

COMMONWEALTH OF THE BAHAMAS

2024

IN THE SUPREME COURT

FAM/gua/00254

Family Division

**IN THE MATTER OF (a minor child)**

**J. D.**

**IN THE MATTER** of the Child Protection Act 2007

**B. D.**

**AND**

**T. D.**

**Applicants**

**AND**

**A. D.**

**AND**

**S.B.**

**Respondents**

**BEFORE:** The Honorable Madam Justice J. Denise Lewis-Johnson MBE

**APPEARANCES:** Mrs. Ramona Farquharson-Seymour of Counsel for the Applicants  
Mr. Patrick Mackey, of Counsel for the Respondent

**DATES:** 22 July 2024; 18 September 2024; 14 November 2024

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**JUDGMENT**  
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**Introduction**

1. By Originating Summons supported by Affidavit filed 5 June 2024, the Applicants sought Guardianship of J.D “the minor child” born the 24<sup>th</sup> day of February A.D. 2013.
2. The minor child’s biological father, is Anthoine Dames and her mother is Temeka Duncombe (“the deceased”) died on the 17 December 2022.
3. Since the death of the mother the Applicants have had actual custody of the child. They now make application to the Court for a grant of guardianship of the said child. The father also is claiming guardianship and custody of the child.
4. The extant application before the Court is accompanied by the following Affidavits:
  - Affidavits of Birdie Duncome and Tremain Dumcombe filed 17 September 2024; and
  - Affidavits of Anthoine Dames & Sybil Burrows, filed 5 September 2024,

**Evidence of the Parties**

**Applicants Evidence**

*Birdie Duncombe & Tremaine Duncombe*

5. That we are the maternal grandmother and uncle of the minor child.
6. That the minor child’s mother died in a road traffic accident on the 17 December 2022.
7. That the minor child has an absentee father who has not been a part of her life.
8. That they are prepared to act as guardians of the minor child.
9. That the minor child never stayed with the Respondent and his mother for the weekend or any other day prior to the mother’s death and the minor child has been living with them after the death of the deceased.
10. That the minor child never attended church with the Respondent and his mother, and as to their knowledge the Respondent does not go to church.

11. That the minor child mother would celebrate her birthdays at the Respondents mother's house which was the deceased's house.
12. That when the child's birthday was hosted at Marcos Pizza, they hosted it and invited the Respondent and his mother to attend. The Respondent and his mother never hosted the birthday party.
13. That the Respondent didn't maintain the child and that they assisted in the child's maintenance when the deceased was alive.
14. That prior to this matter, they maintained the minor child and had custody, care and control, took care daily and paid all back to school expenses and the Respondent didn't contribute until the commencement of this matter.
15. That they hosted the graduation dinner for the minor child and invited the Respondent and his mother.
16. That the minor child did not attend Christmas and New Year's regularly with the Respondent but they allowed the minor child to visit the Respondent and his mother in 2023 in December for the holidays.
17. That the photos presented by the Respondent with the minor child are recent photos which were produced to deceive the Court.
18. That the deceased commenced maintenance proceedings against the Respondent but was unable to complete it due to her death.

### **Respondents Evidence**

#### *Anthoine Dames & Sybil Burrows*

19. That we are the father and paternal grandmother of the minor child.
20. That the minor child currently resides with the Applicants, but resided with her mother until her death on the 17 December 2022.
21. That we were always involved in the life of the minor child and she stayed with them every other weekend during school months and for two weeks when school was closed prior to the death of the deceased.
22. That the minor child regularly attended church with us and her first cousins.

23. That we would celebrate the minor child birthdays with her paternal grandmother every year until the death of her mother in 2022 and thereafter at Marcos Pizza at Cable Beach.
24. That we provided the minor child maintenance in about \$200-\$250 per month and \$50 monthly on treats for her.
25. That we attended the minor child graduation at Thelma Gibson Primary School and took her out for a treat afterwards alone with other family members.
26. That we celebrated Christmas and New Year's holidays with the minor child on a consistent basis before the death of the deceased.
27. That we had regular contact with the minor child which was interrupted by the deceased mother, one of the Applicants after the death of the deceased.
28. That they were not notified by the Applicants of this matter until we were served with the Originating Summons and notice of adjourned hearing one week prior to the court hearing on the 22 July 2024.
29. That in compliance with the Interim Order the minor child was allowed to stay over with us and go to church with her paternal family over the past two weeks. That she is happy and excited to be with us again.
30. That we have established a special bond with the minor child and that it would be in the child's best interest to grant joint guardianship to the parties.

#### **The Issue**

31. Whether Guardianship should be granted to the Applicants or Joint Guardianship be granted to both the Applicant and Respondent.

#### **Discussion & Law**

32. This Court is tasked with determining whether the Applicants ought to be granted guardianship of the minor child. The Court in making decisions on guardianship must adhere to the overriding objective and paramount consideration, which is, what is in the best interest of the child.
33. In these circumstances I rely on the words of Lord MacDermott in **J v C [1970] AC 686** where he stated:-

*“Reading these words in their ordinary significance...it seem to me that they must mean more than that the child’s welfare is to be treated as the top item in a list of items relevant to the matter in question. I think they connote a process whereby, when all the relevant facts, relationships, claims and wishes of parents, risk, choices and other circumstances are taken into account and weighed, the course to be followed will be that which is the most in the interest of the child’s welfare as that term has now to be understood. That is the first consideration because it is of first importance and paramount consideration because it rules on or determines the course to be followed.”*

34. Section 20A of **The Child Protection Act** “the Act” states: -

**(1) The Court may appoint a person as a guardian of a child, either in addition to any other guardian or as sole guardian either-**

**(a) On an application, for the purpose by any person**

**(b) On its own initiative, on making an order or removing a testamentary or any guardian appointed or acting by virtue of this Act.**

**(2) The Court may appoint the guardian as a guardian of the child-**

**(a) Either for a specific purpose or generally;**

**(b) Either for a specified period or not**

35. The Applicants are not the natural parents of the minor child, but are the grandmother and uncle. The Applicants proffered compelling evidence in support of their application, evidence of their involvement in the child’s upbringing, both before and after the death of the deceased. They have always been a consistent presence, providing her with a home and family structure.

36. The Court accepts the evidence of the Applicants in that regard and accepts that the Applicants played a vital role in the minor child’s life before and after the death of her mother. It is commendable that they provided consistent care and support to the child to

date. They not only provided a home but they bore all financial obligations for the child. They voluntarily did this for years without complaint or demanding assistance from the Respondent/father. They provided emotional support after the death of the child's mother, a most critical time, to secure the wellbeing of the child.

37. Not only did the Applicants care for the minor child but they accepted the minor child into their home after the death of her mother.
38. The Court must also have regard to the father. The parents were not married. No evidence was led that the Respondent, Anthoine Dames was declared the putative father, however the child carries his surname and there is an acceptance between the parties that he is the biological father. After the death of a single mother, the father would legally be entitled to custody of the child unless the Court states otherwise. Pursuant to **Section 14 (3)** of the said Act which states:-

**“On the death of one parent, the surviving parent, if any, shall, subject to this Act, be guardian of the child:**

**Provided that if the parents were separated, and the deceased parent had custody of the child, the surviving parent may be guardian of the child either alone or jointly with any guardian appointed by the deceased parent, and**

**(a) where no guardian has been appointed by the deceased parent; or  
(b) in the event of the death or refusal to act of the guardian or guardians appointed by the deceased parent, the court may, if it thinks fit, appoint a guardian to act jointly with the surviving parent...”**

39. It is apparent from the evidence that the Respondent has some relationship with the minor child and that the Applicants accepts this, their evidence stated that they invited the Respondent and his mother to birthday gatherings, graduations and allowed the minor child to spend last Christmas with the Respondent and his mother.
40. The Court does not find the evidence of the Applicants sufficiently persuasive to take away the rights of the Respondent. The minor child has unfortunately lost her mother, the Court

will not take away her father. She requires a strong, loving supportive group of persons to care for her.

41. As this Court stated **In the Matter of Application for Guardianship by Stephen Todd Sipprell and Holly Sipprell 2021/FAM/gua/00473:-**

*“Taking away parental rights is a very serious decision, it ought to be done without significant cause and the highest level of evidence that a parent is not a fit and proper person, his character is a consideration.”*

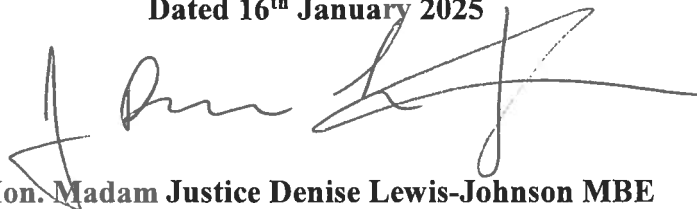
42. The case of **Sipprell** relied upon by the Applicants is distinguishable from the case before this Court as the father showed absolutely no interest in the children after the death of their mother and did not attempt to reach out to the children or show any emotional or financial support to the children. In this case, the evidence is that the father was present albeit not consistently
43. The Court accepts that at various stages in the minor child’s life, the Respondent was present and despite the conflicting evidence of the parties as it relate to the extent of his involvement, he is presently asking to be involved in her upbringing.
44. The Courts paramount consideration is what is in the best interest of the child and that is to have all parties involved in the child’s life.
45. The Court accepts all parties desire the best interest of the child. It is encouraging when both sides of a family seek to be active participants in a child’s life. We wish them to do so in a peaceful, cooperative way. Co-parenting is required. If you love the child, she requires the families “to get along” it’s in her best interest and she should not have to choose.
46. Having considered all the evidence and law, a stable, loving environment has been provided by the Applicants, I will not disrupt that. The Respondents will be allowed to play an active role in raising the child, there is never too much love and support.

## **Conclusion**

47. For all of the reasons stated above, the Court having heard the evidence, watched the demeanor of the parties and having considered the relevant law finds as follows:-

- i. Joint Guardianship is granted to the Applicants and Respondent/Father for the minor child J.D. born the 24<sup>th</sup> day of February A.D. 2013.
- ii. Primary care, custody and control is granted to the Applicants.
- iii. The Respondent shall have staying access every other weekend commencing 31<sup>st</sup> January, 2025 from 5PM Fridays to 5PM Sundays and continuing thereafter until further order of the court.
- iv. The Respondent will have access on Father's Day, his birthday and shared access on the child's birthday.
- v. The Respondent will have access for one month during the summer as agreed between the parties. The parties will alternate Christmas and New Year's commencing with the Respondent having the child for Christmas 2025 and the Applicants having the child New Year's 2026.
- vi. The Respondent is to provide maintenance in the amount of \$400 monthly and to provide bi-annually in the months of August and December an additional contribution of \$500 towards clothing.
- vii. The parties are to share equally all educational, medical, dental and optical expenses of the child until she attains the age of 18 or if she immediately enrolls in tertiary education until the age of 22.
- viii. Each party bears their own cost.

**Dated 16<sup>th</sup> January 2025**



**Hon. Madam Justice Denise Lewis-Johnson MBE**