Respondent. Having considered the circumstances of the parties, it is indeed preferable that they are cared for by the mother as compared to Applicant the father who lives with a male cousin.

Access: Applicant being the biological father of the issues is entitled to have reasonable access to them in accordance with **sections 57 and 44 of Act 560**. Accordingly, Applicant shall have bi-weekly weekend access (from Friday after school to 5pm on the Sunday following) to the issues plus half of their school vacation periods in his home to enable them bond and share time together. Parties shall also share access to the issues on public holidays equally.

Education and Maintenance: As admitted by Applicant, he shall pay half of the issues school fees and school feeding fees. He shall also maintain the issues with GHC1,500.00 monthly to support Respondent with the upkeep of the two issues. Applicant shall pay

the school fees through the Court or directly from his mobile money account to that of Respondent for records purposes.

Medicals: In line with section 2(2) and the case of **Ofori v. Ofori [1981] GLR 745** which held that which authorizes this Court to make other relevant orders to secure the welfare and best of the issues, it is hereby ordered that the Cost of medical care for the issues not covered by the National Health Insurance Scheme (NHIS) shall be shared equally between the parties. Respondent shall see to the renewal of the subscription when it expires.

It is further ordered that Applicant shall write to the issues' school directing them to revert the name of the issues' father to that of Applicant herein.

The parties are to note that orders affecting children are subject to variations depending on the circumstances at any point in time in order to secure the best interest of the child(ren) in issue. They are both advised to priorities the welfare and best interest of the issues at all times.

SGD.

H/H MRS. MATILDA RIBEIRO
CIRCUIT COURT JUDGE