

ROYAL COURT
(Matrimonial Causes Division)

21st December, 1992

229.

F.C. Hamon, Esq., Commissioner,
and Jurats Coutanche and Ruffitt.

Between:

A

Petitioner

And:

B

Respondent

Appeal by Respondent against decision of Greffier Substitute, *inter alia*, refusing Respondent access on Christmas Eve to the two children of the marriage, aged 8 and 7 years.

Advocate Mrs. M.E. Whittaker for the Petitioner.
Advocate Miss A.P. Roscount for the Respondent.

JUDGMENT

THE COMMISSIONER: I will start by saying that we received the papers on this important matter from one party only minutes before we went into Court, and from the other after we had sat.

This is an appeal against a decision of the Judicial Greffier Substitute made on 17th December, 1992, over access for two children of the marriage, J, 8, and M, 7. They live with their mother, who has now remarried.

In 1989 the Greffier Substitute said this (and I quote):

"Unfortunately there has been a long and bitter contention between the Petitioner and the Respondent in this case on the question of access".

Matters have now apparently calmed a little, but on 17th December, 1992, as we have said, the Greffier Substitute made this Order:

1. THAT the Respondent do have access to the said children from 10.00 a.m. on Christmas Day, 1992, until 6.00 p.m.

2. THAT the Respondent's application for access on 28th December, 1992, is refused.
3. THAT the Respondent do have access to the said children on New Year's Day, 1993, from 10.00 a.m. until 6.00 p.m.
4. THAT there will be no Order as to costs".

The Greffier Substitute had taken the quite unusual step of seeing the parties separately in the presence of secretaries from the respective firms advising them.

In his reasons he states as follows:

"The Petitioner, impressed me as being genuinely surprised about the overnight access application. Later when I heard counsel on this matter, the Respondent's Advocate, Miss Roscouet, drew my attention to the fact that she must have known that Christmas access meant access overnight on Christmas Eve as well.

In my predecessor's reasons given at a previous hearing in this case, he stated the following: "As the Respondent has had the children on Christmas Eve for the last two years, it appears not unreasonable to allow access to the Petitioner as sought at Christmas 1990"."

We have looked long and hard at those words "as sought" and we have come to the conclusion that they must mean overnight access.

We have, of course, the right to examine these matters *de novo*, but because of the unusual manner that this matter has been dealt with we have had recourse to the reasons of the Greffier Substitute in some detail.

One reason that appeared to dwell in the Greffier Substitute's mind is this and it is set out at the top of p.2 of his reasons (and I quote):

"Be that as it may, the Respondent's application for overnight access on Christmas Eve contained in a letter written by his Advocate to the Petitioner's Advocate in October this year, I do believe, came as a genuine surprise to her. She has now made arrangements and I understand already had made arrangements by October for the children to be specially entertained on Christmas Eve at her house, and I am quite prepared to give her the benefit of the doubt on this occasion. It would not be in the interest of the children to upset those arrangements".

We were concerned enough about the statements that were made in that part of the reasons to call for the Greffier Substitute's notes after we had retired; and his notes said this:

"Had made plans with the children in mind".

Putting those two parts of the reasons together and they follow as set out, one after the other, the second part of the reasons does appear to us to be somewhat inconsistent with the pattern that had apparently been established. That pattern, if we can describe it in that way, goes back some time and the report of the Children's Officer of 8th September, 1988, recommended in perhaps somewhat inelegant language, but with its meaning eventually clear to us as follows:

"I further recommend that Bank Holidays should be shared on an equitable basis with, for example, Christmas Day and Boxing Day as also Good Friday and Easter Monday and similarly the Spring and August Bank Holidays being alternated with the other Bank Holidays spent uniformly with the Mother".

We have not had the faintest explanation of what special entertainment had been arranged for the children. We appreciate the problems that our decision is likely to cause, but we must first of all look at a letter sent by Miss Roscouet on 26th October, 1992, which says this:

"Finally, B informs me that it is his turn to have the children on Christmas Day this year. He proposes that he will collect the children on 24th December at 6.15 p.m. and will return them on 25th December at 6.00 p.m. Boxing Day falls on a Saturday and it is my client's normal weekend access. He will therefore pick up the children at the usual time on Saturday 26th December. I should be grateful if you would kindly confirm that your client has no objection to these arrangements as soon as possible".

And the reply that Mrs. Whittaker sent on 9th November is somewhat ambiguous but it says this:

"I have taken instructions on the matter of access over Christmas and would advise that there is no difficulty over B having the children from 10.00 a.m. to 6.00 p.m. on Christmas Day. A feels as do many that it is preferable for young children to be at home first thing on Christmas morning, but there are no problems thereafter".

As I say, we can see problems over our decision, but we can only implore the Mother, in the interests of her own children, to curb any natural disappointment that follows from our decision.

We must say at once that the Respondent set out in his reasons (and it was repeated to us) the following statement:

"If access is not granted to the Respondent on Christmas Eve this year and if he is successful in obtaining access on Christmas Eve 1994, the children will then be aged 9 and 10 respectively and will be of an age when they will no doubt no longer believe in Father Christmas and thus the Respondent will never again experience the joyful experience of witnessing his children opening their presents, still believing in the fantasy of Father Christmas. It is submitted that both the children and the Respondent will lose out on what is a magic moment at such a time of the year which can never be repeated at any other time".

We have not in the least been influenced by such an emotive appeal, but we have been influenced by what we consider to be the important interest of consistency; and it is on consistency that we have had to make this most difficult decision.

We would say this, lest we become involved in an argument over semantics, we merely regard 26th December as a holiday, and we make the following Order:

There will be overnight access from 6.15 p.m. on Christmas Eve to 6.00 p.m. on Christmas Day to B. Access on Saturday, 26th December, to M. Access on Sunday, 27th December, to B and that is as normal. Access on Monday, 28th December, to M; and access on Friday, 1st January, 1993, to B, and that will, of course, be from 10.00 a.m. until 6.00 p.m.

In closing, we can again only repeat that we would implore the mother to exercise whatever restraint she possibly can in the best interests of the children.

AUTHORITIES

M. -v- M. (1972) All ER (Family Division)
81 at p. 83.

M -v- W (2nd July, 1992)
Jersey Unreported.

