

**IN THE FAMILY DIVISION OF THE HIGH COURT AT SUVA**

**ORIGINAL JURISDICTION**

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| <b>ACTION NUMBER:</b>          | <i>Family Appeal Case Number 0007 of 2014<br/>Original Action Number 13/Suv/0247</i>   |
| <b>BETWEEN:</b>                | <i>AUSTIN</i><br><br><i>APPELLANT</i>  |
| <b>AND:</b>                    | <i>JACQUELINE</i><br><br><i>RESPONDENT</i>   |
| <b>APPEARANCES:</b>            | <i>Ms. M. Tikoisuva for the Appellant.<br/><br/>No Appearance for the Respondent.</i>  |
| <b>DATE/PLACE OF JUDGMENT:</b> | <i>Tuesday 24 October 2023 at Suva.</i>  |
| <b>CORAM:</b>                  | <i>Hon. Madam Justice Anjala Wati</i>  |
| <b>CATEGORY:</b>               | <i>All identifying information in this judgment have been anonymized or removed and pseudonyms have been used for all persons referred to. Any similarity to any persons is purely coincidental.</i> |

**JUDGMENT**

**Catchwords:**

**FAMILY LAW – PARENTING ORDERS** – *Was it in the best interest of the children that their residence be awarded to the mother – was it within the purview of the medical officer to blame the mother for neglecting the child on the basis that she suffered from impetigo – the overall balancing of the best interest factors indicated that it was in the best interest of the children that their residence to be given to the mother.*

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Cause

1. The appeal by the father of the two children of the marriage arises out of a residence order granted to the mother. The orders were made after the hearing of the father’s application for parenting orders.

2. The parties are divorced since 2013. They have two children of the marriage. The male child is now 16 years old and the female child is now 13 years old.

#### Appeal and Determination

3. The issue on appeal is to determine whether the trial court was correct in ordering residence of the two children to the mother despite the medical evidence that the female child had been suffering from a skin condition called impetigo and that it was caused by bad hygiene and neglect of the mother.
4. On the appeal I have to examine whether the medical evidence was fair and sufficient to conclude that it was not in the best interest of the children that they continue to live with their mother who had looked after them since birth as opposed to the father?
5. There is no dispute that one child suffered from a skin condition termed by the doctor as impetigo. The mother's evidence on record was that she did seek medical attention for the child. Her evidence revealed that the sores started as if they were heat rashes. She was advised by the medical center to wash the skin with salt and water. She said that she took care of the children all the time and never neglected them.
6. I must reflect that many children in this country and abroad suffer from skin diseases such as impetigo and they do so even if they are looked after and cared for by both the parents. They still contract skin diseases even if their parents practice good hygiene. Many children can get sick in other forms. Some even get sick severely. The medical evidence cannot blame a parent for causing the sickness. It is not within the expertise of medical evidence to make that finding without the benefit of hearing from everyone who is involved in raising of the children.
7. In this case, when the child suffered the condition, the mother did seek medical attention. She did her best and she was even informed by the doctors on how to attend to the condition.

8. I do not find that the mother should be blamed for the skin condition that the child suffered. The doctor went beyond her expertise to blame the mother for the skin condition.
9. The medical condition that I am discussing is not a complicated medical illness that the court will need expert evidence on or a contrary medical report to impeach the findings of the doctor who testified in this case. The medical condition is a common ailment which everyone knows about. It is common knowledge that impetigo is a common and highly contagious skin infection that causes sores and blisters. It is not usually serious and often improves quickly with medication. It can sometimes also improve without medication.
10. Impetigo is not only caused by bad hygiene. It can be caused by contact with someone else with that condition. It can also be caused by a cut or an injury. The doctor just unfairly did not mention other ways in which impetigo can be caused. She chose to just mention one way in which impetigo is caused and then conclude who should be blamed.
11. The doctor found it convenient to blame the mother. Her medical evidence was not comprehensive and I class it as unfair and biased to serve the interest of the father who had contacted her to strengthen his evidence. The doctor therefore designed her evidence to suit the needs of the father. The evidence revealed that the doctor knew that the father was going to use this medical evidence for the proceedings.
12. The evidence on all other best interest factors indicated that the children's interest were best served to live with the mother. The mother has been the primary caregiver of the children since their birth. She had looked after them on a daily basis and provided them with the love, care and attention. She saw to their day to day needs and made decisions for their proper upbringing. It is now over 10 years that she has looked after each child.
13. The father was not around most of the time as he had been away to work in different places. He was away from home. He used to send his family money but it was the

mother who was involved in their upbringing. The father says that he had provided his wife and children with accommodation and that he also provided for them financially but when he found out that his wife's family members were living in the accommodation he provided for his wife and children, he got angry. He had an argument with the mother of the two children and left for Rabi to work. He considered his marriage over. He then found himself a partner and carried on with his life.

14. When the father moved on with his life, the children were left behind with the mother. They closely bonded with each other, their mother and her family. Taking that comfort away from them now would definitely be detrimental to them. They have not been living with the father and his new partner. There is no reason to introduce them to a new environment when their interests are well looked after by their own mother.

15. The mother's home environment was also not considered detrimental for the children's upbringing. There was basically no basis for the court to disturb the living arrangement of the children. I too have no basis to impeach the findings and orders of the trial court.

#### Final Orders

16. I do not find any merits in the appeal and I dismiss the same. I affirm the orders of the Magistrate's Court. I order each party to bear their own costs of the appeal proceedings.

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Hon. Madam Justice Anjala Wati

24.10.2023

To:

1. Mitchell Keil Lawyers for the Appellant.
2. Respondent.
3. File: Family Appeal Case Number: 0007 of 2014.