

1967

June 26

[JOSEPHIDES, J.]

VARTAN
HAROUTIAN
MALIAN
v.
ZOFRO MALIAN
(OTHERWISE
PATSAI)

VARTAN HAROUTIAN MALIAN,

Petitioner

v.

ZOERO MALIAN (OTHERWISE PATSAI),

Respondent.

(*Matrimonial Petition No. 6/66*).

*Matrimonial Causes—Divorce—Children—Custody of—Access to—
Interim arrangements pending suit—In the instant case summer
arrangements for the children of the marriage made by the Court—
Welfare of children always of paramount importance in custody
cases.*

*Children—Custody of, and access to, children—Interim arrangements—
See above.*

Custody—Custody of children pending suit—See above.

Access—Access to the children pending suit—See above.

This was an application, in a petition for divorce, for certain arrangements for the children to be made by the Court pending suit, namely for the summer. The facts sufficiently appear in the judgment of the Court.

Ruling.

Ruling on the question of custody of the children of the parties to a matrimonial petition pending the determination of the petition.

St G. McBride, for the petitioner.

I. Ipsilandi (Miss) for L. Demetriades, for the respondent.

The following Judgment was delivered by :

JOSEPHIDES, J. : Questions of custody of, and access to, children are always difficult to decide because of the human element or aspect involved in them. In this particular case I fully appreciate the anxiety of both parents for the happiness of their children, but I have only a very narrow issue to decide, that is, the summer arrangements to be made for

the children, for the period from the 28th June to the 15th September this year. The general question of the custody of, and access to, the children will be decided finally after the determination of the petition by this Court.

In exercising the powers conferred on the Court with regard to the custody of children, the right of access to them, their schooling and way of living, the Court shall have regard primarily to their welfare but it should also take into consideration the wishes of the parents. The net result is that the welfare of the children is of paramount importance in this kind of proceeding. Consequently, I do not have to decide here whether the children feel happy at school—in fact, most of them may not be happy at times at school or boarding houses—but I have to decide what is good for them even if they may not be or feel always happy in their own little minds.

Briefly, the facts leading up to this proceeding are as follows. The petition for nullity and divorce was filed by the father of the children on the 9th August, 1966. It is stated therein that the parties were married on the 3rd March, 1957, at the Roman Catholic Church in Limassol, but not by a registered Minister of Religion under the Marriage Law, Cap. 279. That is one of the issues to be decided at the hearing of the petition. The other ground of the petition is cruelty. Following the marriage in March, 1957, two children were born, the first Anne on the 15th December, 1958, that is to say, she is about 8½ years old; and the second, Elizabeth on the 21st April, 1961, that is, she is about six years old. It is common ground that this has not been a happy marriage and for the purposes of this proceeding we need not enter into the causes. After the filing of the petition the parents of the children—parties to the petition—very sensibly came to an arrangement with regard to the maintenance, schooling and custody of the children. That agreement was embodied in a document dated 8th November, 1966, and signed by both parties. It is *exhibit 2* in this proceeding. Shortly that agreement provides that the father shall be responsible for the expense of the schooling and boarding of the children at the Terra Santa Girls School in Limassol and that the mother shall have custody of the children. The children attended the school and have been in that boarding house until today, when they are about to begin their summer vacation.

It is the mother's case that they have not been happy there; she is not pleased with the care which the Sisters give to the children, nor with the food which is provided. She has referred to

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an incident in November 1966 when the children, being unhappy, left the school at 12.30 p.m. and went to a neighbour's house, where they had their lunch, until she returned home from her work round about 5.30 p.m. It was not until 6.30 p.m. that the Sisters turned up to look for the children. It is further the mother's case that since then the children have been unhappy in the boarding house and that they have tried to run away from school, but in fact they have not run away from school.

It is the father's case that as he was not definite as to what would become of the children during the summer he had in advance made arrangements for them to spend their school holidays at the Troodos School Camp of the same school.

Recently the mother made arrangements to be granted leave specially for the period from the 28th June to the 3rd August, and during that period she proposes to be with the children the whole time, taking them around to other seaside towns as well as to Nicosia, and to look after them for the whole period

Mr. McBride, counsel for the father of the children, very rightly conceded that this is a good arrangement for the welfare of the children and he is not opposing it. But, he is submitting that for the remaining period of the summer vacation, that is to say, from the 4th August to the 15th September, the children should spend their time at the Terra Santa Sisters School Camp on Troodos.

On the evidence it appears that the father is employed as a Stage Manager of live entertainment in the British Armed Forces, Middle and Near East. His work carries him abroad and when he returns to Cyprus he may spend periods of six days to two months. He visits the children at irregular periods, sometimes between 2 ½-3 weeks

The mother who lives by herself in a flat in Limassol stated that apart from the weekends, when she takes out the children, she visits them at school taking them sweets and chocolates every other day and that she takes them out during the week. She firmly believes that the children are unhappy without her presence.

The question is, would it be to the welfare of the children to be left in her care for the aforesaid period of about 5½-6 weeks, from the 4th August onwards, when she goes back to work. She will then be leaving her flat every morning at 7 a.m.

to go to work at Episcopi returning at about 1.30 p.m.; but on Mondays and Tuesdays she may have to work in the afternoon up to about 4 or 4.15 p.m. She stated that she has made arrangements for a baby-sitter to look after the children during her absence and that during the weekends and after office hours she will be in full charge of them. The baby-sitter she said is a woman aged 50, but she was unable to state her name. The woman has good references and she is experienced in baby-sitting. The mother further believes that the children will get accustomed to this woman, whom they do not know at present, and the reason for the mother's belief is that the children have been used to living always with maids, since their infancy, because, as both parents are working people, they were unable to look after the children, except after office hours.

Finally, the mother stated that it would be difficult for her to go to Troodos over the weekends and that the children would be happier with her rather than with the Sisters at Troodos. On the other hand, it has been the case of the father that conceding, as he does, that the children should spend half of their school vacation with the mother, it will be to their benefit if they spend the other half on Troodos where they will be taken good care of and the change of air will be good for their health.

At the short time at my disposal I have given careful consideration to this case. As I said before, these questions are never easy to decide, but on the evidence before me and taking into consideration the wishes of the parents, I think that it will be to the welfare of both children if they are looked after in the Sister's school camp on Troodos rather than being left to the baby-sitter for five days a week. The mother, who has a car of her own, can always drive up to Troodos perhaps twice a week, in the middle of the week and at weekends. It will not be easy for her, but I think that she should be prepared for that sacrifice for the welfare of her children.

In the circumstances of this case I make the following *order* regarding the summer arrangements for the children :

- (1) The mother shall have custody of the children from the 28th June to the 3rd August;
- (2) From the 4th August to the 15th September the children shall spend their holidays at the Terra Santa summer school camp on Troodos, and the mother shall have access to them on any day of the week, including Sundays;

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- (3) The father shall have access to the children at all times;
- (4) If anything goes wrong at any time from the 28th June to the 15th September, the Welfare Officer is to report to this Court, and if there are any changed circumstances, substantially altering the position, this Court may have to vary the present order.
- (5) The Welfare Officer is to call on the mother at any time during the period that the children will be with her, and she is also to call at the Troodos school camp and report to Court if necessary.

No order as to costs. Order accordingly.

Order in terms. No order as to costs.