

COURT OF APPEAL.

28th April, 1994.

83.

Before: Sir Godfray Le Queene, Q.C., President,  
Sir Charles Frossard, K.B.E., and  
R.C. Southwell, Esq., Q.C.

Between

G

Appellant

And

M

Respondent

Appeal from the Order of the Royal Court (Matrimonial Causes Division) of 21st April, 1993, that an injunction denying the Appellant access to the matrimonial home remain in force.

The Appellant on his own behalf.  
Advocate R.J.F. Pirie for the Respondent

JUDGMENT.

**FROSSARD, JA:** The Judgment which I am about to deliver is the Judgment of the Court.

This appeal concerns the welfare of the two minor children of the wife, <sup>G</sup> the husband, and <sup>M</sup> the wife, who were married on 25th July, 1981. Of that union there are two children, <sup>C</sup> born in March 1983, and <sup>D</sup> born in May 1990.

Difficulties have arisen between the husband and the wife who obtained an Order of Justice signed by the Bailiff on 21st September, 1992, and served on the husband on 22nd December, 1992.

The material parts of the Order, which on service being effected operated as an immediate interim injunction against the husband, are that it:

- "(a) obliged the husband immediately to vacate the matrimonial home and to deliver all keys in his possession, custody or control to an officer of the

Viscount's Department and not to return to the matrimonial home.

- (b) restrained the husband, his servants or agents from molesting, threatening, harassing, approaching, communicating, or otherwise interfering with the wife or either of the children of the marriage.
- (c) restrained the husband, his servants or agents from approaching within 50 yards of the matrimonial home or attending at the wife's place of work,

The grounds on which this Order of Justice was obtained are varied and may be described as cruel or unreasonable behaviour by the husband. This Order of Justice was followed by a petition for divorce by the wife dated 8th October, 1992, and alleging cruelty by the husband. It is to be observed that the effect of the Order of Justice was to deprive the husband of any access to the children at that stage, though joint custody remained with both parties.

On 17th November, 1992, on the application by the husband, the Greffier Substitute ordered *inter alia*:

- 1. That the husband be at liberty to arrange collection of his personal belongings at the matrimonial home through the intermediary of a third person approved by the husband.
- 2. That the husband's application for access to the said children be adjourned until 10.00 a.m. on Thursday, 10th December, 1992. And that in the interim the husband do have reasonable access to the said children. Such access to be arranged in consultation with the wife and away from the matrimonial home.

The Greffier Substitute made the Order in those terms as he did not have the power to vary the injunction to enable the husband to attend personally at the matrimonial home.

On 27th November, 1992, by consent the injunctions were varied as was necessary to enable the Greffier Substitute to make such orders as he considered necessary for the husband to have access to the matrimonial home and/or to exercise access to the children.

On 10th December, 1992, the Greffier Substitute having heard the parties by their respective advocates ordered:

- 1. That the husband have access to the children for an initial period of one hour in the presence of a third

party to be nominated by the husband and approved by the wife.

2. That the husband's application for access to the children in the long term be adjourned for a date to be fixed for hearing before the Inferior Number of the Royal Court or the Judicial Greffier at the option of the husband.

In a reasoned Judgment the Greffier Substitute found that the husband was inflexible in his demands to see the children in the matrimonial home without anyone being present between 1.00 p.m. and 6.00 p.m. on Boxing Day and New Year's Day. And he accepted the evidence of the wife that the husband had threatened to remove <sup>(1)</sup> to France. This Judgment also shows that Mr. David Dallain of the Children's Service, who had been attempting to negotiate a compromise in respect of access was of the opinion that any initial access would, in the interests of the children, have to be gradual.

In spite of negotiations between the husband's and wife's respective advocates, this order for access was not implemented.

On 30th December, 1992, on the application in person of the husband, the Royal Court ordered, *inter alia*:

1. That the husband's application for discharge or variation of the injunctions be adjourned *sine die*.
2. Upon hearing the oral evidence of David Dallain the States of Jersey Children's Care Officer, that the husband may have interim access to the children of the marriage for the initial period of two hours in the presence of a Child Care Officer or a third party to be nominated by the husband and approved by the wife and that the said access shall take place at the former matrimonial home.

Again, this Order was not implemented because, so the Court was told, the husband would only exercise access without the presence of a third party.

On 21st April, 1993, on the application of the husband appearing in person the wife appearing through her advocate the Royal Court, having heard an Officer of the States of Jersey Child Care Service (the record does not show whether it was Mr. Dallain) ordered, *inter alia*, that the injunctions do remain, leave being granted the husband to appeal.

The husband has appealed the grounds being the decision of the Royal Court to leave the injunction in force was wrong in all the circumstances of the case. Particulars will be submitted orally by the appellant who will be representing himself at the hearing.

The husband submitted that he was entitled to see the children. He made a series of unsubstantiated complaints against the Court and the wife's advocate. He complained at being forced out of the matrimonial home which is held in joint names and, *inter alia*, he complained that the wife was extravagant. He further complained that he had requested the children's officer to arrange for the children to be examined by a French doctor (the husband is French) but the children do not speak French fluently. The request was not implemented. In any event the main thrust of his argument was that he wished to exercise access to the children with no other person being present. He was repeatedly asked by the Court whether he appreciated that the welfare of the children was paramount and in view of the long period of separation (some 18 months) access of a gradual nature would be in the best interests of the children. Again his reply was that he wished to

see the children with no other person being present, and that he would never agree to seeing them with any other person present.

Advocate Pirie, appearing for the wife, informed the Court that, in principle, she had no objection to the husband having access to the children. She was guided by Mr. Dallain who advised that access should be effected on a gradual basis. Indeed, following the various Court Orders on access, the wife through her advocate, had tried to negotiate the details of access but nothing had eventuated.

The Court itself had noted that there were differences between the parties on detail, particularly as to who should be the third party to be present at the time that access was effected. Mr. Pirie informed the Court that although the wife was being guided by Mr. Dallain, she did not insist that he should be the third party to be present at the time of access, provided that the third party was impartial and experienced in child welfare.

Mr. Pirie drew attention to the fact that the children were happily settled with their mother. Indeed C was doing well at school as evidenced by a school report which stated "*she should achieve high standards*", and she had recently passed the exam for entry to Secondary School and obtained a scholarship.

Mr. Pirie finally submitted that should the appeal be allowed and the injunctions set aside the result would be that the father would be able to return to the matrimonial home immediately and would therefore have total and unrestricted access to the children, there being no interim custody order of the Matrimonial Causes Division of the Royal Court, a decree nisi dissolution of marriage on the grounds of the husband's adultery having been made on 18th January, 1994.

The Court is well aware that it is a very serious matter for a father not to continue to see his children, and indeed it is usually equally serious for children not to be able to continue to see their father. Nevertheless in deciding the question of access the Court is mindful of its paramount duty to consider what is best for the welfare of the children.

Taking into account all the submissions which have been made to us and also in particular the attitude of the husband who has refused for so long to implement the existing access order and who does not acknowledge that after a long period of separation any access which may be given to him must be of a gradual nature and with the assistance of a third party to enable the children to get to know him again. The Court has no option but to dismiss this appeal. To allow it would give the husband unrestricted access in entirely inappropriate circumstances.

This of course is not the end of the matter. Before the Court grants a decree absolute it will have to consider to whom permanent custody of the children should be given and what access should be given to the other parent. No doubt it will have the benefit of and consider any advice which may be tendered by the Child Care Service who we are sure have carried out their professional duties in an exemplary manner and are trying to assist the Court and the parties. But this Court is of the opinion that regrettably their efforts are suspect to the husband. This Court therefore draws to the attention of the Royal Court Rule 57 of the Matrimonial Causes (General) (Jersey) Rules, 1979 which provides:

**"SEPARATE REPRESENTATION OF CHILDREN.**

**57. Without prejudice to paragraph (2) of Rule 46, if in any matrimonial proceedings it appears to the Court that**

any child ought to be separately represented, the Court may appoint an advocate or solicitor or some other proper person (provided in any case that he consents) to be the guardian or guardian ad litem of the child, with authority to take part in the proceedings on the child's behalf".

Such a guardian ad litem might be able to resolve the present impasse and secure a degree of stability for the children to be able to resume contact gradually with their father.

Finally the Court would like to express the hope that the present unsatisfactory state of affairs may be speedily resolved in the interests not only of the parties but more especially in the interests and welfare of the children, bearing in mind that the children's interests and welfare must always be the paramount consideration for the Court.

No authorities.

