

IN THE ROYAL COURT OF JERSEY  
( Samedi Division )

172A.

20th November, 1991.

Before: Commissioner F.C.Hamon

assisted by Jurat G.H.Hamon and  
Jurat J.M.Orchard.

BETWEEN Mr H Plaintiff  
AND Mrs H Defendant.

Advocate R.J.F.PIRIE. For the Plaintiff.

Advocate Mrs. S. PEARMAIN For the Defendant.

The Background to the Application ( which is to raise an injunction ) is that on the 18th November, at the very start of his working day, the learned Deputy Bailiff was called upon to sign a hand-written Order of Justice which contained injunctions restraining the Defendant Wife from removing the child of the marriage, C, from the Jurisdiction. It was the intention at that time for the Mother to take C to South Africa with her and to stay there for some 35 days with her family where the Wife was born and where her whole family lived. We were told that the family had paid for the return air fare for both Mother and Child. The Order of Justice presented by the Father is interesting in that it does not allege that the Child is to be taken permanently from the Jurisdiction but avers :

" That the Plaintiff does not consent to the Child being removed from the Jurisdiction as he believes it to be contrary to her best interests particularly as regards her education as she is due to sit an examination in February 1992."

Now on that point the Wife had consulted with the Deputy Headmistress of C's School who had in turn taken advice from the Education Committee and permission had been given for C to take " the extended break" ( as it is called ) but with a request that C be returned in time to sit the Entrance Examination to the Main College which examination is going to take place some time in early February. We are suprised in reading that letter that the Husband was not consulted at any time by the School which seems to have acted solely on the information supplied to it by the Wife. We should perhaps point out that there were no legal proceedings in train between the parties and the Order of Justice has not yet been served.

We were told by Mrs. Pearmain this morning that arrangements have been made by the Mother for her and C to leave the Island at ten past two this afternoon for Heathrow and there will be a flight later on today to South Africa.

We have given much consideration to the detailed Affidavits ( some of them hand-written) and we have read them through very carefully at Counsel's request in Chambers. We note that there are very serious matters that need to be considered particularly as it appears that the wife has no work at the present time although, because of the kindness of a family friend, a Mr D, she has accomodation for herself and C. Now this is not a case where there is any question of abuse of any kind, mental or physical, towards C who seems, according to the evidence of both parties (who are clearly very fond of her) and from the School ( which referred to her, in a letter from the Deputy Headmistress, as " a most conscientious and mature child" ) to be well settled. We noted that Mrs Pearmain told us that the Husband appears to lead a strange existence as an entrepreneur and he has, from time to time, been in some financial straits. She told us that the Husband's real purpose in preventing his wife and child from leaving the Island was because of a motor car which he required and which the Wife had refused to allow him to use. That may be so. We heard no evidence. We would doubt that is his main intention when we read his Affidavit which candidly and conscientiously deals with the problems tht he sees that C is likely to face.

As I said the decision that we have to make is difficult. We considered at one time if we should only be concerned that C might not return to the jurisdiction. But as our deliberations progressed it became clear that our main concern had to be the factor that a father does not wish

his daughter to go to South Africa because he feels that that will interfere with her education and we must say that we find that 35 days away from school just before taking an important exam- similar to the eleven plus - must make matters more difficult for C. We say this in the knowledge that we have been told that some provision has been made for her continued education in South Africa.

We asked whether there was any evidence that the Wife's health was being affected, as alleged, by the very traumatic events which are taking place around her at the present time and Mrs Pearmain very frankly told us that she thought that the Wife was not the sort of person who would take pills in order to alleviate a problem and she had not taken medical advice.

The Husband, from his Affidavit, appreciates the problems that the Wife faces and says so. He says this in one of his Affidavits:

" I fully appreciate that the pressure on my wife during the last few months and the past few weeks in particular has been enormous and that she therefore feels that she badly needs a break."

But then he goes on to say this:

" However I do not believe that it is in C's best interest to be away for so long and believe that her interest must come first."

Our decision has caused us great anxiety but we have decided that we are not prepared to allow the status quo to be altered in the manner suggested and our decision has not a lot to do with whether or not we feel that C would ever come back from South Africa. We feel that she probably would come back. We have one parent that does not want his daughter to go to South Africa and another parent who does. On that basis, difficult though the decision is, and although C may be very disappointed by the decision we are not going to allow the Injunction to be raised.