

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

SUIT NO. E. 20 of 1976

5/11/76
IN THE MATTER of Lloyd Paul Wilmot
and Robert Lewis Wilmot

AND

IN THE MATTER of Guardianship and
Custody of Children Act.

Between	Pamela Elizabeth Wilmot	Plaintiff
AND	Neville Churchill Palmer Wilmot	Defendant

Chambers J:

This action was brought before me in Chambers by Originating Summons filed by one Pamela Elizabeth Wilmot the wife/appellant of the Respondent Neville Churchill Palmer Wilmot that:

- (a) the custody and care of the two infant children, Lloyd Paul Wilmot and Robert Lewis Wilmot, may be committed to the said applicant during their minority or until further order of the Court;
- (b) that the said Court do give such directions as it thinks fit as to the return of the said children to the applicant in England and as to access in favour of the Respondent Neville Churchill Palmer Wilmot as it sees fit;
- (c) application for maintenance for the children;
- (d) and for costs of these proceedings.

First of all it is unfortunate that the two contestants in this suit live some 4,500 miles apart. The applicant the wife, an English woman lives in England and her husband the respondent and a Jamaican has since the 13th of November, 1975, lived in Jamaica with the two boys subject of this application for custody.

The Respondent has for the past 15 years lived in England, and where some 7 years ago he got married to the applicant. The marriage took place on the 25th September, 1969, when the elder child Lloyd was just over 2 years old, having been born on the 14th November, 1967, and the younger one was born less than 3 months after marriage, that is on the 6th December, 1969.

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The marriage is alleged to have broken down in or about 1975 when the two children were respectively 8 years and 6 years old. Proceedings for divorce was instituted by the applicant Mrs. Wilmot in England on the 10th of November, 1975 on which date she also made an application for Interim Custody of the children.

The application for Interim Custody was fixed for hearing in England on the 14th November, 1975, but on the 13th November, 1975, the day before the hearing of the summons, the husband/respondent left the matrimonial home with the two children taking them to Jamaica where they are now living.

Now from the evidence in this case the children were "kidnapped" by the respondent and taken to Jamaica. In spite of this he should not be punished for this action. The primary concern of this Court is what is best for the welfare of these two boys.

Before stating who these children should be with I must state that the best interest of these two children is that whatever home they are to go to, they should not be separated from each other in an action of this sort.

From the evidence in this case each parent, it would seem, would be able to look after the care and well being of the children but the question is what is best for the children.

In considering what is best for these children one has to consider which of these two parents living 4,500 miles apart should have custody, bearing in mind that any order for access of one parent visiting the children that is with the other parent, would be almost meaningless while living 4,500 miles apart, unless they were wealthy persons and had the time to spare. Both, or rather each parent seem financially able to look after the children but the only welfare of a child should not be measured by money/nor by physical comfort only. Apart from its moral and religious welfare, its physical and environmental welfare has to be considered.

All things being equal, in determining which parent should have custody, and bearing in mind that the "kidnapper" should not be punished for his kidnapping, by depriving him of custody, though it might be felt that the welfare, and what is best for the children should be that, being boys they should be with him, one has to ask oneself, the question "why should a mother who is able to look after her children, if she can look after them, lose all or almost all her rights to their care and upbringing," (which would be the result in

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this case if custody was granted to the father/respondent, merely because the husband who chooses to leave the matrimonial home and the country where the children were born and brought up, may be able to give the children adequate parental care possibly better than or slightly better than his wife could, and as adequate provided that her care is adequate/as when both husband and wife resided together in England where the children were born and brought up.

Both parents love the two children. The mother who flew out from England to be cross examined want the children with her and to continue to look after them as before this unfortunate incident. As previously, while the children were in England they attended school by travelling a distance of any where between 2 to 8 miles or 4 to 16 miles return from their home where they lived with their parents, and would now, if living with their mother, the applicant, would travel about the same distance to and from school as before.

While in Jamaica, the father, according to his evidence, lives some several miles from where the boys live with his brother and his wife and the boys have to travel some 28 miles return to school each day as compared to at the most 16 miles in England and possible only 4 miles. The father/respondent in his submissions says he now lives in Ocho Rios, thus cutting the school journey for the boys.

As stated earlier the Court does not intend to punish the respondent for his exploit at kidnapping his own children especially because of his belief which belief I could not and do not agree with. One has to bear in mind that as in Re F (An Infant) (1965) 2 Chancery p.238 at 239, custody was given to one party despite that party's responsibility for the break-up of the marriage -- the welfare and what was best for the children came first.

In this case the children though coloured were born in England and as stated in Re O (A Minor) Times 26th February, 1973, as cited by Scharschmidt for the applicant, three Lord Justices in England held that a coloured child born and growing up in England is regarded wholly as English and quote:

" save for blood and colour the child was wholly English."

The children in this case were born in England and lived most of their lives in England and for most of their lives enjoyed an English environment, schooling and upbringing. It is true, apart from environment the schooling in Jamaica is almost completely based on English traditions and lines, and so what is

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best for the children other things being equal, the question of these two children being boys might result in their being given to their father, but matters are not that equal.

These boys, in a way have been brought to Jamaica to a somewhat different environment and thus in a measure, to a greater or lesser extent, would cause a disruption of their accustomed lives, and any such disruption should be terminated as soon as possible.

There is no evidence that coloured children going to an English school amongst English children or British children or mixed white and coloured children do not get on well at school as their white counterparts. As a matter of fact the evidence is that these children do get on well in such an environment.

In regard to adults we are not here dealing with adult children. When that time arises the children if they still retain their Jamaican passport which they recently acquired, and are ordered by this Court to be returned to England may if they wish, elect to remain in England or return to Jamaica at that time.

The conditions which the respondent agreed to in regard to his children's schooling and staying with Mrs. Gomez would continue if they are returned to England. Why should he now object to that situation continuing, which situation he has by self help put an end to and for his children to now enjoy an unaccustomed environment.

What therefore is best for these two boys -- being with the father or mother. If with the mother they would be in an environment in which they were born and brought up in for some 6 to 8 years of their lives, where they would, it is hoped, be taken to school and collected from school under circumstances that both parents arranged amongst themselves when they were living together in England.

The Court considers therefore that the best interest of these children would be for custody to be granted to the mother but as there is an action pending in the English Courts and as stated in *Re T (Infants)* (1968) Chancery p.704 or 1968 3 W.L.R. p.430 the question is "Where do these children belong where is (or was) the matrimonial home" "or was" is my wording. The Court finds, that the children belong to England and should be handed over without delay to Mrs. Wilmot who is by this order allowed to take the children out of the jurisdiction.

Husband/respondent to deliver the two boys to Mrs. Wilmot at Green
...../Gables

Gables Guest House at Cargill Avenue by 1 p.m. on Saturday the 6th November, 1976, along with the passports and other travel documents.

Cost of these proceedings to Petitioner/Applicant Certificate for Counsel.

H.V.T. Chambers