IN THE HONORABLE SUPREME COURT OF THE REPUBLIC OF LIBERIA

SITTING IN ITS MARCH TERM, A.D. 2023

BEFORE HER HONOR: SIE-A-NYENE G. YUOH……..……. CHIEF JUSTICE
BEFORE HER HONOR: JAMESETTA H. WOLOKOLIE……..ASSOCIATE JUSTICE
BEFORE HIS HONOR: JOSEPH N. NAGBE…….…....ASSOCIATE JUSTICE
BEFORE HIS HONOR: YUSSIF D. KABA…….……ASSOCIATE JUSTICE
BEFPRE HIS HONOR: YAMIE QUIQUI GBEISAY, SR. ……..ASSOCIATE JUSTICE

Mrs. Weemon Jallah Cole-Boyce of the City of Monrovia, Liberia……Appellant	)
Versus	) APPEAL
Mr. L. Olandor Boyce, also of the City of Monrovia, Republic of Liberia….....Appellee	)
GROWING OUT OF THE CASE:	)
Mr. L. Olandor Boyce, also of the City of Monrovia, Republic of Liberia….....Petitioner	)
Versus	) PETITION FOR CUSTODY) OF THREE MINOR
Mrs. Weemon Jallah Cole-Boyce of the City of Monrovia, Liberia……Respondent	) CHILDREN)

Heard: April 5, 2022 Decided: May 19, 2023

MR. JUSTICE KABA DELIVERED THE OPINION OF THE COURT

On April 19, 2021, Mr. L. Olando Boyce, appellee herein, filed before the Sixth Judicial Circuit for Montserrado County a nineteen-count petition for custody of his three minor children against his divorced wife, Mrs. Weemon J. Cole-Boyce, appellant. The petition alleged, *inter alia,* that during the life of their marriage, they were blessed with four children: L. Olandor Boyce, II (19), Mathias O. Boyce (14), Treasure O. Boyce (9) and Milton O. J. Boyce (6); that on August 16, 2019, the said circuit court declared their marriage dissolved, annulled and cancelled on ground of incompatibility of temper without a contest after the parties agreed to a divorce settlement agreement executed on July 26, 2019; that the divorce settlement agreement (DSA) provides that the parties will have legal custody of the children, however, by virtue of being the custodial parent of the children, the appellant will have the right to remain in and enjoy the privilege of staying in the marital home; that said privilege shall cease or terminate when (a) all of the children have attained

the age of majority under Liberian Law, or that the children at the age of majority, make a determination that the appellant's privilege continues or (b) the appellant shall have a spouse living/sleeping in said premises or remarries; that the appellee shall have visitations right and will have custody of the children on the first, third and fourth weekends unless otherwise arranged while the appellant shall have the children staying over on the second weekends of every month; that during holidays and annual school vacations, the parties shall share the period of custody equally with the exception of emergency; that the marital (custodial?) home is located at Brewerville where the children are schooling at the Risk's Institute, but that since December 11, 2020, the appellant had forcibly relocated two of the children away from their school community to Fendell, a distance of almost hours' drive to reach their school; that the appellant had instructed a stranger to stay with the other two children who had refused to relocate with her; that the relocation of the two children away from their original environment adversely affects their parenting time, visitations, wellbeing and building of bond between the appellee and the children on one hand, and amongst the children on the other hand; that the stranger placed in the home by the appellant is cruel and mean to the other two children who remained in the marital (custodial) home by wasting the children's food; that the DSA did not provide for the appellant to have a stranger place in the home to take care of the children.

The appellee further alleged in his petition that when he contacted the appellant concerning her reported abandonment of the marital home, she replied in an email in the following manner: "enjoy the weekend with our lovely and wonderful children while I take my time to arrange their new home in Fendell where we officially moved today December 11, 2020"; that the DSA did not provide for the appellant to retain physical custody of the children in the event her employer or future employer relocates her to another area; that the relocation of the children without care for the home owned by the children exposes the property to risk at the detriment of the children; that the law extant is that when the parents are in separation, the father takes custody of the children, but in the instant case, the appellant was allowed to take physical possession of the children for the sake of peace; and that the appellee believes that the appellant having abandoned the home in violation of clause #6 of the DSA, it is appropriate for the appellee to exercise his legal right of custody over the children because "what is not done properly is not done at all". The appellee, therefore, prayed the trial court to order the return of the two children to their

Brewerville home, declare clause #6 of the DSA illegal, invalid, and void, grant the appellee legal custody of the children in keeping *Domestic Relations Law Revised Code:9:4.1*, amongst other relief.

On April 26, 2021, the appellant filed her eleven-count returns and averred that there is no provision in the DSA that requires the appellant to stay in the marital home during the period of custody of the children; that the appellant admits that the DSA gives her "the right to enjoy the privilege of staying in the marital home" which can be construed that she has right of election to stay or not to stay with the children in the marital home; that the issue of custody of the children having been settled per the DSA, same cannot be re-litigated; that it is untrue that the appellant abandoned her "belly born" minor children, but rather the appellant continues to nurture, develop, care and maintain the children; that the appellee is morally and emotionally unfit to hold custody of the children because he does not have permanent home, but instead he is rotating in a circle of paramours; that conversely, the appellant has a permanent home at Fendell Campus where the children are attending a very good school; that had the appellee been morally fit to take care of the children, he could have insisted on being the custodial parent at the time of executing the DSA which was signed by the appellee without coercion; that it is misleading and false that the home owned by the children in Brewerville lies in ruin and that the said home is not owned by the appellee's children borne by Clara Maloney; and that the appellee filed the petition as pretext to evade the monthly payment of US$1,000.00 for the maintenance and support of the minor children. The appellant, therefore, prayed to the trial court to deny and dismiss the appellee's petition for custody of the children.

The trial court assigned the petition and the returns for a hearing on May 31, 2021. Subsequently, on July 19, 2021, the trial judge entered the final ruling as follows:

> "Following the termination of the marriage between L. Olandor and Weemon Boyce in 2019, This court approved a divorce settlement which gave custody of the four (4) marital children to the [ex-wife], Mrs. Weemon Boyce with the right to remain in the children property in Brewerville and care for the children until they reach maturity. The agreement provides the right of visitation of the father each weekend.

On April 19, 2021, Mr. L. Olandor Boyce, the ex-husband of the defendant and father of the four children, filed a petition for custody of three (3) of the children, one having reached his maturity. The petitioner maintained in his petition that Mrs. Weemon J. Cole Boyce had abandoned the children's property and took two of the children with her to Fendell Community, depriving the children of attending Risk Institute. He also [averred] that the other two children left in Brewerville were left in the hands of a stranger who is cruel to them and attached a text from one of the children to the effect that the stranger wasted one of the children's food. The petitioner prayed the court to nullify the divorce settlement agreement and return the children to him and allow him to live in the children's building to care for the children.

To this petition, the respondent, Mrs. Boyce, filed returns and maintains and argues that to stay in the house was a matter of right granted to her by the divorce settlement agreement, but as an educated woman, she is not compelled to remain in the marital home or exercise such right. She has the right to relocate herself at the convenience of the job or career demand[s]. Consequently, her relocation to Fendell Community is in response to her employment which she needs to live a comfortable life. She contends that Mr. L. Olandor Boyce does not have a permanent home and is morally incapable of taking care of the children and therefore prays the court to deny his petition. The sole issue which determines [s] this matter is: considering the facts and circumstance herein, whose care will the children's wellbeing and best interest be served?

The respondent does not deny that she moved out to Fendell with two of the children for the convenience of employment. This court also agrees with the respondent that from the language of the divorce settlement agreement, for her to remain in the children's property in Brewerville was a right, which respondent could [choose] not to enjoy. However, this court in interpreting the agreement holistically and says its intent realistically was that the respondent will live in the house and take care of the children. Courts are under a legal duty to holistically interpret and give effect to its true and intended meaning.

This court says Chapter 4, subsection 4.1 of the New Domestic Relations Law of Liberia gives joint natural custody to husband and wife, but in the state of separation, the father shall have custody of the children except proven otherwise that he is unfit. However, the divorce settlement agreement approved by this court gives the right and privileges to the respondent to exercise custody and control of the children, which in the opinion of the court, was a compromise in the children['s] supreme interest. The right given goes with responsibility. That [responsibility] includes for the children to grow together in their parent home, in the care of their mother, in the neighborhood of Brewerville, and enjoy their compound. Fair enough, the mother had moved out in pursuit of greener pasture, thereby separating the children; which action affect[s] the intent and purpose of the divorce settlement agreement, it is but proper and expedient to re-visit the agreement in the best interest of the children.

This court holds that since the allegation of Mr. Boyce's moral inability to care for the children is not yet proven, this court hereby nullified the divorce settlement agreement with specific reference to the custody of the three (3) minor children and orders as follows:

a. That Mr. L. Olandor Boyce takes custody of the three (3) minor children;
b. That movant moves back to the children’s property in Brewerville;
c. That the respondent has the right of visitation to the children or take them for a weekend not more than twice a month and return to Mr. Bpyce Sunday evening;
d. That the support for the children to Mrs. Boyce is terminated with immediate effect for the children until the last child reaches maturity age.

Wherefore and in view of the foregoing, the petitioner's petition for custody is hereby granted, and the three (3) children are permanently placed in the custody of their father, and return thereto is hereby set

aside. All costs ruled against the petitioner. And it is hereby so ordered."

For the benefit of this Opinion, we quote the pertinent part of the DSA, which is the crux of the parties' contentions and the trial judge's final ruling as follows:

"6. CUSTODY OF CHILDREN

The plaintiff [appellee] and defendant [appellant] will have legal custody of the children, with the defendant being the custodial parent with physical custody of the children. The plaintiff shall have visitation right and will unless otherwise arranged, have custody of the children for the first, third, and fourth weekends (beginning on Friday to return them on Sunday) in every month; while the defendant shall have the children staying over on the second weekend of every month. During holidays and annual school vacations, the plaintiff and defendant shall share the period of custody equally (meaning fifty percent (50%) custody each), except for emergencies in respect of the children.

The plaintiff and defendant hereby agreed on each weekend that the children will have to spend with plaintiff, the plaintiff will have to pick up the children. On any occasion that plaintiff himself cannot perform this task, he shall give the defendant prior notice and the exact identification of the proxy that will be performing such task.

The defendant, by virtue of her being the custodial parent, will have the right to remain in and enjoy the privilege of staying in the marital home, which by the language of this agreement will be held in fee simple tenancy in common by the children. However, the enjoyment of such privilege by the defendant shall cease or terminate when either of the following conditions exist:

a. All of the children have attained the age of majority under Liberian law, or except by virtue of their majority status, they make a determination that the defendant['] privilege continues; and or
b. The defendant shall have a spouse living/sleeping in said premises or remarries."

The appellant noted exceptions to the trial court's final ruling and announced an appeal to this Court of last resort. In the appellant's nine-count bill of exceptions, she has assigned the following errors for appellate review:

1) That the trial judge erred when he elected not to take evidence from both parties so as to prove the averments contained in their respective pleadings;

2) That to take the custody of the children as provided for in the divorce settlement agreement does not mean that the appellant must do babysitting; hence, the trial judge erred when he interpreted the DSA beyond its plain meaning; and

3) The trial judge erred when he ruled granting the children's property to the appellee without due process of law, supposedly under the pretext of the children's best interest.

Given due consideration to the appellee's petition for custody, the resistance to it, the trial judge's final ruling, the appellant's bill of exceptions, the briefs filed, and arguments had by the parties before this Court, the contentious issues that are dispositive of this appeal are as follows:

1) Did the Divorce Settlement Agreement (DSA) condition upon the mother's custody of the children to her remaining in the marital home with the children?

2) Whether the trial judge erred when he decided the issue of the custody of the children without first resolving the issues of facts raised in the petition and the resistance to it?

We shall now address these issues in the order in which they are presented.

Relative to the first issue, it is the appellant's position that the DSA made it a matter of right granted unto the appellant to stay in the marital home, the title to which the parties transferred to the four children as tenants in common. She argued that the DSA did not compel her to reside in the marital home as a condition of her custody of the children. The appellant maintained that she reserved the right to relocate herself at the convenience of her job or career demands. Therefore, her relocation to the Fendell community was in response to her employment which she needed to live.

In his final determination, the trial judge agreed with the appellant that, indeed, from the language of the divorce settlement agreement, the appellant remaining in the children's property in Brewerville was a right that the appellant could elect not to enjoy. However, the trial judge reasoned that a holistic interpretation of the DSA leads to the conclusion that it intended to ensure that the children grow together at their parent's home in Brewerville, in the care of their mother, and enjoy their compound. Therefore, the trial judge concluded that the appellant moving out of the said home and relocating with some of the children was a clear breach of the DSA based, upon which she lost her right of custody.

We agree with the trial court's application of the common law's 'four-corners rule' which states that "a document's meaning is gathered from the entire document and not from its isolated part, or that the court cannot use extraneous evidence to interpret an unambiguous document." *Black's Law Dictionary Ninth Ed page 728* However, we note that the appointment of the appellant as the custodial parent in the DSA was not conditioned on the premise that the appellant permanently remains in the so-called marital home until the children attain the age of majority; instead, the DSA provides grounds for the termination of appellant's privilege to stay in that home. We quote the relevant part of the DSA as follows:

> "The defendant, by virtue of her being the custodial parent, will have the right to remain in and enjoy the privilege of staying in the marital home, which by the language of this agreement will be held in fee simple tenancy in common by the children. However, the enjoyment of such privilege by the defendant shall cease or terminate when either of the following conditions exist:
>
> a. *All of the children have attained the age of majority under Liberian law, or except by virtue of their majority status, they make a determination that the defendant['] privilege continues; and or*
> b. *The defendant shall have a spouse living/sleeping in said premises or remarries." Italics supplied*

The agreement is explicit that the appellant's right to stay in the children's home may end if the children reach the age of majority, if and when the appellant lives with a spouse on the premises, or if she remarries. The agreement not having expressly provided that the appellant moving out of the so-called marital home would terminate her custody of the children and considering the self-same document provides grounds for the termination of the appellant's habitation of the house, it

would seem extraneous to have the custody clause of the DSA interpreted in a manner and form as the trial judge did in his ruling. Therefore, we hold that the conditions or terms for appointing the appellant as the custodial parent were to serve the best interests of the children irrespective of whether or not the appellant remains in the so-called marital home or whether or not the children must live together under the same roof and in the same community or neighborhood.

On the issue of whether the trial judge erred when he decided the point of the custody of the children without first resolving the issues of facts raised in the petition and the resistance to it, the appellant has argued that the parties made several factual allegations which ought to have been authenticated by proofs; that is, the trial court ought to have ruled those issues of facts to trial to accord the parties the opportunity to present evidence in support of their respective allegations for the jury or the court, in case of a bench trial, to reach the certainty of the existence of a fact in its determination of the petition for custody of the children.

We hasten to note that some of the issues of facts that the appellee raised include that the appellant abandoned the marital home and relocated to Fendell Community with two of the children making it difficult to commute to their school in Brewerville, that the maid hired by the appellant is cruel and mean to the other two children who refused to relocate with the appellant; that the appellant left the house in a state of dilapidation and insecurity resulting to several burglaries taking place in her absence; and that her act to leave the home in the care of a stranger who was cruel to the children a stranger in charge of the home in a state of dilapidation, separating the children and relocating to afar community breach the terms of the divorce settlement agreement, create hardship for the appellee and children to maintain the bond of relationship, as well as depriving the children of attending Risk's Institute where they were registered.

On the other hand, the issues of facts as gleaned from the allegations made by the appellant are that the appellee is without a home, that he is rotating amongst paramours, thereby making him unfit to take custody of the children; and that the children at Fendell attend an outstanding and reputable school.

We also cull from the records that the trial court alluded to the fact that the appellant did not substantiate her charge against the appellant for being morally and

emotionally unfit. Still, under the same breadth, the said court held that the appellant had admitted to moving out of the home to another location not contemplated under the DSA; for these reasons, the trial judge declared the custody clause in the DSA nullified. The trial court anchored its conclusion on the theory that the said clause was a compromise agreement in derogation of the statute controlling the case of custody of a minor child; that is, that the *Domestic Relations Law Revised Code:9:4.1* provides as follows:

> "A married woman is a joint natural guardian with her husband of the minor children of their marriage while living together and maintaining one household. Each such parent shall be equally charged with their care, nurture, welfare, and education. When such parents are living in a state of separation, *the father shall be the custodian of the minor children of the marriage as against the claim of any person whomsoever; but if he is unable or morally unfit to perform his parental, legal, moral and natural duties toward his children or for any other reasons he fails or neglects to perform such duties, upon petition to a circuit court for a writ of habeas corpus or other appropriate relief and a showing in the proceedings thereon of such inability, moral unfitness or failure on the part of the father, the minor children of the marriage shall be entrusted to the mother or some other person who is capable of performing such duties.* If the father is dead or absent, the mother shall have custody of the minor children of their marriage unless it is established that she is unable or unfit or failing to perform her duties toward them." Italics supplied.

So, the moral unfitness and legal disability of the appellee having been brought into question by the appellant in her pleading coupled with the facts that the appellee also alleged the insecurity of the home at the instance of the appellant, the alleged cruelty of the maid against the two children allegedly left at the Brewerville home, it is our considered opinion that the trial court ought to have conducted a trial of the facts

alleged by the parties. This Court has held in a litany of cases, including *Cooper et al. v. Cooper Estate et al. 39 LLR 750 (1999)*, that "only evidence alone will enable a court to decide with certainty the matter in dispute". This Court has also held that "'the mere allegations or averments set forth in the complaint do not constitute any proof, but evidence is essential as to the truth of the facts constituting the claim in order to render a judgment with certainty concerning the matter in dispute.' *Salala Rubber Corporation v. Francis Y S. Garlawolu 39 LLR 609 (1999)*

WHEREFORE, and in view of the foregoing, the trial court's final ruling is reversed, and the case is remanded for the trial of the said issues. The Clerk of this Court is ordered to send a mandate to the court below commanding the judge presiding therein to resume jurisdiction over this case and give effect to the judgment of this Opinion. Cost are ruled against the appellee. AND IT IS HEREBY SO ORDERED.

When this case was called for hearing, Counsellor Amara M. Sheriff appeared for the appellant. Counsellor Jamal Christopher Dehtho, Jr. of the Dehtho & Partners, LLC appeared for the appellee.