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ROYAL COURT
(Matrimonial Causes Division)

23rd November, 1995

229.

Before: The Deputy Bailiff,
and Jurats Blampied and Runfitt.

Between:	PS	Petitioner
And:	JS	Respondent

Appeal by the Respondent against the Order of Advocate V.J. Obbard, Greffier Substitute, Matrimonial Causes Division, refusing the Respondent's application for an Order vacating the dates fixed for the hearing of the Respondent's appeal against the Order of the Greffier Substitute of 25th August.

Advocate F.J. Benest for the Petitioner.
Advocate G. Le Sueur for the Respondent.

JUDGMENT

THE DEPUTY BAILIFF: The Greffier Substitute made an order on 25th August, 1995, which was subject to an appeal to this Court.

On 8th November, 1995, the Respondent, JS
 5 served a summons on the Petitioner, his former wife, PS
 , for appearance before the Judicial Greffier on 15th
 November. The summons (apart from an order as to costs) asked for
 three matters to be dealt with: first, for an abridgement of time;
 10 secondly, that the date fixed for hearing the Respondent's appeal
 (30th November and 1st December, 1995) should be vacated; and,
 thirdly, that the Greffier should give further directions arising
 from that.

The argument as to the vacation of date was further supported
 15 by six factors. These particularly dealt with the apparent breach
 of the provisions of Rule 55A of the Matrimonial Causes (General)
 (Jersey) Rules 1979. Those Rules are clear. An appeal lies to

the Royal Court from any order or decision of the Greffier. Notice of appeal is to be served within 10 days of the making of the order or decision appealed against, or, in certain circumstances, within such delay as the Greffier shall allow.

5 When the Greffier receives a copy of the appeal he delivers to the parties a statement of his reasons. Within 14 days of service of the notice of appeal every other party to the proceedings delivers to the Greffier and to the appellant a statement of submissions to be made on the hearing of the appeal. After that 14 day period

10 has elapsed, the Greffier consulting with the Bailiff, (that means the Bailiff's Secretary) fixes the day for the hearing and notifies the parties.

At the hearing before the Greffier the Respondent stated that, on the procedural points, certain factors were agreed. The notice was served outside the 10 day period.

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The Petitioner failed to deliver the statement of submissions to the Greffier but apparently did deliver some form of statement to the Respondent on 25th October, 1995, and Mr. Le Sueur tells us that the notice of appeal was actually served on 15th September, 1995.

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The parties fixed the date and not the Greffier. At the time of the fixing of the date before the Bailiff's Secretary - an unusual form of procedure, it seems to us, in the light of the Rules - the Respondent's advocate apparently made it clear that he would have to take instructions as to whether the dates arranged by the Bailiff's Secretary would be convenient to his client and he told us that the fixing of the date was subject to that condition.

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On 1st November, 1995, apparently, Mr. Le Sueur wrote to Mr. Benest explaining that it had not been possible for him to contact his client and requesting that the dates fixed should be set aside.

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Very shortly thereafter a letter was received from PS's doctor - and we have that letter before us. It is on that letter that we have to deal with the matter today, primarily, not on the procedural points. The letter is difficult to deal with because, as Mr. Benest quite properly points out, it is in fact dated 16th November, but there are difficulties here because

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45 ^S apparently is not on the telephone and his doctor professionally will not discuss his affairs without his authority.

The letter raises medical grounds: apparently JS as she is called - although it is thought that she is in fact the common law wife of PS - had her fourth child 4 weeks ago

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10 October, 1995. The son had difficulty with his breathing after delivery and spent a short time in a special care baby unit before discharge from the hospital.

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5 The one year old son, R , had a ear infection and has had to have antibiotics prescribed and JS is due to be admitted to hospital shortly (whatever that may mean) for sterilisation procedures. She has four children already and she has had four previous miscarriages. She is in the post-natal period and having a sick one year old child to look after the doctor says in these words "I would not recommend either she or her husband travel away from home".

10 Mr. Benest quite rightly points out to us it is thought that the doctor clearly thought the hearing was the week following his letter of 16th November and it is not, but we cannot progress the matter further than that because the letter has in fact achieved the object of its exercise and has raised doubts in our minds. We do not really need to refer to the provisions of the law which were put to us, they are perfectly clear: the Court will not, under most circumstances, force someone to attend at trial where there are reasonable medical grounds for that procedure not being adopted. R.S.C. (1995 Ed'n) O.35, r. 3/1:

25 *"The power of the Court to grant an adjournment should make allowances for domestic misfortune, and therefore where the defendant's wife broke her leg, and the defendant had therefore to stay home to look after the family, the refusal of the Judge to grant an adjournment was reversed".*

30 In saying that, we have had regard to some of the comments made by the learned Greffier in his original reasons which were appealed against and some of these are, shall we say, noteworthy. The husband during these proceedings has been "elusive". The husband apparently has not been "full and frank with the Court". The Greffier describes the purchase of the property as an "irresponsible escapade" by the husband. He has made three applications to adjourn the case and a final application was made based on facts that a visit to the Island would entail possible arrest because of his income tax liabilities.

40 We find all this disturbing and we are also disturbed by the fact that while we appreciate that the Respondent may very well be in a parlous state, we have not heard evidence on this at all. We have heard that the Petitioner is living in Portugal and eking out a living as best she can, carrying on her trade there. She had in fact, according to Mr. Benest, purchased an airline ticket to come to Jersey for the date set down for the hearing. She is under pressure yet again from the Comptroller of Income Tax to pay substantial arrears of Income Tax.

50 In the circumstances and because of the medical letter that we have, we feel that we have no alternative but yet again to postpone the hearing. However, dates have been made available and

I am going to ask counsel when I have finished this short judgment to allocate to the hearing one or two days available at the end of February. We would say this: it will take the most strenuous application by PS to postpone the next hearing that we fix and we would suggest that if there are medical problems at home, he should make provision as best he can to cover for the two days for any contingency other than a real emergency during that time.

The dates available to counsel are 8th and 9th February (1 1/2 days), 19th and 20th February, 26th and 27th February, 28th and 29th February, and 1st March, 1996.

We will sit on 26th, 27th, 28th February. We would ask the parties to consult with the learned Judicial Greffier as quickly as they may in order that any necessary procedure for the filing of pleadings be arranged in the light of the anomalies that have occurred to date. We feel that Respondent must pay the costs of this application.

Authorities

R.S.C. (1995 Ed'n) O.35, r. 2, 3.