



The reasons for judgment of the Court were delivered orally by:

**ROSCOE, J.A.:**

This is an appeal of a custody and access award made by Justice David Gruchy of the Supreme Court pursuant to the **Divorce Act**.

There are three children of the marriage, all boys, now aged 4, 6 and 7. The respondent father's employment requires him to be away at sea every second month for a total of four months per year. The balance of the year he is at home on leave.

The trial judge granted joint custody of the children to both parents and ordered that the father have the day to day care and control and that they have their principal place of residence with their father for the thirty-two weeks of the year that he is at home, subject to generous specified access to their mother. While the father is at sea, the mother is to have the day to day care and control.

The appellant submits "that the Learned Trial Judge acted upon a wrong principle and disregarded material evidence in ordering that the children's primary residence be with the respondent."

In **Gorham v. Gorham** (1994), 131 N.S.R. (2d) 7 (N.S.C.A.), Matthews J. A. said the following at p. 8:

The question of custody is one which lies particularly within the discretion of the trial judge. That discretion should not be disturbed unless the trial judge clearly acted upon some wrong principle or disregarded material evidence. An appellate court does not have the advantage given a trial judge of seeing the parties, hearing them and evaluating the character of each...

(See also **Routledge v. Routledge** (1987), 75 N.S.R. (2d) 103 (N.S.C.A.) per

Clarke, C.J.N.S. at pp. 104-105).

We are of the unanimous opinion that Justice Gruchy made no reviewable error in coming to his conclusion in this matter. The appellant has not persuaded us that the trial judge acted upon any wrong principle or disregarded any material evidence. The trial judge's task was to determine what was in the best interests of the children, in the unique circumstances of this case, and we are satisfied that in the course of his assessment of the evidence he made findings of fact which are amply supported by the evidence. There is no basis upon which the order for custody and access should be disturbed by this Court.

The appeal is therefore dismissed without costs.

Roscoe, J.A.

Concurred in:

Chipman, J.A.

Pugsley, J.A.