

H v H

1980 No. 683 Sp

THE HIGH COURT



IN THE MATTER OF THE GUARDIANSHIP OF INFANTS ACT 1964

BETWEEN:

A. H.

Plaintiff

and

B. H.

Defendant

AND

1981 No. 567 Sp

THE HIGH COURT

IN THE MATTER OF THE GUARDIANSHIP OF INFANTS ACT 1964

AND IN THE MATTER OF C.M.H., A.H. AND L.H. INFANTS

AND IN THE MATTER OF THE FAMILY LAW (MAINTENANCE OF SPOUSES AND CHILDREN) ACT 1976

AND IN THE MATTER OF THE FAMILY HOME PROTECTION ACT 1976

B. H.

Plaintiff

and

A. H.

Defendant

Judgment of Mr. Justice Barrington delivered the 11th day of January 1982

These two sets of proceedings arise out of the same family dispute.

The first set of proceedings was issued on the 21st July, 1980. In it

the husband is plaintiff and seeks sole custody of the three children.

of the marriage.

The second set of proceedings was issued on the 3rd July, 1981.

In it the wife is plaintiff and seeks sole custody of the three children of the marriage and an order barring the husband from the family home.

Both parties to the proceedings are Roman Catholics and were married in a Roman Catholic Church on the 31st August, 1974. At that date the husband was 26 and the wife only 16. The wife had become pregnant when she was 15 and had given birth to a child (C.) prior to marriage, on the 20th day of July, 1974. The wife was in a home for unmarried mothers when the husband telephoned her and asked her to marry him. The wife said in evidence that she agreed to marry him in order that her child would have a father.

There were two more children of the marriage - A. who was born on the 18th July, 1975 and L. who was born on the 24th November, 1976. It is the custody of these three children which is in issue in the present proceedings.

From the beginning the marriage appears to have faced many difficulties. For one thing the young couple had no home of their own and depended on accommodation provided by the wife's people. The relationship between the husband and the wife's people began badly and does not appear to have improved over the years.

In September 1977 the husband went to England to work as a barman and his wife followed him with the three children in November of that year.

Meanwhile the wife had applied to the Meath County Council for a house. Her mother informed her that an allocation of houses would be made in the spring of 1978. She accordingly returned to Ireland in January 1978 and in April 1978 she was in fact allotted a house. This house was placed in the wife's name and the wife has continued to pay the rent in respect of it. The husband returned from England in April 1978 and the family settled in to living in their new home.

The new house was in a village in County Meath.

The wife's sister lived nearby.

Things however did not work out well and the wife left home on a number of occasions.

The husband attributes ~~the~~ breakdown of the marriage partly to trouble with his mother-in-law but principally to the fact that the wife has been carrying on with other men.

The wife on the other hand attributes the breakdown of the marriage to the husband's violent temper. She says he has assaulted her on numerous occasions and broken up furniture in the house for little or no

reason. She admits to having had an extra marital affair but denied, in this Court that it was an adulterous relationship.

For his part the husband admits to having, in recent years, a violent temper. He also admits to having assaulted his wife on a number of occasions but denies that he did intend to injure his wife or that he did in fact injure her.

Social workers, who have attempted to effect a reconciliation between the parties, and who now despair of doing so, have testified before me to mutual verbal aggressiveness on the part of both husband and wife. The husband, in his evidence before me, struck me as being basically an honest and well intentioned man. I am satisfied also that he is very devoted to his children but that where his wife is concerned he appears to have an explosive temper and I am also satisfied, that on at least two occasions, following altercations with him, the wife was so seriously hurt that she required and received medical attention.

There is no question of drink in the case and the husband is clearly, himself, worried about his violent outbursts of temper. He associates them with headaches from which he has been suffering and for which he sought medical assistance.

The parties local doctor, Doctor Burke gave evidence that the husband

had sought his assistance some eighteen months ago in respect of these headaches. He considered that the husband was suffering from anxiety and gave him sedatives but these produced no effect. He regarded the headaches as a serious problem but could find no organic basis for them. He accordingly felt that the headaches were brought on or aggravated by the husband's matrimonial problems.

Doctor Burke had the husband admitted to Blanchardstown Hospital for tests. After full investigation the Doctors could find nothing wrong with the husband other than severe tonsillitis. At present the husband is waiting for a bed in hospital to have his tonsils out. It was possible that this operation might help his headaches as it would help to relieve sinusitis.

It was possible that the headaches were connected therefore with the tonsillitis. No doubt the headaches would be aggravated by any form of family crisis.

As previously stated I considered the husband to be basically an honest and well intentioned man. On most points I considered his evidence to be more reliable than that of his wife. But in relation to most episodes involving violence I considered her evidence to be more accurate than his. Moreover I could not regard him as being - in his

present circumstances and state of health-a fully stable person.

One could not but have a large measure of sympathy with the wife. She was pregnant at 15 and had three children by the time she was 19.

She had no proper home of her own until April 1978. But even then, for whatever reason, she seems to have found it difficult to settle down. According to her husband she started, from about July, 1979 to go out with other men. One night about September 1979 she did not arrive home until 4.20 a.m., giving as her excuse that the car in which she was coming home had broken down. Shortly afterwards she left the family home and was away until the following October. She then took an overdose of drugs and was admitted to hospital. Following an intervention by the wife's mother the husband and wife were reconciled and the wife returned to the family home where she remained until the following Christmas.

About three days before Christmas 1979 the wife left the family home saying that she was going out for a drink. She did not return until 12.45 on Christmas morning. The husband was furious not least because he had given her money to buy toys for the children for Christmas. When she returned an argument and a scuffle took place. Ultimately the husband admitted her to the house to sleep the night. But the following day he

excluded her from the Christmas festivities and asked her to leave.

She left.

The wife's version of this incident is that she went out for a drink with some girl friends some days before Christmas. She had too much to drink and subsequently went dancing. She met a girl and went home with the girl to see the girl's mother. There was no one to drive her back to her own home. However one of the sons of the house left her home on Christmas morning. When she arrived home her husband opened the door. He was shouting and gave her a box across the face. Ultimately he allowed her to stay for the night but asked her to leave next day.

Even accepting the wife's version of this incident as being in all respects accurate (which I do not) it still appears to have been remarkably irresponsible behaviour on her part.

The husband says the wife next contacted him some two or three weeks later by phone. She said she was sleeping rough, had pawned her wedding ring, and asked if she could come home. The wife said in evidence before me that she was staying, during this interval, with three other girls in a flat. The husband agreed to take her home.

Some time later the husband came across a letter in the wife's handwriting. The wife threw the letter into the fire and it was partly

burned but the husband succeeded in retrieving part of it.

From the surviving part it is clear that the letter is a love letter and that, in it, the wife is soliciting the man to whom it is addressed to continue or renew a liaison with her. In the course of the letter she appears to have raised the question of whether, in the past, the addressee had acted as he did "to help me to get a flat or was it just to get rid of me". Elsewhere in the letter she says -

"I love you and I am not joking about that and second I want you to come away and live with me. Don't say no right away. Think about it and please say yes".

More important for the purposes of this case she continues -

"I had to come home because I missed the kids but now I am home I miss you even more. I really do. I had a flat in town as you probably know and I left it to come back to the kids but now I would leave everything to be with you. I dream about you nearly every night and I think about you all day....."

The wife says she did not post this letter and that she had no intention of posting it. She said she only wrote it because she was unhappy because her husband had given her a beating. She did not post it on the day on which she wrote it. On the following day she had no intention of posting

it. Unfortunately however the husband found it.

After the incident concerning the letter the wife again left the matrimonial home. She returned however in the following May. She took ill however with pains in her stomach. Doctor Burke diagnosed an ectopic pregnancy and had her sent to Holles Street Hospital where she lost her child. The husband says that he had no idea that she was pregnant and that he is not the father of the child in question. The wife says he is the father. It is not necessary for the purposes of this case to resolve this issue.

The husband visited her in Holles Street and, in due course, she returned to the matrimonial home with him.

In June 1980 the wife again left the matrimonial home. She went to solicitors who brought an application for a barring order against the husband on her behalf in the District Court. The proceedings in the District Court appear to have been inconclusive and no barring order was in fact made.

The husband issued the present proceedings on the 21st July, 1980 and an interlocutory hearing took place before me on the 24th July, 1980. This resulted in the consent order dated the 24th July, 1980.

The interim settlement set out in that order was not in fact

successful with the result that the children have, during the greater part of the intervening period, remained in the custody of the husband in the matrimonial home. The husband has during the whole of this period been unemployed and has been free to look after the children's welfare.

At the time of the abortive interim settlement on the 24th July, 1980 it was thought that the case would come on for hearing on the 28th November, 1980. However this did not happen and the case did not come on for trial until the 19th November, 1981. Meanwhile the wife had issued her proceedings dated the 3rd July, 1981 and both sets of proceedings came on for hearing before me on the same date. Unfortunately the evidence was not completed on the 19th November, 1981 and the case had to be adjourned until November 26th, 1981 and again until December 15th, 1981.

The parties made specific arrangements for Christmas 1981 and requested me to defer delivering judgment until after the recess.

Meanwhile during 1980 and 1981 a number of events took place which call for specific mention.

In October 1980 the husband apparently despaired of being able to retain custody of the children and sent his wife a terse undated note in the following terms -

"I am going to England tomorrow night or early Monday morning. So you can have the kids and the house, and you can take the kids

tomorrow in case I go tomorrow night as I have a job with Noel to start on Tuesday morning in the Castle".

The husband in fact went to England and the wife moved into the matrimonial home and took over custody of the children. But after about two weeks the husband changed his mind and returned home. He said he did this because of a telephone call informing him that the children were not being properly looked after. He arrived home at about 6.55 p.m. The wife was upstairs putting the children to bed. The wife was dressed to go out. At this stage the oldest child was six and the youngest almost four. The wife did go out and did not return.

In November 1980 however the wife took custody of the youngest child L. On the 10th March, 1981 the defendant took L back again. The wife says the defendant took L from the care of L aunt when L and the aunt were out shopping together. The defendant says he met L in the church grounds in the village, picked her up and took her home.

In May 1981 the wife apparently entered or attempted to gain entry to family home. The defendant wrote her a savage letter addressed to "Housebreaker Biddy Glynn".

In June 1981 the wife seized the three children and took them to

a hostel run by Womens Aid. There they met Miss Miriam Logan who is a social worker employed by Womens Aid. She is also a trained nurse and a graduate in social science.

Miss Logan found the wife very distressed and tearful.

Miss Logan was not at that stage aware of the provisions of the order of the 24th July, 1980 which contemplated that the children would remain in the matrimonial home. Miss Logan however wrote to the husband who contacted her immediately and a meeting was arranged between her, him, the wife and the children in the Ormond Hotel, Dublin. The meeting apparently started in a reasonable and co-operative atmosphere but, apparently as a result of something the child A said to his father, the father became very aggressive and used some abusive language. The meeting ended with the father taking all three children home. Prior to this Miss Logan got the impression that the children were confused. A was with his father. L was clinging to her mother and C did not seem to know what to do.

On the 3rd July, 1981 the wife issued her proceedings in which she claimed custody of the three children and a barring order.

On the 6th July, 1981 the husband wrote, from the family home to Miss Logan, the following letter -

"Dear Miriam

I am writing to you as a last resort to save our marriage before the Court on the 16th July, because I cannot afford to go to Court, and I know if I am not there I will lose it, I don't want to lose the three children, as I could not live without them. I know with the proper people like yourself myself and Breda could sort things out, I don't want to put Breda through the same things in Court again, I would sign any forms giving Breda custody of the children and let me live here with them, and that if I started anything with her that I would be put out of the house. I am not trying to get the better of Breda. I know I have a temper and so has Breda. I know if we were left alone, and I hope you can do something in a hurry to avoid going back to Court. I know I did not treat Breda right. But I know we could make things work.

Signed: A H .

Nothing definite appears to have come of this initiative. Meanwhile the husband was waiting for a bed in hospital and was expecting to be admitted for the operation which still has not taken place. He asked for help from the welfare authorities and came in contact with Miss Veronica McDermott a social worker employed by the North Eastern Health Board.

She said she found the husband very distressed and in need of help. He was under doctors attention and expecting to undergo an operation. He was agreeable that the children should return to the care of the wife for a while but conditions could not be agreed between the husband and the wife. Under these circumstances Miss McDermott arranged to have the children admitted to care in St. Vincent's Home in Drogheda for a while. This was done on a voluntary basis. She says there was no question of neglect or ill treatment of the children.

The children were accordingly admitted to care in St. Vincent's Home in Drogheda on the 4th August 1981 and remained there until the 10th October.

Sister Carmel Casey had care of them during this time. She and Miss McDemott were clearly impressed at the concern which the husband showed for the children's welfare during this period. He visited them regularly - at times almost every day. The mother also visited but at less regular intervals. On one occasion the children were disappointed when they were expecting their mother and she failed to arrive. Sister Casey formed the view that the children got on well with both parents but that they were more relaxed with their father. They seemed more anxious in their mother's presence.

The mother's explanation for visiting the children so seldom was that she understood that arrangements for visits had to be made through her husband or at times to suit his convenience. Sister Casey said that the arrangement was that the parents could visit the home at any reasonable time. All the mother had to do was to advise the home when she wished to come. The mother also says that she had hoped to take the children on a weeks holidays to Butlins and that she was saving up for this. She had not enough money to pay bus fares to Drogheda as well.

In October 1981 Sister Carmel, Miss McDermott and the father all thought that it would be better to get the children back to their normal schools and their normal life if this was possible.

Miss McDermott thought she could arrange for the North Eastern Health Board to give the father some financial support in obtaining domestic help. The father in fact obtained the services of a local girl

Miss Margaret Sweeney to look after the children and to keep house.

Miss McDermott is happy with this arrangement and is confident that the North Eastern Health Board will provide financial support for it.

She thinks the children are happy and well looked after. She visits the home from time to time not usually giving prior notice of her intention to come. She considers Miss Sweeney to be a reasonable and stable

person. She considers that the children are all happy to be home and that they are very close to their father. She considers it better that they should be living in this household under these conditions than that they should be in care. She will however continue to keep an eye on the situation and to give support.

Under these circumstances I have to consider the question of custody regarding the welfare of the children as the first and paramount consideration. On the basis of the evidence I have heard I consider that both parents care for the children. But it appears to me the husband has, in the children's day to day life, shown himself the more practical and caring parent. Clearly the children should not be separated and it appears to me that the present arrangements offer them the best chance of enjoying a modicum of stability.

It therefore appears to me that the needs of the children are best met, in the years immediately ahead at any rate, by giving custody to the father with appropriate access to the mother.

Approved

Jue Day

29/11/32.