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IN THE SUPREME COURT }  
OF THE TERRITORY OF }  
PAPUA AND NEW GUINEA. }

CORAM : MANN, C. J.  
(Chambers).

MARIA LOUISA KRAUS

v.

FRANCIS EDWARD KRAUS.

REASONS FOR JUDGMENT.

Port  
Moresby.  
13th  
September,  
1966.

In this application, the respondent, the father of the child, seeks an Order to have the petitioner and the child examined by a psychiatrist. Objection was taken that there is no power to make such an Order and, in the alternative, it was argued that there was no occasion for it and that it would only amount to a harmful invasion of the present relationship between mother and daughter.

I am not disposed to up-hold the objection that there is no power to make such an Order, although the Child Welfare Ordinance contains express power to refer certain specified matters to a Welfare Officer, it seems to be undesirable and unnecessary to construe the Ordinance as setting up an exclusive administrative machinery to cover the whole legal field of the welfare of children, so as to restrict the jurisdiction of the Court.

In the Appeal of Ako-Ako, (Index No. 125), I concluded that under the earlier legislation the essential inherent jurisdiction of the Court in relation to infants had not been abrogated. Further, it seems to me that the present question is an interlocutory or procedural matter and the Court's powers to make Orders for discovery and inspection, or to make the child a Ward of the Court might well cover the present need. However, there is no need for me to decide that question, because I am satisfied there is no occasion for such an Order as is now sought to be made.

In the applicant's view the psychologist, Mr. Wright, in his affidavit of the 3rd August, 1966, expressed the opinion that the respondent was not a

fit person to have the custody and care of the child's up-bringing.

It is clear that paragraph 9 of the affidavit is adverse to the interests of Mr. Kraus in the proceedings, but it does not say, nor does it imply, that Mr. Kraus is unfit. It is a relative opinion preferring the wife as custodian because of the particular needs of the child and because of the particular situation in which both parties have been for some time. Mr. Wright emphasizes that the marital relationship broke down a number of years ago. It is obvious enough that there is no immediate prospect of reconciliation and, in the position of strong antagonism which has arisen, Mr. Wright has chosen the mother as the more appropriate of the two parties to look after the child.

Attempts have been made to give the child the benefit of the society of both parents, but this has seriously threatened the child's sense of security and peace of mind that it has been necessary to exclude one of the two parents. The conflict between the parents appears to be all the more intense and irreconcilable than usual because both parents appear to be people of high intelligence rating, who, for some reason, could not and apparently did not want to apply their intelligence to the resolution of a situation which has become, or has given rise to, an emotional conflict. This is made clear by the affidavit of the respondent filed in support of the present application in which the range of the criticisms which he makes concerning his wife give a good insight into the situation which has developed between the two parties. I think that compulsory subjection to psychiatric examination would appear to the wife and child to be a harmful instrument of attack. The idea may commend itself to the respondent for this reason. If the respondent wishes merely to counteract what he imagines to be an opinion that he is unfit to look after the child, then he can have himself examined by psychiatrists, who can agree or disagree with Mr. Wright as they see fit.

There is no need to have the petitioner or the child examined unless the respondent now seeks to set up some deficiency on their part. No ground has

yet been made up to suggest that such a course would be anything more than a "fishing expedition". When these proceedings come to final trial, the Court may make whatever Order it deems appropriate, but at this stage and under the conditions at present prevailing, I see no justification for compelling the petitioner or the child to undergo psychiatric, or any other, examination.

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