

IN THE FAMILY DIVISION OF THE HIGH COURT AT LAUTOKA

APPELLATE JURISDICTION

CASE NUMBER:	18/LTK/0007
[ORIGINAL CASE NUMBER]:	[16/LTK/0035]
BETWEEN:	RAGHAV
AND:	NANDINI
Appearances:	<i>Mr. R. Kumar for the Appellant</i> <i>Respondent in Person.</i>
Date/Place of Judgment:	<i>Friday 09 August 2024 at Suva.</i>
Judgment of:	<i>Hon. Madam Justice Anjala Wati</i>
Category:	<i>All identifying information in this ruling have been anonymized or removed and pseudonyms have been used for all persons referred to. Any similarities to any persons is purely coincidental.</i>
Anonymized Case Citation:	RAGHAV v NANDINI – Fiji Family High Court Case number: 18LTK0007

JUDGMENT

A. Catchwords:

FAMILY LAW – PARENTING ORDERS – APPEAL - father raises concern on the limited contact granted to him- further concern raised on how the relocation orders were granted- contact is the right of the child- it has to be regular and meaningful for the child to form a proper bonding with the parent he or she does not live with- it is not granted only for the sake of compliance with the law - contact time increased-relocation orders cancelled as there was no application for relocation by the mother depriving the father of a proper chance to defend the issue raised only at the trial- breach of natural justice as a result.

B. Legislation:

- 1. Family Law Act 2003 (“FLA”): s. 41(2).**

Cause

1. On the mother's application for parenting orders, the Family Division of the Magistrate's Court made several orders.
2. The father initially appealed against all the orders. However at the hearing, he confined his appeal only against the limited contact and relocations orders.
3. The orders of the court below were:-

- (1) Mother to have residence of the only female child.*
- (2) The father to have contact with the child in Lautoka on every Saturday between 2pm to 3pm as long as the mother resides in Lautoka.*
- (3) The parties are at liberty to change the venue and the time upon mutual agreement depending on prevailing circumstances at the time.*
- (4) If the mother moves out of Lautoka to any other place within Fiji, the father to have contact with the child every Saturday between 2pm to 3pm at any place convenient to the mother. The mother must give reasonable notice of such change of circumstances to the father.*
- (5) The parties are at liberty to change the place or the time of contact upon mutual agreement.*
- (6) If the mother intends to move out of the jurisdiction of Fiji, she is granted permission to take the child out of jurisdiction subject to the following conditions:-*
 - (i) The order for residence and contact must be registered with the relevant authority in such country that she intends to take the child with her pursuant to s.152 of Family Law Act.*
 - (ii) The mother must facilitate the child to have contact with the father via telephone or by any other electronic means such as "Skype" or "FaceTime" for one hour every Saturday at a time convenient to the mother.*
- (7) The parties are at liberty to change the date, time or the manner in which the contact order is exercised upon mutual agreement.*

The Parties Position

4. The father's position is that it is now almost 6 years post the initial judgment and the circumstances of the parties have changed in relation to the child.
5. He says that he is getting enough contact with the child and so he is not going to challenge the residence orders. The contact he gets now is even more than that outlined by the orders of the court.
6. He reflected that he picks the child up from the school and takes the child to his home. He drops her back at 6.30pm.
7. On Sundays, he picks the child up at 2pm and drops her off at 7pm. The father has also been taking her for swimming classes. There has been occasions when he has dropped the child to school as well.
8. The father says that he is content with the arrangement except that he wants to have the child during festivals and at times to have overnight contacts. If there is any function at his place or if he is travelling to hotels and staying over, it would be better for the child to stay overnight with him.
9. The father has expressed concern over relocation orders. He says that he was not able to address the relocation issues.
10. The wife's position is that she was already given a job in overseas. Due to the delay of the hearing of the appeal case, she lost the offer. She says she needs to get the order for relocation so that if she gets any other offer to go overseas, she need not come back to the court to get an order. She fears getting caught up in the court proceedings.
11. In respect of the contact, she says that there is no issue regarding the extended contact.

12. The mother says that the child can attend the functions and travel with the father as long as the child is brought home during night. The mother says that if there is an order for night contact, then she will accompany the child.

Law and Analysis

13. It is a positive act on the part of the parents to have harmoniously agreed to extend contact for the benefit of the child.

14. To have a meaningful bonding with a parent the child does not stay with, is the right of the child. Each parent must promote that right enshrined in s. 41(2) of the FLA.

15. S.41(2) (a) and (b) states that:-

“The principles underlying these objects are that, except when it is or would be contrary to a child’s best interest-

(a) Children have the right to know and be cared for by both their parents regardless of whether their parents are married, separated, have been married or have never lived together;

(b) Children have a right of contact, on a regular basis, with both their parents and with other people significant to their care, welfare and development, ...”

16. The only issue regarding contact is whether there should be overnight contact and contact during festivals.

17. In respect of festivals, understandably both parents need the child to be with them. It would be in the child’s interest to celebrate the main festivals with both parents. The main festivals would be Diwali, birthdays of the child and her parents, Christmas, prayers at home, close family weddings and related functions.

18. It is not inappropriate for the child to enjoy the festive seasons and her important days with both parents. The child will learn to engage with relatives from both side. She will get to bond with all other family members. It is only proper that a child knows his or her family members from both the maternal and paternal side. When she grows up, she can always turn

to them if she thinks they are reliable for support and advice. I propose to make orders to reflect this.

19. As for overnight contact, the child is 8 years old and would be in year 3. She has always stayed with her mother at nights and the mother is her comfort zone. There is no harm if the child occasionally spends nights at the father's place or in the father's care but it should be conditional upon the child's wishes. If the child is willing and looks forward to spend nights at her father's place or in his care, this will only promote the child's welfare. It would be regressive, if it is to be imposed on her to spend nights at her father's place or in his care without her willing to do so.
20. On the question of the relocation order, there was no application to be heard. Hearing the wife at the trial on her need to relocate was not proper in the circumstances. The mother ought to have put the father on notice regarding relocation for him to have sensibly prepared himself to address the application for relocation. To ambush him with the issue, affected his right to a proper process and that was breach of natural justice. The order was not justified.

Final Orders

21. In the final analysis, I make the following orders:-

- (i) *The mother to have residence of the child.*
- (ii) *The father to have contact of the child as follows:*
 - (a) *Mondays to Fridays after school until 6.30pm. The father to pick the child up from the school and drop the child to her home.*
 - (b) *Every Sundays from 2pm to 7pm. The father is to pick and drop the child.*
 - (c) *On all important festivals such as Diwali, Christmas, Father's Birthday, the Child's Birthday, Prayers at father's home, family weddings and related functions, the child is to spend some reasonable and meaningful time with the father. The time is to be mutually worked out between the parties.*
 - (d) *If the child wishes, she can stay overnight at the father's home or at hotels but the child must be at all times supervised by the father. The parents can both*

discuss the issue amicably and request the child to inform them of her position.

(e) During school breaks, the child will spend her time equally with both parents. The child can be picked daily at 10am to 7pm for the week(s) the child is to have contact with the father. For example, in 2 weeks holidays, the child must spend one week with the father from 10am to 7pm daily from Monday to Sunday. This applies to the year-end break as well. If the year-end break is for 7 or 9 or 11 weeks, then the child is to have contact with the father for a week more than the mother.

(f) The parties should communicate with each other, if due to unforeseen circumstances, the orders cannot be complied with.

(g) The parties are at liberty to vary the contact day and time by agreement.

(h) The parties are at further liberty to enter into a different arrangement for the contact as long as it is recorded and clearly agreed to by the parties.

(iii) I cancel the relocation and the associated orders.

(iv) Each party is to bear their own costs of the appeal proceedings.

.....
Hon. Madam Justice Anjala Wati

09.08.2024

To:

- 1. Roneel Kumar Lawyers for the Appellant.***
- 2. Respondent in Person.***
- 3. File: Family Appeal Case Number: 07 of 2018.***