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ROYAL COURT

22nd January, 1992 12.

Before: The Deputy Bailiff, and
Jurats Gruchy and Vibert.

Between: LM Applicant

And: GM Respondent

Application to raise Injunction.
Application by the applicant:
(1) to alter the Division of the Court from the Samedi to the Matrimonial Causes Division; and
(2) to extend her summons to include the permanent custody, care and control of the children.

Advocate R.G. Morris for the applicant.
Advocate G.R. Boxall for the respondent.

JUDGMENT

THE DEPUTY BAILIFF: The Court undoubtedly has a discretion, under Rule 3/2 of the Royal Court Rules, 1982, to transfer this matter from the Samedi Division to the Matrimonial Causes Division.

Moreover, Article 1A of the Matrimonial Causes (Jersey) Law, 1949, as amended, empowers the Matrimonial Causes Division to grant such injunctions and other relief as may, in all matrimonial causes, suits and matters, be granted by the Samedi Division.

However, the Court has to consider the purpose for which the transfer is sought. Mr. Morris has made it clear that his sole purpose is to extend the scope of the proceedings in order that the Court should deal with the question of custody, care and control of the children of the marriage. The Court has to say, with regret, that those matters are not before it and that would remain the situation even if the Court were to transfer the proceedings to the Matrimonial Causes Division.

My note of the original hearing in these proceedings is absolutely clear. Mr. Hoy represented the applicant on that occasion. It was an application by the applicant for the injunction ousting her from the matrimonial home, including the non-molestation injunction, to be lifted. That was the total of the application albeit a formal summons was not submitted.

Equally, my note of the 18th November, 1991, when the proceedings started again before the Court as at present constituted, is absolutely clear. The only difference on that occasion was that Mr. Morris referred to the two Orders of Justice, albeit the second one had not been served. But he said that the application before the Court was one to have the injunctions raised in their entirety.

I have examined very carefully my note of the opening address of Mr. Morris. It is clear that he asked the Court to raise the injunctions in their entirety with the effect that the applicant would be reinstated in the matrimonial home. It is

true that he said "...it may be that the Court will think of a way out". He suggested that the applicant could live in the matrimonial home with the children and that the respondent might live in the separate accommodation hitherto occupied by a lodger or tenant, with cross-undertakings by the parties to keep away from each other. Perhaps warning bells should have clanged then, but Mr. Morris did not then seek to transfer divisions, nor did he seek to put in an expanded summons. In the Court's judgment it was dealing only with an application to lift injunctions in their entirety.

The judgment in Rothmer and others -v- Hill Samuel (Channel Islands) Trust Co Ltd and others (12th May, 1991) Jersey Unreported, is relevant. Firstly it cites two cases in which the Court decided that it could not go beyond or supplement the prayer of an Order of Justice - these are Golder -v- Société des Magasins Concorde Ltd (1967) JJ 721 at p.735; and Arbaugh -v- Leyland et uxor (1967) JJ 745 at p.749. Secondly, the Court decided that it could not go beyond or supplement the prayer of a party's summons. I am sure that those decisions are well-founded. Accordingly, the Court is bound by them. In the present case the only prayer in the applicant's "summons" is that the injunctions be lifted.

Mr. Morris submits that the Court has an overriding discretion in the Matrimonial Causes Division to make any order, in its discretion, which it may consider necessary or desirable for the welfare of the children.

But the Matrimonial Causes Division is a creature of statute - its jurisdiction and its powers are defined by the Matrimonial Causes (Jersey) Law, 1949, as amended. I have examined that legislation most carefully. I can find no power

in the Court effectively to initiate custody, care and control proceedings or to make orders of its own volition.

What Mr. Morris is in effect seeking to do, having withdrawn one summons this morning, is to substitute a further unwritten summons in far wider terms. This the Court cannot permit him to do.

Mr. Morris says that the petition, answer and cross-petition are before the Court. But they are before the Court for two purposes only. One is to show the documentation which was before the learned Bailiff when he granted the injunctions. The other is to form the basis for the examination and cross-examination of witnesses. They are not before the Court as a cause or matter.

Finally, if, as a result of our decision in this present matter, the children were to be at risk - and we do not necessarily accept that that would be the case whichever way our decision goes - then the proper machinery for dealing with that issue is to be found either in an urgent summons before the Matrimonial Causes Division to deal with custody, care and control under Article 25 of the Matrimonial Causes (Jersey) Law, 1949, where the Court can act either before, or by, or after the final decree or under the Children (Jersey) Law, 1969.

Therefore the application is dismissed.

Authorities

Rothmer -v- Hill Samuel (Channel Islands) Trust Co. Ltd. (12th May, 1991) Jersey Unreported.

Golder -v- Société des Magasins Concorde Ltd. (1967) JJ 721 at p.735.

Arbaugh -v- Leyland et uxor (1967) JJ 745 at p.749.