

ROYAL COURT
(Samedi Division)

104.

20th May, 1994.

Before: F.C.Hamon, Esq., Commissioner, and
Jurats Le Ruez and Vibert.

Between
and

A
B

Petitioner
Respondent

Advocate S.A.Pearmain for the Petitioner.
Advocate A.P.Roscouet for the Respondent.

JUDGMENT

5 **THE COMMISSIONER:** We have before us two summonses. The first is
an application for the respondent to have staying access to C
and D, the children of the petitioner and the respondent from
12.30 p.m. on Saturday, the 28th May, 1994 until 7.30 p.m. on
Sunday, 5th June, 1994 to enable the respondent to take the
10 children on their annual visit to Liverpool. There is provision
made in the application for the eventuality of flight delays. The
second (for which we abridged time) is a request that the
petitioner be ordered to comply with an Act of this Court that
the respondent should have access to the children, in accordance
with arrangements made by the Child Care Officer on the 14th May,
15 1993. The petitioner has failed to comply with the terms of the
Act since the 5th December, 1993 save on the 15th May, 1994.
There is a request that the petitioner be required to give an
undertaking to the Court that she comply with the terms of the
Order and that if she breaches the undertaking the respondent be
20 permitted to apply to the Court for an Order for her committal.

In the last matter (and it is the only point of law that we
wish to raise) Advocate Roscouet for the respondent (we shall
refer to him as "the husband") referred us to Re M
25 (Minors) (Access: contempt committal) (1991) Fam.Law 265 where, in
the Court of Appeal (Butler-Sloss, Staughton and Beldam JJ),
Butler-Sloss L.J. said that " *she was satisfied in relation to
three of the specific breaches complained of, that the judge was
justified in concluding that the mother was in contempt of court
and that she was indulging in a course of conduct designed to
30 detach the children from a relationship with their father.*

Committal orders in family cases were remedies of very last resort and should only be considered where there was a continuing course of conduct and where all other efforts to resolve the situation had been unsuccessful. The court would take that measure where it was clear that a person was deliberately and persistently refusing to obey a court order".

We were to have considered the apparent contempt today from a representation due to be heard originally on the 11th February, 1994. This was deferred and is again deferred because the Children's Officer who was to have given evidence is out of the island.

D is aged 8 and C is aged 9. They live with their mother and stepfather in a large property that the mother has inherited at St. Ouen. The father lives in modest accommodation in St. Helier. The stepfather works at home as a self-employed motor mechanic.

The father is a sales assistant at a local sports outfitters and both D and C attend a local primary School.

On the 7th June, 1993, this Court (presided over by the learned Bailiff) made an order stipulating the access arrangements. These strike us as being particularly fair and were of course recommended by the Children's Service after a careful and detailed investigation. Although all the reports prepared in this matter are confidential we are not breaching confidence when we say that the Child Care Officer's report contains this statement:

"It is a matter of some concern that the long and acrimonious contention between the two parties on the matter of access does not appear to have abated in any way".

Every access arrangement since November has been missed. The husband has attended at the home in his car. No children have come out to him. On many occasions, members of the St. Ouen's Honorary Police have been called to no avail.

On the 7th June, 1993, the Court also imposed a supervision order placing the children under the supervision of the States of Jersey Education Committee in accordance with Article 54 of the Children (Jersey) Law, 1969, until further order.

We have heard both the husband, the wife, the stepfather and a neighbour, E who is a friend of the wife.

We also have had the benefit of three most carefully, anxiously and, if we may say so, professionally prepared reports from Mrs. Canavan, an Ecrivain of this Court. We have had an

5 opportunity with all three Counsel in chambers to study all the
confidential reports prepared for us. We have heard the criticism
of the husband by the wife. We have seen photographs of the
children taken last Sunday at the Merton Hotel swimming pool by
the husband. We have listened very carefully to the stepfather and
to E. Advocate Roscouet had one other witness but as
she was inadvertently in Court through an oversight by Counsel
while the husband was giving his evidence, and as Advocate
Pearmain raised an objection, we allowed that witness to stand
10 down without hearing the evidence.

15 Apart from the denial of the father's legitimate access to
his children, there is another matter of enormous concern. The
wife's explanation to that denial was quite simply that the
children did not want to go with their father and "there was not
much she could do is they said they would not go". On the question
of access, there has been a continuous series of court actions.
Again, without breaking confidentiality, the Children's Service
wrote as one of its conclusions in February of this year:

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25 *"As the Court will be aware, there have been
numerous attempts over the past few years to ensure
continuity of access. It is certainly not in the
children's best interests that there have been so
many returns to Court for the dispute to be
resolved"*

30 With that we entirely agree. The other matter has now brought
matters to a head.

35 Every year since 1989 (there had to be a Court Order in 1993)
the husband has taken his children to Liverpool, his home town.
They visit his grandparents at their home on Merseyside. The
husband, D and C spend some time in the grandparents'
caravan in Wales. We have a report from a senior social worker of
the Metropolitan Borough of Septon (dated the 13th October, 1989)
which says: "They (the grandparents) see their rôle as
grandparents as a valuable one and are delighted at the prospect
of spending time with the children, having planned, in
40 anticipation of a successful court hearing, various trips and
outings for them". Nothing apparently has changed and we have no
doubt that a visit to loving grandparents can only be beneficial
to these emotionally damaged children. What has happened has
caused us to reach a point bordering on disbelief. The wife has
45 arranged, in the full knowledge of this now time honoured visit, a
trip for herself, the stepfather, D and C to Center Park in
France. This visit clashes absolutely with the projected visit to
Liverpool. It was clearly made with that intention. Worse, the
wife has filled these young children's minds with the excitement
50 of the visit and has packed their bags. This is moral blackmail
(we put it in these terms so that the wife can clearly understand
our displeasure) of the worst kind. We have heard from Mrs.

Canavan of the love and concern that these children show for their mother. C in our view, has shown a maturity well beyond his years and for a woman, however emotionally immature she may be, to use young children in a war of attrition such as this is objectionable.

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Everything that the wife has done of late can only have a lasting and damaging effect on the children. We have very grave concern from the reports we have seen that the children, and particularly C, are now beginning to suffer what might be permanent emotional harm. We can see nothing with which to criticize the husband. This Court wishes to make it perfectly clear that while its patience may often seem inexhaustible, we have only one paramount consideration and that is the interests of D and C whose torn loyalties are being flagrantly played upon by the mother to her own advantage. This need not be. We appreciate that Advocate Pearmain has attempted all, and more, that her considerable professional skills allow. We must ask her to make very clear to her client that we are going to ask the Children's Office in the light of this order and of the supervision order to watch the situation on our behalf very closely indeed. The next few weeks and the wife's reaction to our order may be crucial in this sad family history. Not to beat about the bush, we wish to make it very clear that the wife stands a real chance, unless she takes a grip on herself, of losing the great privilege that she has at the moment of caring for her children. We do not say this lightly.

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We feel that the children however hard this may be, and we appreciate the disappointment that they will feel, must be allowed to accompany their father in accordance with the provisions of the summons. We so order. Access must be granted in accordance with our earlier orders and we will see how matters proceed in the light of the adjourned contempt proceedings. We should say that we are satisfied that this is the only time that the father can take this holiday; the mother and stepfather (who is not in any way to blame for these matters) can easily, in our view, rearrange their holiday for the summer.

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If D requires speech therapy, then we would remind the parties that they have joint custody of their children.

Authorities

Re: M (Minors) (Access: Contempt Committal (1991) F.L.R.265