

**IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX**

OPHIA BENJAMIN,

Petitioner,

v.

STANLEY A. FARRELLY,

Respondent.

FAM. NO. SX-16-CS-13

ACTION FOR CUSTODY

Cite as: 2019 Super VI 49

Appearances:

LYDIA LOGIE MOOLENAAR, ESQ.

The Law Offices of Lydia Logie-Moolenaar

St. Croix, VI 00820

For Petitioner

MARK MILLIGAN, ESQ.

The Law Offices of Mark Milligan

St. Croix, VI 00821

For Respondent

AMENDED MEMORANDUM OPINION

HINDS ROACH, Judge

¶1 **THIS MATTER** came before the Court for a final custody hearing on March 1, 2019 (recessed from February 22, 2019).

¶2 Petitioner Ophia Benjamin appeared, represented by Lydia Logie Moolenaar, Esq. Respondent Stanley Farrelly appeared, represented by Mark Milligan, Esq.

¶3 This Court having considered the admitted evidence and the argument of counsel, enters the following findings of fact and conclusions of law:

¶4 The parties are the parents of T.H.Y.T. (DOB: 3/23/2004) and T.A.A.T. (DOB: 10/30/2001) and are presently governed by the Court's July 5, 2016 Order and the parties' Stipulated Amendment to the July 2016 Order – both interim Orders. The Order and Stipulated Amendment provide for shared physical custody. Mr. Farrelly retains physical custody of the boys from Monday after school to Friday morning when he drops them off at school. Ms. Benjamin retains physical custody of the boys from Friday after

school to Monday morning when she drops them off at school.

¶5 This Court is being called upon to make a final determination as to legal and physical custody of T.H.Y.T. and T.A.A.T.

Findings of Fact

1. Ms. Benjamin and Mr. Farrelly were in a relationship from 1999 to 2003 which resulted in the births of T.H.Y.T. and T.A.A.T.
2. In 2009, Ms. Benjamin received custody of the two boys pursuant to a restraining order against Mr. Farrelly.
3. Ms. Benjamin retained custody of the two boys until 2016, even though the restraining order lapsed in the interim.
4. At or around March of 2016, T.A.A.T. was struggling academically in geometry and biology.
5. As a result of T.A.A.T.'s poor academics, both boys went to live with Mr. Farrelly, an educator in agricultural science, to assist T.A.A.T. improve his grades.¹
6. Since living with Mr. Farrelly, T.A.A.T. failed geometry but improved in his other classes, namely biology, after he and Mr. Farrelly sat down and studied the materials together.
7. When Ms. Benjamin attempted to pick the boys up from Mr. Farrelly's home in July 2016, Mr. Farrelly did not allow T.H.Y.T. and T.A.A.T. to leave.
8. As a result, two cases were filed for custody and visitation of the boys, SX-16-MS-17 and the instant case, which were consolidated.
9. On July 5, 2016, the Court gave Mr. Farrelly temporary custody of the boys to ensure their academic interests were safeguarded. Pursuant to the Order, each party had half of the summer with the boys and Ms. Benjamin has physical custody of the boys on the weekends while Mr. Farrelly has physical custody of the boys from Monday afternoon through Friday mornings.
10. During the summer of 2016, T.A.A.T. studied geometry so that he would be prepared to continue his schooling in the next term. Mr. Farrelly also instructed the boys to do yard work, such as planting seeds and caring for the farm.

¹ The parties disagree as to the length of time the boys were supposed to live with Mr. Farrelly. Ms. Benjamin and the boys assert there was an agreement for the boys to live with Mr. Farrelly for the term and then return to Ms. Benjamin's home at the beginning of the summer of 2016. Mr. Farrelly contends there was no such agreement.

11. When the boys asked Mr. Farrelly to return to Ms. Benjamin's home in the summer of 2016, Mr. Farrelly told the boys their mother did not care about them² and became frustrated and angry.³
12. Since the boys came to live with Mr. Farrelly in March of 2016, Mr. Farrelly helped the boys with assignments and ensured that the assignments are done in a timely manner. Mr. Farrelly actively spoke to the boys' teachers and kept up with the boys' progress when both were living with him. Mr. Farrelly also drove the boys to school.
13. After Mr. Farrelly started assisting the boys with their schoolwork, they both improved and made the honor roll at different times during the past three years.
14. Per the Court's April 25, 2017 Order, home studies were to be conducted as to Ms. Benjamin and Mr. Farrelly's respective homes.
15. Mr. Farrelly never reached out to the Department of Human Services regarding a home study and that, despite multiple attempts to contact him, Ms. Hicks had never spoken to Mr. Farrelly or conducted a home study for him.
16. Ms. Benjamin initiated the home study process by coming into the office on May 17, 2017 and her home study was completed pursuant to the Department of Human Services' standard procedures.⁴ Ms. Benjamin's home was suitable to provide for children and Ms. Benjamin had adequate income to do so.
17. Since 2016, T.H.Y.T. has been suspended twice for smoking marijuana at school and T.A.A.T.

2 T.H.Y.T. also testified that when the two boys asked Mr. Farrelly about returning to their mother, Mr. Farrelly would use derogatory language about Ms. Benjamin. Mr. Farrelly contends he did not use derogatory language, but admits he told the boys their mother did not care about them. This admonition indicates to the Court that Mr. Farrelly is aware of his past failings and intends to improve his actions in the future.

3 T.A.A.T. and T.H.Y.T. also testified that Mr. Farrelly had hit them with a tractor belt as a punishment. However, neither boy testified as to bruises or other abrasions from the tractor belt. Neither boy stated he had filed a police report or talked to someone in DHS outside of their interviews with Ms. Hicks. Mr. Farrelly admitted to using corporal punishment on each boy once as a punishment over the past three years; Mr. Farrelly denied using a tractor belt to administer the corporal punishment, stating that it was a fan belt and not a tractor belt.

4 The Department of Human Services' standard procedures included Ms. Benjamin filling out the required forms, the police conducting a criminal background check, and Ms. Hicks conducting a home evaluation and interviewing Ms. Benjamin and both minor children. The Court, pursuant to Tutein v. Artaega, 60 V.I. 709 (V.I. 2014), may appoint an individual to conduct an investigation so that the Court has all of the information it needs to make a determination as to what is in the best interests of the child. See also V.I. Super. Ct. R. 88 (authorizing the court to conduct such social investigation). As such, the Court will consider the home study report but disregard any additional letters of reference included as they may contain irrelevant and potentially prejudicial information. Even though there were hearsay concerns raised at the hearing, the Court determined that case law and court rules allow and encourage the Court to order an investigative report so that it can make an informed determination as to the best interests of the child. It would be illogical for the legislature to allow the Court to order an investigation and then not consider the information and interviews in the report once it was completed. Like Tutein, the potential hearsay concerns "are outweighed by the benefits to minors who are often unable to protect themselves[.]" Tutein, 60 V.I. at 718.

has been suspended once for the same.

18. Mr. Farrelly was aware that the boys had smoked marijuana and had drug tested them after the boys were both suspended for 10 days for smoking marijuana on school grounds together.
19. During the suspension, the boys were locked in the house with bars on the door from around 7:00 a.m. until 3:00 p.m. for about a month.⁵
20. The boys used a key to escape once and unscrewed the bolts to get out on a different occasion. However, the key was taken away and Mr. Farrelly welded over the bolts so that they could not be unscrewed again.
21. Currently T.H.Y.T. lives with Mr. Farrelly and Mr. Farrelly's girlfriend.
22. Mr. Farrelly provides a good opportunity for both boys to do the best that they can in school and he spends a significant amount of time attempting to help them excel.
23. As to T.H.Y.T.'s academics, Mr. Farrelly checks in on how well he is doing in his classes and looks at his notebooks to evaluate his notetaking skills. Mr. Farrelly is currently helping him with all of his subjects. After school, Mr. Farrelly will meet with T.H.Y.T. and look over his notes; if they are up to par, T.H.Y.T. will have free time. If his notes need work, Mr. Farrelly will have T.H.Y.T. take additional notes and then review them.
24. T.A.A.T. is currently a student at the University of the Virgin Islands (UVI) and is living on campus in a dorm room but is on academic probation due to poor grades.
25. T.A.A.T. does not have a relationship with Mr. Farrelly outside of discussing academics, especially now that he is living at the dorms on campus at the University of the Virgin Islands.
26. T.A.A.T. does not ask Mr. Farrelly for academic assistance and failed 3 of the 4 classes he took last semester. Mr. Farrelly is unable to monitor T.A.A.T.'s grades since T.A.A.T. started living on campus and Mr. Farrelly has been unable to get T.A.A.T.'s report card.
27. Despite his failing grades, Mr. Farrelly pays for T.A.A.T.'s tuition at UVI while Ms. Benjamin contributed by purchasing items for his dorm room and supplies.
28. During the weekends, Ms. Benjamin has an opportunity to spend time with the boys and T.H.Y.T. and T.A.A.T. have the chance to interact with their sister and communicate and spend time as a family.

⁵ However, Mr. Farrelly stated his retired brother lives next door and Mr. Farrelly asked his brother to watch the house during the suspension period because the boys were inside.

29. Ms. Benjamin's focus is to have fun with the boys, love them, and allow them to socialize, stating they need to be nurtured by cuddling and spending quality time together as a family.
30. Both T.A.A.T. and T.H.Y.T. have acted reluctant to return to Mr. Farrelly, sometimes becoming distant or angry.
31. Mr. Farrelly testified in detail about T.A.A.T. and T.H.Y.T. daily habits, financial and educational needs, friendships, and his relationship with the boys' over the span of their lifetimes. It is clear from the record that Mr. Farrelly cares deeply about his children and is attempting to provide the best opportunity for their future that he can.

RELEVANT LAW

¶6 In making a custody determination, a Virgin Islands Court considers, above all other factors, the best interests of the child. Madir v. Daniel, 53 V.I. 623, 631 (2010). See, e.g., James v. Faust, 2015 V.I. Supreme LEXIS 24, *4 (2015); Jung v. Ruiz, 59 V.I. 1050, 1057 (2013); Smith v. Cedano, 24 V.I. 11, 13 (1988); 16 V.I.C. § 109(b). Furthermore, the Court must select, as between disparate environments, the one which is more likely to provide a secure, comfortable, and predictable future for the child. Smith, 24 V.I. at 15. St. Croix is the home state of both minor children at the time of the commencement of this action, therefore it is properly within the authority of this Court. 16 V.I.C. § 127.

¶7 While there are no enumerated factors that the Family Court must exclusively consider, this Court has in the past considered the following factors when making a custody determination: a) the parties' respective home environments; b) the ability of each parent to nurture the child; c) whether either parent was guilty of abuse; d) the inter-relationship of the child to parents/partners and other siblings; and e) the willingness of each parent to provide a stable home environment. Madir, Id. at 632.

ANALYSIS AND CONCLUSIONS OF LAW

¶8 At issue in this case is a debate between which parenting style will best prepare the minor children to succeed in school, work, personal endeavors, and life as a whole: structure or nurture.

¶9 Mr. Farrelly's parenting style provides the minor boys with structure and discipline through hard work on the farm, planting and cultivating seedlings until they mature and bear fruit. The boys work with their hands and put their energy toward an activity that shows them that, with time and effort, they can make an impact and shape the ultimate outcome. Mr. Farrelly also provides the opportunity for the minor boys to cultivate for themselves a work-ethic and self-discipline in the realm of academics through daily reviews of their school work, tutoring sessions after school, and additional individual attention to academics during the summer when necessary.

¶10 Ms. Benjamin's parenting style provides the minor boys with fun, freedom, and a friend that they can talk to about anything. The boys spend time with their family and friends on the weekends, socializing and cuddling and playing card games. With Ms. Benjamin, the boys would have more freedom to shape how their days are spent, likely choosing to go to the movies or spend time with friends or cousins as they so testified.

¶11 The Court, when looking at which parenting style will best serve the boys' interests and safeguard their futures, will evaluate the factors considered in Madir and then make its determination based on the evidence as a whole.

Home Environment

¶12 The evidence shows that both home environments are adequately suited to the raising of the boys. Both homes appear to be appointed with the basic necessities with suitable space for the boys to sleep. Nothing in this regard militates in favor of either party.

Abuse

¶13 The evidence shows that Mr. Farrelly locked T.A.A.T. and T.H.Y.T. in his home from around 7:00 a.m. until 3:00 p.m. for approximately one month as a punishment for smoking marijuana in school. Even though Mr. Farrelly stated he asked his brother to watch the house during that time period, the Court does not find this safety measure reassuring and finds Mr. Farrelly's actions to be abuse. The Court is concerned that in the event of a fire in the home, an accident involving one of the boys, or other medical emergency, T.H.Y.T. and T.A.A.T. would have been trapped and unable to leave due to Mr. Farrelly's actions.

¶14 Regarding the testimony of Mr. Farrelly using corporal punishment with a tractor belt, T.A.A.T. stated that Mr. Farrelly had beat him but did not testify as to bruises or abrasions. T.A.A.T. also stated that he did not report the incident to the police or DHS personnel outside of the interview with Ms. Hicks as part of the home study. Furthermore, Mr. Farrelly admitted to testimony that was adverse to his interests, e.g. admitting to telling the boys that their mother did not care about them and using corporal punishment. Mr. Farrelly's honesty indicates to the Court that Mr. Farrelly would disclose his past failings, including in the realm of his method of punishing the boys. As such, the Court as the finder of fact credits Mr. Farrelly's testimony that he only used corporal punishment on each boy once.

¶15 In regard to the derogatory language about Ms. Benjamin, both T.A.A.T. and T.H.Y.T. stated Mr. Farrelly used "bad language" in reference to Ms. Benjamin. Mr. Farrelly admitted stating that Ms. Benjamin did not care about the boys but denied using any derogatory language about Ms. Benjamin. The Court noted that Mr. Farrelly became agitated while testifying and that Mr. Farrelly admitted being frustrated and aggravated by the boys' calculated requests to return to Ms. Benjamin. As such, the Court as the finder of fact credits Mr. Farrelly's admission that he told the boys Ms. Benjamin did not care about them and also finds that he did not use derogatory language in regard to Ms. Benjamin.

¶16 Considering the aforementioned testimony and evidence, most importantly the safety concerns raised by Mr. Farrelly locking both boys in his home, this factor mitigates in favor of Ms. Benjamin having custody.

Ability of Parent to Nurture Child

¶17 From the evidence, both parties are able to provide for the boys' basic needs. Past being prologue, the evidence shows that Mr. Farrelly is better able to provide for the boys' academic needs and Ms. Benjamin is better able to meet their emotional needs. From an academic standpoint, the boys perform better with the benefit of Mr. Farrelly's sustained involvement and daily tutoring. T.A.A.T. and T.H.Y.T. also benefit from the time spent with Ms. Benjamin and their sister on the weekends. The current custody and visitation schedule is able to accommodate both benefits offered; Mr. Farrelly can assist the boys with academics during the week and Ms. Benjamin can address their emotional needs during the weekends. Both parties have an equal opportunity to nurture the boys during the summer as the summers are split in half.

¶18 T.H.Y.T. and T.A.A.T.'s testimony bears Mr. Farrelly's position out. Although both boys described Mr. Farrelly as strict, they admitted to doing better in school while at Mr. Farrelly's home. T.A.A.T.'s testimony also showed that when removed from Mr. Farrelly's home, he began failing his classes again. Ms. Benjamin also admitted that Mr. Farrelly provides the best opportunity for the boys to excel in school.

¶19 This factor mitigates in favor of Mr. Farrelly having custody of T.H.Y.T. and T.A.A.T. during the week and Ms. Benjamin have the boys on the weekend.

Inter-relationship of Child/Parents-Partners/Siblings

¶20 Per the evidence, both parties have paramours but there is little to no information about them in the record.

¶21 The evidence shows that T.A.A.T. and T.H.Y.T. still maintain a close relationship even though T.A.A.T. resides at the UVI dorms instead of with T.H.Y.T. at Mr. Farrelly's home. The Court is concerned that the boys were suspended for smoking marijuana together on school grounds and that they smoked in the home per their testimony and Mr. Farrelly's testimony regarding drug tests performed. This evidence indicates to the Court that when the boys are together they do not use their best judgment and get into trouble as a result.

¶22 The evidence shows that T.A.A.T. and T.H.Y.T. are forming a relationship with their sister on the weekends when they visit their mother. Per Ms. Benjamin's testimony, both boys spend time with their sister when they are at her house and are bonding as a family.

¶23 As it relates to T.H.Y.T., he testified that he wished to have a relationship with his father. T.H.Y.T. is living alone with Mr. Farrelly currently as T.A.A.T. is living in the dorms at UVI. T.H.Y.T. is currently 14 and in 10th grade; he can benefit from the academic assistance that Mr. Farrelly has proven he is capable and willing to provide. Furthermore, because T.A.A.T. is not in the home, Mr. Farrelly can provide individual attention to T.H.Y.T. and foster a meaningful relationship with him. The academic assistance and the structure provided by Mr. Farrelly will allow T.H.Y.T. to focus on his schoolwork and form a relationship singularly with his father.

¶24 As it relates to T.A.A.T., he testified that he is almost 18 years old and is already living at the UVI dorms for most of the year. T.A.A.T. testified that he would prefer to live with his mother when he is not at the dorms. T.A.A.T. also testified that he no longer reaches out to Mr. Farrelly for academic assistance, thereby limiting the benefit Mr. Farrelly can have on T.A.A.T.'s academic performance.

¶25 Considering the evidence in regard to T.H.Y.T., this factor mitigates in favor of Mr. Farrelly having custody during the week in order to safeguard T.H.Y.T.'s academic future. T.H.Y.T. can still foster a relationship with Ms. Benjamin and his sister on the weekends as the evidence shows presently does.

¶26 Considering the evidence and testimony of T.A.A.T., this factor mitigates in favor of Ms. Benjamin having custody as T.A.A.T. does not appear willing to spend time with Mr. Farrelly or benefit from his assistance.

Willingness (and ability) to Provide a Stable Home Environment

¶27 The evidence suggests that both parties are able to provide a stable home environment. Because both parties appear to be financially stable and able to support both children, this factor does not mitigate in favor of either party.

¶28 The Court acknowledges that it is putting a premium on Mr. Farrelly's ability to provide structure and educational guidance to T.H.Y.T. at this critical time in his life. However, the Court believes that providing for T.H.Y.T.'s future through the resources Mr. Farrelly has available, namely the ability to promote self-discipline and work ethic through farm work and school studies, is in T.H.Y.T.'s best interest. Allowing T.H.Y.T. to cultivate a relationship with Mr. Farrelly in these next critically important years will enable T.H.Y.T. to reap significant net-benefits, not only in the academic sphere but also in his personal and work spheres going forward. Similar to his experience working on the farm, T.H.Y.T. will be able to plant the seeds of his future through his schoolwork and, through hard work and determination, reap the fruit of his labor as he applies for college and work beyond high school. The Court also believes that T.H.Y.T. can be an example for his sister in the future, showing her that one can succeed if they have self-discipline, willpower, and follow-through to achieve your goals.

¶29 The Court further notes that Mr. Farrelly has shown an awareness of his past failings, admitting to the Court the truth even when it was not in his best interest. Mr. Farrelly is an educator who is smart enough to adapt his behavior when admonished by the Court to improve his relationship with his sons and

his behavior. The Court believes that, upon given a second chance with T.H.Y.T., Mr. Farrelly will modify his behavior for the better and make the most of his time with T.H.Y.T., both personally and academically.

¶30 **WHEREFORE**, this Court finds that, given the findings as related above (specifically as it relates to the ability of the parent to nurture child and the inter-relationship of child/parents-partners/siblings), it is in the best interest of T.H.Y.T. for primary physical custody to lie with Mr. Stanley Farrelly during the week and with Ms. Ophia Benjamin on the weekends.

¶31 It appears from the evidence to be in the best interest of T.A.A.T. for primary physical custody to lie with Ms. Ophia Benjamin, as is his preference. It is in the best interests of both T.H.Y.T. and T.A.A.T. for Ophia Benjamin and Stanley Farrelly to have joint legal custody.

¶32 This Court has incorporated the visitation schedule in the accompanying order.

DONE AND SO ORDERED this 12th day of April, 2019.



DENISE A. HINDS ROACH, JUDGE

A T T E S T:

Estrella George
Clerk of the Court

By: 

Court Clerk Supervisor

4/15/19