

ROYAL COURT

(Matrimonial Causes Division)

10th February, 1989

Before: F. C. Hamon, Commissioner

Assisted by Jurats: Maxwell Gordon Lucas, and
Barbara Holmes, wife of John Graeme Boulton Myles

Between	D	Plaintiff
and	S	Respondent

Contempt of Court - breach of an order
of the Greffier Substitute concerning access
to children

Advocate P. C. Sinel for the plaintiff,
Advocate R. J. Renouf for the respondent.

JUDGMENT

THE COMMISSIONER: This representation is brought by the Petitioner wife against the Respondent husband alleging that he is in breach of an Order of the Court made on the 2nd December, 1988. The Order which the Greffier Substitute made on that day was in these terms;

"Upon hearing the advocates of the petitioner and the respondent it is ordered that pending a receipt of a further report from the Child Care Officer, the provisions for access to the children of the marriage by the respondent be varied to the extent that the respondent do have access to each of the children on Saturdays between the hours of 09.30 am and 6.00 pm. such access to be exercised in the presence of the second co-respondent, V."

There are two children of the marriage A aged 11 and N aged 6. The children live with their mother. The respondent lives with Mrs. Vallance in a flat in St. Peter.

We heard evidence from the petitioner, the respondent and V. We did not hear evidence from the children. The report from the Child Care Officer has not yet been prepared. Because we did not hear evidence from the children (and we have no doubt that it was right not to call the children) the petitioner was quite unable to support the allegation contained in her affidavit in support of her representation where she said:

"It appears that A was alone with the respondent and V because N was visiting a friend. A told me that they had spent the afternoon at the respondent's flat and he had watched television together with his father and V who had chatted and laughed on the other side of the room making him feel that he should not be there. That when N returned to the respondent's accommodation at 5.00 pm she also spent the remaining hour with the respondent and V."

In our view Doctor Georgelin, the family doctor who has treated A over the recent past, should have been called to give evidence. He was not called.

Before any evidence was adduced, we asked counsel to address us on the standard of proof. No authorities were passed to us but Advocate Sinel for the respondent felt that the standard was the civil standard that is proof on the balance of probabilities. We drew Counsel's attention to Dean and Dean 1987 Family Law Reports 200 where the Court of Appeal held that it had long been recognised that the procedure in contempt was of a criminal nature and that the case against the alleged contemner must be proved to a criminal standard of proof. This is clear although the breaking of a Court order or an undertaking is a civil contempt. This is to us a logical step because contempt is conduct which can attract penal consequences. We were therefore looking for a high standard of proof.

The petitioner was able to tell us that when she arrived at the flat to deliver the children on Saturday, 21st January, V's motor car was parked outside the flat; when she returned to collect the children at 6.00 pm V's car was still parked outside. That evening A was extremely upset.

On the evidence that we heard we can establish what happened. The petitioner arrived at the flat shortly before 09.30. V was in the flat. She had an aerobics class at 10 o'clock. The children were taken by the respondent into the lounge. They did not see V who duly left for her class. The petitioner had arranged for N to go to a birthday party at 2.00 pm. N had been given hand written directions by her mother which she saw and she gave these to her father. The Saturday in question was cold and wet. The respondent took the children shopping and bought A a model aeroplane. He prepared them lunch. Meanwhile V told us that while in town she had felt ill - she had a dizzy feeling. She came back home and retired to bed. The respondent spoke to her but not in the presence of the children. The respondent took A and N with him in his car and dropped N off at the birthday party. They returned to the flat and watched rugby on television. Shortly before 5 o'clock the respondent set off to collect N from the party. It was, as we have said, a very wet and cold day. A told his father that he would stay in the lounge playing with his aeroplane. V told us that she heard the car leave and assumed that A had gone with his father. In moving to the kitchen to make herself a hot drink she saw A. They talked for about 15 minutes and then the respondent returned with N. V told us that she was wearing her daytime clothes; the respondent remembered her wearing a white dressing gown. The children seemed happy and were not disturbed in any way. That on the evidence we heard is all that we can deduce.

Contempt of Court is always a serious matter but we must in this case have regard to the circumstances of the case. We feel that questions raised by Counsel as to past behaviour or damage to the dignity of the Court are of little relevance when we have to consider a difficult domestic jurisdiction. The interests of the children, in our view, are paramount.

We have anxiously considered the order of the Greffier Substitute. We think that it can be made to work and that there are not circumstances where we feel that there has been a deliberate flouting of the order. Had the petitioner been able to prove to our satisfaction the passage that we have cited above from her affidavit then we might well have felt differently. We are not really helped by the only legal authority passed to us by Counsel, Mrs F -v- Mr F Unreported, 25th August, 1988. We are helped in the knowledge that on the 27th January of this year V gave a personal undertaking to this Court not to be present in future during access to the children.

Because this is a divorce which unfortunately is being bitterly fought in all its aspects it does seem to us that the Child Care Officer should prepare his report without further delay and certainly within the next 14 days. Once the report is in Counsel's hands then application can be made if necessary to vary the order of the Court.

We must accept the respondent's explanation of what happened. This was an exceptional occurrence. We would not expect a repetition of it particularly as we feel that the respondent was wrong to leave A alone in the house knowing that V was resting in an adjoining room. He could so easily have informed V that he was leaving the house or indeed he could have taken A with him. We do not believe that he has culpably broken the Court's order. Had he given the matter some thought he might have saved his son distress; we also must say that we feel that the parties with sensitive legal advice could have resolved this matter without the trauma of a Court hearing.

Because we are satisfied that the order of the Greffier Substitute can be made to work we intend to allow matters to stand.

The respondent must, however, pay the petitioner's taxed costs.

Authorities:

Ms F v. Mr F Jersey Unreported: 25th August, 1988.

Spokes v. Banbury: 1805 Lloyds I Equity

Dean v. Dean: 1987 Family Law Reports 200

