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Vincent, Re

Newfoundland Supreme Court

Furlong, C.J.

Judgment: June 23, 1972

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Counsel: **David F. Pitcher**, for the applicant.

**David C. Day**, for the respondent.

Furlong, C.J.:

1 This matter comes before me by way of an application for a writ of habeas corpus in order that the custody of the two children of the parties, Gregory, 6 years old, and Donna, 3 years old, may be determined.

2 The applicant, Gloria Vincent, is the mother, and her application is opposed by their father, Derrick Vincent.

3 Proceedings to dispose of the care, custody and control of infants are ordinarily taken in Chambers in order to provide a degree of privacy which is not readily present when matters are heard in Court, so I do not propose to record in detail the evidence which has been placed before me on affidavit, and which was amplified by the viva voce cross-examination of the several deponents.

4 It is sufficient, I think, to say that the husband and wife have quarrelled and live apart. Charges of general misconduct have been made by them against one another. With these charges I am only concerned where they refer to conduct which would render either of them unfit to have custody of the children.

5 The conduct of the parties, as I may loosely describe them, is only one factor for consideration in determining in whose custody these very young children should be placed. The overriding consideration, the paramount consideration, must be the welfare of the children. Counsel have referred to this point in the course of their arguments, and I simply repeat what has been said in this Court on several occasions in recent years when I state that this is the paramount, but not the sole, consideration in deciding the question of custody. Counsel have

reminded me of what I have said on this matter in *In re Winsor*, [48 M.P.R. 445](#), the substance of which I have just referred to above.

6 Having read the affidavits of the husband and wife, I felt that the matter required further investigation and I had them attend for viva voce examination and cross-examination by Counsel.

7 It appears from the evidence that the father Derrick Vincent, is in a better position financially to house and support the children. With the assistance of his own mother I have no doubt he could make a home for them. By occupation he is an automobile mechanic, and in employment. He is a young man, with the normal interests outside the home surroundings, and though he asserted that he would spend a lot of time with the children, it is not unreasonable to suppose that this might not turn out to be so. Their housing, education and physical care would be adequately attended to.

8 The mother, Gloria Vincent, is also in employment, as a restaurant cashier. She has established a home at Manuels, where the children have lived with her. The comfort and convenience of the house appears to be sufficient for the mother and children. The location is adjacent to a school where the children can go, and she has made proper arrangements (as so many working-mothers do today) for the care of the children in her absence.

9 Allegations have been made about the father's neglect of the children, and his treatment of the mother. On the other hand accusations have been made about the conduct of the mother and her relations with a male friend. It may be that neither of these allegations are wholly untrue; I have not been convinced that there is sufficient substance to warrant my finding that they establish unfitness as a parent to have custody.

10 It has been pointed out to me by counsel that in a general way children should not be separated from their brothers and sisters but should be brought up together. With this I agree, but would add that, more importantly, children should not be separated from either of their parents. If the latter cannot be effected, it sometimes happens that children may have to have different homes.

11 I have also had in mind the desideratum that very young children should not be taken away from their mothers. Like the question of separating children, this is not always possible to arrange. It remains a matter of great importance in my view that very young children should be brought up by their mothers, unless circumstances render it eminently unsuitable. As to what constitutes eminent unsuitability I can only say that it would be unwise to define it narrowly. Each case requires consideration. It is clear that inability to provide housing and decent living would be one instance; equally gross conduct on the part of a mother would demand that she be required to surrender her child. Having said all this I should like to make it quite clear that I can find nothing in the evidence to suggest that the epithet, eminent unsuitability, can be applied to Mrs. Vincent's position in relation to these children.

12 The evidence before me leads me to the conclusion that the boy, Gregory, is better off with

his father; in fact Mrs. Vincent in her affidavit accepts this state of affairs. This I shall direct.

13 As to the little girl, everything suggests to me that her best interest in every way is to be brought up by her mother, and this will be ordered.

14 There remains the question of maintenance of the girl in the custody of her mother, and the complementary question of access to her by her father, as well as the mother's right of access to the boy, Gregory. These matters have not been put before me, and it is to be hoped that they can be settled by Mr. and Mrs. Vincent, if they are sincere in their protestations of attachment to their children. Should agreement not be possible then the matter can further be considered by me.

15 I direct therefore that Gloria Vincent have custody of Donna Lee Vincent, and that Derrick Vincent have custody of Gregory Vincent.

16 The costs of this application are to be borne by Derrick Vincent.

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