

IN THE SUPREME COURT OF QUEENSLAND O.S. No. 303 of 1982

CHAMBERS

BEFORE MASTER LEE, Q.C.

BRISBANE, 3 MARCH 1983

IN THE MATTER OF the Children's Services Act, 1965 - 1980

- and -

IN THE MATTER OF the Rules of the Supreme Court

- and -

IN THE MATTER OF an application by CHRISTINE ANN MCKAY
for custody of MAY-LING LI also known as KELLY JAMES also
known as MAY LING JAMES.

JUDGMENT

MASTER: This is the further hearing of a summons by Kowyan Li filed 25 January 1983, in which he seeks interim access of the child the subject of this application. On 9 February 1983 orders were made by consent by Master Weld; these are contained in the order of that date.

As pointed out by Mr. Nagel, solicitor acting for the respondent to this application, that order is prefaced upon certain undertakings that the applicant and the respondent should fully participate in the obtaining of a welfare report in relation to custody and access from a suitably qualified person to be agreed to by the parties' solicitors, and to share equally in the cost of same. It appears from the evidence and from submissions of Mr. Nagel that a Mr. Smiley has been engaged with a

view to interviewing the parties and preparing a report which is not yet forthcoming.

On 6 May 1982 the respondent to Mr. Li's application, Christine Ann McKay, herself brought an application for custody of the child and for certain other orders. On 28 June 1982 Mr. Justice Macrossan ordered that Christine Ann McKay have interim custody of the child until further order. His Honour then made no order as to interim access, but ordered that the matter stand adjourned to be brought on before the Master by either party giving two days' notice to the other. The costs of that application were reserved.

It clearly appears that no steps have been taken by either party to advance this matter to trial or to the ultimate hearing and determination by a judge of the Court after all available evidence is to hand. Why this has not been done I am unable to say.

It is perfectly clear that interim orders for custody and access are made in the interim. They are in no way binding upon the Court which ultimately hears the matter after all evidence is adduced. They are simply designed to regularise a situation in the meantime. An order is made on the evidence which is not always complete. The Court concludes on the material then before it, what is in the best interests of the child.

The evidence before me shows that the applicant on this application, Mr. Li, seeks access to the child for one day only, namely tomorrow, 4 March 1983, between the hours of 9 a.m. and 4 p.m., on identical terms to those contained in the order made by consent before Master Weld on 9 February 1983. He states that he intends to return to his business and home in South Australia within a couple of days and that it will be some before he will be able to return to Queensland, for various reasons.

His application is opposed by the respondent substantially on the grounds that she had prepared her household and the child for access on the three days contained in Master Weld's order, and that it would be highly inconvenient if access were to be taken tomorrow,

4 March, by Mr. Li. The evidence also shows that she informed the child in question that that period of access had now terminated. She has also stated that the child did on each day of access show signs of emotional disturbance and that the child appeared to her to be reluctant to go with Mr. Li.

On the other hand, there are before me photographs taken during access on Tuesday by Mr. Li which show the child in question in the company of Mr. Li and his wife and family in circumstances which could only be described as apparently harmonious. The mother, of course, states that the child, on coming home, appeared to be withdrawn and quiet.

On an interim application I make no final rules, and that the parties ought not to regard any order I make now as an indication of ultimate success or failure of their respective cases.

I have listened carefully to the submissions of counsel and to the evidence given by both parties and I have read carefully all of the material before me. Doing the best I can in the circumstances of this case, it seems to me that the justice of this case and the interests of the child are in the long term best served if I order that the applicant have access tomorrow, 4 March 1983, in similar terms to those contained in the order of Master Weld, between the same hours, that is, 9 a.m. to 4 p.m. and I so order. It is my view that the parties should obtain directions for trial and I will hear submissions in that regard.

After discussing the matter with the representatives of each party it seems to me that in the circumstances the outcome of the welfare report should be awaited. It may well be that the advent of this report will help the parties resolve the questions of access and custody without a further hearing. But, as discussed with counsel, if the matter is not resolved the parties should advance the cause towards a hearing at the earliest possible time. If the parties are unable to agree, or in the event that problems are not resolved, then the parties are at liberty to apply to come back to the Court

on two days' notice in writing by either party to the other for directions. I do not need to give separate liberty to apply, because that is already contained in the order of Master Weld. I am, in effect, merely adding to the Master's order by including "4 March" thereto.

I order that the costs of and incidental to this application today should be reserved.
