

MACLEOD -v- MACLEOD

High Court of Solomon Islands

(Ward C.J.)

Civil Case No. 131 of 1989

Hearing: 1 August 1991

Judgment: 8 August 1991

T. Kama for Applicant/Respondent

J. Corrin for Respondent/Petitioner

WARD CJ: A decree nisi was granted in this case on 22 January 1990 and was made absolute on 25 April 1990.

There is one child of the marriage, Louisa, born on the 15 June 1983. A wardship order was made by this Court in 1984 following an attempt by the father to abduct the child and the application now by the father is for that order to be set aside and custody decided by the Court in the divorce proceedings.

In order to simplify the proceeding I have ordered that the wardship and divorce proceedings be dealt with together and I cover both in this judgment.

This is a sad and difficult case where the conduct of both parties has been determined to a considerable extent by mistrust and anxiety about the motives of the other. In the middle of it all, of course, is a little girl who for the last few years has been living almost exclusively with her mother and effectively without a father.

The effect of the attempted abduction on the mother has been to leave her with the firmly held belief that the father has no conscience and cannot be trusted with the daughter in any circumstances that might allow him to take the child and not return her.

The father, following that desperate and extremely ill-advised act, has not only been denied all but the most limited access but has, for periods of time, lost track of the child and her mother and been forced to undertake extensive enquiries to ascertain their whereabouts.

Various affidavits have been filed and I have now had the advantage of hearing both parents give evidence. Whilst each witness tended to blame the other, I felt their

evidence showed a new awareness of the other's position and gave cause for some hope this matter will eventually be resolved in a way that is best for the child. I am sure the time has past for allocation of blame but I accept and bear in mind that past events have left wounds that will be slow to heal and may well leave permanent scars.

This Court's duty first and foremost is to safeguard the interests of the child. It has long been the principle that the interests of the child are paramount and I am very concerned to ensure that arrangements can be made in furtherance of those.

Whatever the feelings of the mother, I am sure this girl has the right to expect access to and love from her father as well as her mother. Of course that has to be developed from the position in which the parties are now and I was happy to hear and accept that the father acknowledges the special bond that has built up between the girl and her mother. That is very much to his credit. The mother has been able to develop that bond by her decision to exclude the father. That was a decision she knew would have a most profound effect on her daughter. She describes the father as having no conscience but she may like to examine her own when she made a unilateral decision of such far-reaching consequence to her small child.

Having heard her give evidence I accept, however, that her actions over the last few years grew entirely out of a consuming fear of another abduction attempt. As a result, even when successful meetings between the daughter and the father had taken place, she was unable to see them as anything but calculated steps to prepare for another removal of the child.

As I have said, the time has gone for matters of blame. Past actions can never be forgotten but I feel it is time they are subordinated in the hope of finding a proper arrangement for the child. Already the parents' failure to make a successful marriage and their subsequent actions have had a profound effect on their daughter and they must now look ahead and try and give each other a chance to prove, if it be so, that they are now willing to make proper and sensible arrangements.

I feel that it is right to set aside the wardship order and I do so. Such a course will inevitably cause the mother a feeling of dreadful insecurity but she must realise that, as long as she is in Solomon Islands (and that of course applied to the wardship order also), the order I am about to make in terms of custody gives her equal protection if any attempt should be made to take away her child.

I order that the custody of Louisa be with the mother with reasonable access to the father. At this stage I direct that for the access to be reasonable, it must, until further order of this court, be within Solomon Islands. I further order that any

meetings between the father and the child must be in the presence of the mother unless she agrees otherwise. I do not order that a third person should be present and, indeed, I do not feel that should occur otherwise than when the presence of another person occurs in the way of normal social contact.

The mother does not seek any financial contribution from the father. However, her financial independence may not always continue and, in order to preserve her position, there should at least be a nominal order. However, it goes further than that. I feel to some extent her determination to be financially independent of the father is a way of restricting his influence over the child and I accept that may be reasonable. All too often an absent father, consciously or unconsciously, tries to 'buy' the affection of his child. I hope the father in this case is sensible enough to realise how wrong that would be and I believe he is. At the same time, his self-respect and position as a father entitles him to be able to feel he is contributing to his daughter's welfare. That requires more than a purely nominal sum.

I order that he shall pay to the mother for the maintenance of Louisa, the sum of \$200 per month. How the mother deals with that for her daughter's benefit is a matter for her to decide.

At the hearing, the father was due to leave the country the following day. I made an order to enable him to see his daughter. I hope that was a successful first step. I said then and I feel it bears repetition, that it is only fair the arrangements should allow the mother some peace of mind but they should equally be such that the father has a proper chance to prove his true intentions to the child and her mother. That requires both parties to be as relaxed and natural as they can to the daughter and each other when they are all three together. I hope and trust they both have the sense to see that and act on it.

They would also be wise to remember that, at any subsequent application to vary this access order as must be inevitable, the Court will consider most carefully how the order has worked up to then and the relative contribution of each of the parents to the success or otherwise of the arrangements.

No order for costs.

(F.G.R. Ward)
CHIEF JUSTICE