1983 May 28

[TRIANTAFYLLIDES, P.]

IN THE MATTER OF AN APPLICATION FOR AN ORDER OF HABEAS CORPUS BY SUSANNE ANNANDER,

AND

IN THE MATTER OF JOSEPH AN INFANT.

(*Application No.* 9/82).

Child—Illegitimate child—Custody—Section 3 *of the Illegitimate Children Law, Cap.* 278*—To be applied in conjunction with the general principle of law that the welfare of the child is a most vital primary consideration—Child, two years old, residing with his father in Cyprus—Mother a Swedish citizen, applying for custody and intending, if given custody, to take child with her to Sweeden—Conduct of mother towards another illegitimate child of hers—If child taken out of the jurisdiction prior to determination of legitimation proceedings, which had been instituted by his father, he will be deprived of the possibility of becoming the legitimate child of his natural father—And his father will be deprived, due to the distance and expenses involved, of any real possibilities of regular access to him—Not in the interest of the welfare of the child to grant order applied for at present—Application refused.*

The applicant, a Swedish citizen at present residing in Cyprus, applied for an order of habeas corpus for the purpose of securing the custody of her illegitimate infant son, Joseph, who was about 2 years old. The child, which was a Swedish national and was the illegitimate offspring of the cohabitation of the applicant and respondent 1, Andreas Christodoulides, resided in Nicosia with respondent 1 who lived with his parents.

Respondent 1, the father of the illegitimate child has by voluntary recognition established paternal affiliation of the child (see Articles 3 and 4 of the European Convention on the Legal Status of the Children born out of Wedlock, which was ratified by means of Law 50/79) by, in particular, applying to the Di-

strict Court of Nicosia for an order declaring the child concerned to be his legitimate child, under the provisions of sections 6 and 7 of the Illegitimate Children Law, Cap. 278 and this application was still pending. The applicant intended, if she was given custody, to leave Cyprus, taking the child with her to Sweden, where, apparently, she could earn much more easily a living and would have, also, the assistance of her family. Before forming a relationship with respondent 1 applicant had given birth to another illegitimate child, Daniel; and after she and respondent 1 decided to come with their illegitimate child, Joseph, to Cyprus, in order to marry and settle permanently here, the applicant entrusted Daniel to relatives of hers in Sweden, thus depriving her first illegitimate child of her care as his mother.

After stating that the applicant genuinely wished to have the custody of her child for reasons of maternal affection and that she was in a position to look after him and bring him up in a proper manner; and that respondent 1 was, also, very fond of his son and wished to bring him up himself, with the financial and other assistance of his parents; the Court:

Held, (1) that in cases involving the custody of an illegittmate child section 3* of the Illegitimate Children Law, Cap. 278, has to be applied in conjunction with the general principle of law that the welfare of the child is, to say the least, a most vital primary consideration and, thus, such consideration should be taken into account by this Court, within proper limits, in deciding whether or not to make the order of habeas corpus applied for by the applicant in this case.

(2) That had the applicant been residing permanently in Cyprus or had she intended to remain here as a permanent resident for the foreseeable immediate future, this Court would have been inclined to the view that, because especially of the tender age of the child, it would be better for the welfare of the child to make the applied for order of habeas corpus, coupled with terms safeguarding the right of respondent 1 to have access to the child; that taking into account the conduct of the applicant towards the other illegitimate child, Daniel, this Court cannot

* Section 3 provides that "an illegitimate child shall have the legal status of a legitimate child in respect of his mother and her relatives by blood".

reasonably exclude the possibility that if she meets someone else after she returns to Sweden and they decide to live in some other country she may entrust her second illegitimate child, Joseph, too, to relatives in Sweden and thus deprive him of the care of his mother as well as of his father.

(3) That if the child involved in this case is allowed to be taken out of the jurisdiction of the District Court of Nicosia prior to the determination of the Legitimation Application, which was filed by his father, he will be deprived of the possibility of becoming the legitimate child of his natural father, respondent 1, thus, in all probability, remaining illegitimate for the rest of his life; that this matter is considered as being a factor of paramount importance as regards the outcome of the present case; that, also, due to the fact that the child will be taken by the applicant to Sweden, if she succeeds in this application, respondent 1 will, as a result, be deprived, due to the distance and expenses involved in travelling from Cyprus to Sweden, of any real possibilities of regular access to his child; that in view of all the foregoing this Court has - with some reluctance because of compassion for the feelings of the applicant mother - reached the decision that it should refuse the order of habeas corpus applied for by her, because it is not in the interest of the welfare of the child to grant such an order at present; accordingly the application must fail.

Application dismissed.

Cases referred to:

R. v. Barnardo, Jones's Case [1891] 1 Q.B. 194 at p. 198;

Lazarou v. Savva (1968) 1 C.L.R. 334 at p. 337;

Krzentz v. Krzentz (1971) 1 C.L.R. 168 at p. 171;

Thompson v. Thompson, The Times dated 12.3.1975;

Queen v. Nash, In re Carey and infant [1883] 10 Q.B.D. 454 at p. 456;

Barnardo v. McHugh [1891] A.C. 388 at pp. 394, 398, 399;

In re J.M. Carroll (an infant) [1931] 1 K.B.317 at p. 345;

J. v. C. [1969] 1 All E.R. 788 at pp. 819, 820;

In re A. (an infant) [1955] 2 All E.R. 202 at p. 205;

In re C. (M.A.) (an infant) [1966] 1 All E.R. 838 at p. 846; and on appeal [1966] 1 All E.R. 849 at p. 858;

Re C(A) (an infant) C v. C [1970] 1 All E.R. 309 at p. 311;

Re O. (an infant) [1964] 1 All E.R. 786 at pp. 788-789.

Application

Application for an order of habeas corpus by Susanne Annander of Sweden for the purpose of securing the custody of her illegitimate son, Joseph.

A. Georghiades with *N. Clerides*, for the applicant.

Gl. Raphael with *A. Markides*, for the respondents.

Cur. adv. vult.

TRIANTAFYLLIDES P. read the following judgment. The applicant, Susanne Annander, who is a Swedish citizen at present residing in Cyprus, seeks an order of habeas corpus for the purpose of securing the custody of her illegitimate infant son, Joseph, who when the present application was filed was about two years old and who, having been born in Sweden, is a Swedish national too.

The child resides for the time being in Nicosia with respondent 1, Andreas Christodoulides, who lives with his parents, namely Adamantini (or Ada) Christodoulides, who is respondent 2 in this case, and Joseph Christodoulides; and until the 4th June 1982, when she broke off relations with respondent 1, there, also, resided with them the applicant, as she was about to marry respondent 1 who is the father of her child.

On 9th July 1982 I gave in this case a decision* on certain preliminary issues and I need not repeat now what I have stated then in such decision; it suffices to say that I, of course, still adhere to its contents which should be deemed to be incorporated in this judgment.

As on 9th July 1982 I did not have before me all the required material for the purpose of enabling me to decide regarding the aspect of how the welfare of the child concerned would be affected by the making or the refusal of the applied for order of habeas corpus I directed that there should be prepared by the Department of Welfare Services a comprehensive report in respect of the infant in question and I added, too, that both sides were free to place before the Court any other material which they might deem relevant.

* Reported in (1982) 1 C.L.R. 479.

The welfare officer, Mrs. T. Pericleous, prepared a social investigation report dated 21st August 1982 and she supplemented it by further reports dated 23rd September 1982 and 20th October 1982.

The applicant filed supplementary affidavits dated 23rd August 1982, 14th September 1982 and 23rd September 1982. She has, also, adduced, by way of affidavits, evidence of four witnesses in support of her case, one of whom is Dr. A. Kamenos, a psychiatrist and psychotherapist in Nicosia, who has filed, together with his affidavit, a psychiatric opinion dated 31st August 1982 regarding the effects of maternal deprivation on a two years old infant.

Both the respondents have filed supplementary affidavits dated 19th August 1982.

The applicant, the respondents and Dr. Kamenos were cross-examined regarding the contents of their affidavits and gave, also, further evidence orally.

From, inter alia, the judgment of Lord Coleridge CJ in *R.* v. *Barnardo, Jones's Case*, [1891] 1 Q.B. 194, 198, there appears that in proceedings for an order of habeas corpus in relation to the custody of an infant evidence may be adduced either by way of affidavits or orally.

The welfare officer was not called to give evidence because counsel for both sides agreed that her reports should be produced by consent and be treated as material before the Court which is relevant to the determination of this case.

In my aforementioned decision of 9th July 1982 I stated that it is common ground that the father of the child is respondent 1, Andreas Christodoulides, and that the child is the illegitimate offspring of the co-habitation of the applicant with this respondent in Sweden from May 1975 onwards.

In his final address at the conclusion of the hearing of this case counsel for the applicant stated that it was not correctly stated in my decision of 9th July 1982 that it is really common ground that respondent 1 is the father of the infant in question.

I cannot, however, accept as valid this contention of counsel for the applicant, because in finding that it is common ground

that respondent 1 is the father of the child I based myself not only on what counsel for the applicant had said to that effect before the Court but, also, on, inter alia, the following paragraph which is to be found in an affidavit sworn by the applicant herself on 8th June 1982: "My said child was born out of a lawful wedlock and is illegitimate. I ought to say here that I verily believe that the father of the said child is a certain Andreas Christodoulides, of Nicosia, Costis Palamas street, No. 20, Aspelia Court, Flat F2, 6th Floor, with whom I have cohabited for long periods of time since May 1975 until last Friday, the 4th of June 1982".

Also, respondent 1 in his affidavit dated 19th August 1982 stated expressly that the child is his illegitimate child.

Actually, this case has all along been fought by both sides on the basis that the child concerned is the illegitimate offspring of the applicant and of respondent 1, who was her fiance; and, having unhesitatingly accepted as true all the evidence by way of affidavits or orally to that effect, I have not the slightest doubt that this is so.

After the final addresses of counsel for the parties there were received through the aforementioned Welfare Officer two reports from social welfare authorities in Sweden, dated, respectively, 24th November 1982 and 26th November 1982; and as when these reports were brought to the notice of counsel for the parties counsel for the respondents applied to be heard in relation to them, I re-opened the hearing and both counsel were heard in this connection.

Counsel for the applicant had stated, as soon as the two reports from Sweden had been brought to his knowledge, that he consented that they should be treated as material before the Court relevant to the determination of this case.

Counsel for the respondents stated, eventually, that his clients were prepared to accept that there could be taken likewise into consideration the contents of the first report from Sweden dated 24th November 1982, as well as the contents of the first page of the second report from Sweden dated 26th November 1982. He added that he disputed as incorrect the contents of the second page of such report, especially as regards,

mainly, the movements of the applicant and respondent 1 during the years 1980 and 1981.

It is appropriate to examine, at this stage, what use is to be made of welfare reports in a case of this nature:

In *Lazarou* v. *Savva*, (1968) 1 C.L.R. 334, 337, the contents of a welfare report were relied on in deciding the issue of custody of a child as between estranged parents; and the same course was adopted in *Krzentz* v. *Krzentz*, (1971) 1 C.L.R. 168, 171.

In *Thompson* v. *Thompson* (see the Law Report dated 11th March 1974 in the London "Times" of 12th March 1975) Lord Justice Buckley sitting in the Court of Appeal in England, with Lord Justice Ormrod, said:

> "..... that the Court could not rely on a welfare officer's report because it was apparent from its terms that it was largely based upon what the officer had been told by others. Some hearsay evidence was unavoidable in such a document, and in respect of comparatively uncontroversial matters was likely to be unobjectionable. But where acutely controversial matters were concerned it was important that a reporting officer should report his own observations and assessments and where he was constrained to pass on second-hand information and opinions he should endeavour to make that explicit and indicate its source and his own reasons, if any, for agreeing with those opinions. Where a judge had to arrive at crucial findings of fact he should found them upon sworn evidence rather than on an unsworn report.
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> It might be that in the instant case the welfare officer formally vouched for the accuracy of his report when giving oral evidence, thus giving the report the status of sworn evidence, but even so it remained impossible to ascertain from the report how much of it was hearsay and how far direct evidence of the welfare officer's own observation".

The *Thompson* case, supra, is referred to in Rayden on Divorce, 13th ed., vol. 1, p. 1037, para. 33.

An indication of the usefulness of welfare reports is, also, rule 5 of the Guardianship of Infants and Prodigals Rules

of Court, as amended by the Guardianship of Infants and Prodigals (Amendment) Rules of Court, 1972 (No. 1, Second Supplement to the Official Gazette of the Republic dated 6th October 1972).

In the present instance, having borne duly in mind the already quoted observations of Buckley LJ in the *Thompson* case, supra, I have relied on the contents of the welfare reports which were prepared both here in Cyprus and in Sweden to the extent to which the parties, as already stated, had agreed that they should be treated as material before the Court relevant for the determination of this case; I have, however, disregarded the disputed part of the second report from Sweden, which, in any event, was not of any material significance.

I shall deal, next, with the law which I have to apply in deciding whether to grant or refuse the order of habeas corpus sought by the applicant in this case for the purpose of securing the custody of the illegitimate child who is the subject of the present proceedings:

Counsel for the applicant has relied on section 3 of the Illegitimate Children Law, Cap. 278, which provides that "an illegitimate child shall have the legal status of a legitimate child in respect of his mother and her relatives by blood".

I cannot, however, agree that section 3, above, should be construed as going so far as to give exclusively and invariably in all cases the custody of an illegitimate child to only the mother of such child.

It is useful to compare, in this respect, the wording of section 85(7) of the Children Act 1975, in England, which provides that "except as otherwise provided by or under any enactment, while the mother of an illegitimate child is living she has the parental right and duties exclusively" (and see, too, in this respect, Rayden on Divorce, supra, at p. 1206).

In my opinion, the express provisions of the said section 85(7) go much beyond what is laid down by means of section 3 of our Cap. 278.

The approach of the Courts in England to the issue of the custody of an illegitimate child, in habeas corpus proceedings, affords quite valuable guidance in the present case:

In *The Queen* v. *Nash, In re Carey, an infant*, [1883] 10 Q.B.D. 454, Jessel M.R. stated the following (at p. 456):

> "In many cases the law recognizes the right of a mother to the custody of her illegitimate child. In the case of *Ex parte Knee* before Sir James Mansfield, it was held that she had such a right unless ground was shewn for displacing it. The Court is now governed by equitable rules, and in equity regard was always had to the mother, the putative father, and the relations on the mother's side. Natural relationship was thus looked to with a view to the benefit of the child. There is in such a case a sort of blood relationship, which, though not legal, gives the natural relations a right to the custody of the child".

Also, in the same case, Lindley L.J. stated (at p. 456):

> "We cannot interfere with the right of the mother in favour of persons who are mere strangers. There is indeed no legal relationship, but there is a natural one, and the affection of the mother for the child must be taken into account in considering what is for the benefit of the child".

In *Barnardo* v. *McHugh*, [1891] A.C. 388, the *Nash* case, supra, was referred with approval by Lord Halsbury L.C. (at p. 394) and, also, by Lord Herschell (at p. 398) who went on to say the following (at p. 399):

> "I think this case determines (and I concur in the decision) that the desire of the mother of an illegitimate child as to its custody is primarily to be considered. Of course, if it can be shewn that it would be detrimental to the interest of the child that it should be delivered to the custody of the mother or of any person in whose custody she desires it to be, the Court, exercising its jurisdiction, as it always does in such a case, with a view to the benefit of the child, would not feel bound to accede to the wishes of the mother".

The above dictum of Lord Herschell was referred too by Greer L.J. in *In re J.M. Carroll (an infant)*, [1931] 1 K.B. 317 (at p. 345), who proceeded then to add the following:

> "I do not myself see any distinction between this propo-

> sition and the proposition that if it be shown that it would be advantageous to the welfare of the child that it should be put in the custody of somebody other than its mother, the Court would be entitled to refuse to hand the child over to its mother or to the persons in whose custody she desired it to be".

It must be pointed out that in the *Carroll* case, supra, Greer L.J. dissented as regards the actual outcome of that case, but this does not detract, in my opinion, from the correctness of his aforequoted dictum. Moreover, when in the case of *J.* v. *C.*, [1969] 1 All E.R. 788, the approach adopted by Scrutton L.J. and Slesser L.J. in the *Carroll* case, in relation to the effect of section 1 of the Guardianship of Infants Act, 1925, in England, was disapproved by the House of Lords, nothing was said which throws any doubt on the validity of the above dictum of Greer L.J. in the *Carroll* case; and, indeed, it may be derived from the judgment of Lord Upjohn in the *J.* v. *C.* case, supra (at p. 833), that he agreed with the dissenting view of Greer L.J. as regards the outcome of the *Carroll* case.

In *Re A.* (*an infant*), [1955] 2 All E.R. 202, Sir Raymond Evershed M.R. stressed the following (at p. 205):

> "In *Barnardo* v. *McHugh*[1], the observations of SIR GEORGE JESSEL, M.R., in *R.* v. *Nash*, *Re Carey*[2] were cited with approval by LORD HERSCHELL, who said [1891] A.C. at p. 398):
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> > 'It is, however, no longer important to inquire what are the rights of the mother in relation to an illegitimate child at common law. All the courts are now governed by equitable rules, and empowered to exercise equitable jurisdiction. As was said by SIR GEORGE JESSEL, M.R., in *R.* v. *Nash*[2] (10 Q.B.D. at p. 456): 'In equity regard was always had to the mother, putative father, and relations on the mother's side.' "

In the *Re A.* (*an infant*) case, supra, an order was made that the illegitimate child should be committed to the care and control of the natural father's brother and sister-in-law. At

1. [1891] A.C. 388.
2. [1883] 10 Q.B.D. 454.

the time the child was eighteen months' old and it was directed that the order made should be reviewed in two years' time; and such order was sustained on appeal.

The *Re A. (an infant)* case, supra, was referred to by Ungoed-Thomas J. in *Re C. (M.A.) (an infant)*, [1966] 1 All E.R. 838 (at p. 846), where the learned Judge pointed out that in exercising discretion, in particular circumstances, as regards a child's welfare "..... what is decisive is the appreciation of those particular circumstances as a whole, which (together with the law) is what results in the decision"; and when the *Re C. (M.A.) (an infant)* case, supra, was considered on appeal (see [1966] 1 All E.R. 849) Harman L.J. stressed (at p. 858) that "In considering the welfare of the child, all the facts must be taken into account".

The referred to earlier in this judgment section 1 of the Guardianship of Infants Act, 1925, reads as follows:

> "Where in any proceeding before any Court (whether or not a Court within the meaning of the Guardianship of Infants Act, 1886) the custody or upbringing of an infant, or the administration of any property belonging to or held on trust for an infant, or the application of the income thereof, is in question, the Court, in deciding that question, shall regard the welfare of the infant as the first and paramount consideration, and shall not take into consideration whether from any other point of view the claim of the father, or any right at Common law possessed by the father, in respect of such custody, upbringing, administration or application is superior to that of the mother, or the claim of the mother is superior to that of the father".

As from the enactment of the above section 1 all proceedings concerning the custody of an infant in England have been determined, as it appears from relevant case-law, on the basis that the welfare of the infant is the first and paramount consideration.

The said section 1 of the Guardianship of Infants Act, 1925, being a statutory provision in England, is not directly applicable to proceedings for an order of habeas corpus in Cyprus, such as the present case. It is, however, important to bear in mind that case-law which preceded the enactment of section 1, shows that the welfare of an infant in matters of custody was a

consideration of primary importance; and, actually, as it appears from the judgment of Lord McDermott in the *J.* v. *C.* case, supra (at pp. 819, 820) the part of the said section 1 which makes the welfare of the infant the first and paramount consideration has been regarded, by judges in England, as being declaratory of the existing law at the time of its enactment.

A provision analogous to section 1 of the Guardianship of Infants Act, 1925, is section 7(2) of the Guardianship of Infants and Prodigals Law, Cap. 277, which provides that, in exercising the powers conferred by section 7 of Cap. 277 in regard to infants, a Court shall have regard primarily to the welfare of the infant, but shall take, also, into consideration the wishes of the parents. Though section 7(2) is a statutory provision relating to the application of section 7 of Cap. 277, I regard it as affording some guidance in the present instance, in the sense that it embodies the same principle which was evolved by common law and equity in England and was, then, given statutory recognition both in England and here.

In my opinion in cases involving the custody of an illegitimate child the already referred in this judgment section 3 of Cap. 278 has to be applied in conjunction with the general principle of law that the welfare of the child is, to say the least, a most vital primary consideration; and, thus, such consideration should be taken into account by this Court, within proper limits, in deciding whether or not to make the order of habeas corpus applied for by the applicant in this case.

As regards the rights of the father of an illegitimate child Harman L.J stated the following in the case of *Re C (A) (an infant) C* v *C*, [1970] 1 All E.R. 309 (at p. 311):

> "I am of opinion that the rights of the father of an illegitimate child have been treated much the same for a very long time. He was always heard in the old Court of Chancery, notwithstanding that the infant in law was filius nullius, and since 1926 he has been specifically entitled to be heard. He has no rights such as the right to forbid an adoption, as the mother of an illegitimate child has, but nevertheless he is a person who is not to be ignored, and his wishes, when he is a person who in many respects is a perfectly respectable member of society, can be given some weight.

They will not be given much weight against the mother; but here there is no mother; there are only the aunt and the grandmother".

In *Re O. (an infant)*, [1964] 1 All E.R. 786, Lord Denning M.R. said (at pp. 788–789):

"The natural father is not in the same position as a legitimate father. He is a person who is entitled to special consideration by the tie of blood, but not to any greater or other right. His fatherhood is a ground to which regard should be paid in seeing what is best in the interests of the child; but it is not an overriding consideration".

The above dictum of Lord Denning M.R. was referred to with approval in the case of *Re C. (M.A.) (an infant)*, supra, (at p. 853).

In Cyprus the status of the father of an illegitimate child has been afforded recognition due to the ratification of the European Convention on the Legal Status of the Children born out of Wedlock by means of Law 50/79.

It is useful to quote, in particular, Articles 3, 4, 6, 7 and 8 of the Convention.

"Article 3

Paternal affiliation of every child born out of wedlock may be evidenced or established by voluntary recognition or by judicial decision.

Article 4

The voluntary recognition of paternity may not be opposed or contested insofar as the internal law provides for these procedures unless the person seeking to recognise or having recognised the child is not the biological father.

Article 6

1. The father and mother of a child born out of wedlock shall have the same obligation to maintain the child as if it were born in wedlock.

2. Where a legal obligation to maintain a child born in wedlock falls on certain members of the family of the father

or mother, this obligation shall also apply for the benefit of a child born out of wedlock.

Article 7

1. Where the affiliation of a child born out of wedlock has been established as regards both parents, parental authority may not be attributed automatically to the father alone.

2. There shall be power to transfer parental authority; cases of transfer shall be governed by the internal law.

Article 8

Where the father or mother of a child born out of wedlock does not have parental authority over or the custody of the child, that parent may obtain a right of access to the child in appropriate cases."

In the present case respondent 1, the father of the illegitimate child in question, has by voluntary recognition established paternal affiliation of the child and this recognition is amply proved not only by his own evidence but, also, by other material on record in this case. Respondent 1 has, in particular, applied by means of Legitimation Application 4/82 in the District Court of Nicosia for an order declaring the child concerned to be his legitimate child, under the provisions of sections 6 and 7 of Cap. 278, and this Application is still pending.

Before the conclusion of the hearing of the present case an opportunity was afforded to counsel for the parties to address the Court on the issue of whether the order of habeas corpus applied for by the applicant could be granted on certain terms in relation to matters such as the removal or not out of the jurisdiction of our Courts of the child in question, the rights of access to the child by the parties and other cognate aspects.

In considering the outcome of this case, in the light of all relevant circumstances, I have paid due regard to the basic principle that as the child is still illegitimate I should lean in favour of granting the order of habeas corpus applied for by the applicant mother unless there exist good and sufficient reasons for reaching the contrary conclusion.

There is no doubt in my mind that the applicant genuinely wishes to have the custody of her child for reasons of maternal affection and that she is in a position to look after him and bring him up in a proper manner.

I am equally satisfied that respondent 1 is, also, very fond of his son and wishes to bring him up himself, with the financial and other assistance of his parents.

Had the applicant been residing permanently in Cyprus or had she intended to remain here as a permanent resident for the foreseeable immediate future, I would have been inclined to the view that, because especially of the tender age of the child, it would be better for the welfare of the child to make the applied for order of habeas corpus, coupled with terms safeguarding the right of respondent 1 to have access to the child.

The applicant has, however, stated in explicit terms that if, and as soon as, she is given custody of the child by means of the said order she will leave Cyprus, taking the child with her to Sweden, where, apparently, she can earn much more easily a living and will have, also, the assistance of her family.

I have, in this connection, felt bound to take into account the conduct of the applicant towards another illegitimate child of hers, Daniel, to whom she gave birth before she formed a relationship with respondent 1: After the applicant and respondent 1 decided to come with their illegitimate child, Joseph, to Cyprus, in order to marry and settle permanently here, the applicant entrusted Daniel to relatives of hers in Sweden, thus depriving her first illegitimate child of her care as his mother. So, I cannot reasonably exclude the possibility that if she meets someone else after she returns to Sweden and they decide to live in some other country she may entrust her second illegitimate child, Joseph, too, to relatives in Sweden and thus deprive him of the care of his mother as well as of his father.

If the child involved in this case is allowed to be taken out of the jurisdiction of the District Court of Nicosia prior to the determination of the aforementioned Legitimation Application he will be deprived of the possibility of becoming the legitimate child of his natural father, respondent 1, thus, in all probability,

remaining illegitimate for the rest of his life; and I consider this matter as being a factor of paramount importance as regards the outcome of the present case.

Also, due to the fact that the child will be taken by the applicant to Sweden, if she succeeds in this application, respondent 1 will, as a result, be deprived, due to the distance and expenses involved in travelling from Cyprus to Sweden, of any real possibilities of regular access to his child.

In view of all the foregoing considerations I have - with some reluctance because of compassion for the feelings of the applicant mother - reached the decision that I should refuse the order of habeas corpus applied for by her, because it is not in the interest of the welfare of the child to grant such an order at present.

As respondent 1 has never refused to allow the applicant to have reasonable access to the child while she is in Cyprus it is expected that the interim arrangements made in this respect during the hearing of this case will continue to be implemented by both parties in a spirit of goodwill.

In the result this application is dismissed; but in the light of all relevant considerations I have decided to make no order as to its costs.

Application dismissed with no order as to costs.