## ROYAL COURT

24th May, 1990

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<u>Before</u>: F.C. Hamon, Esq., Commissioner, and Jurats Myles and Hamon

Between:

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Plaintiff

And:

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Defendant

Application by defendant to raise interim ouster and non-molestation injunction. Notwithstanding the defendant's presence in Court, the Court refuses to hear application as it is not supported by affidavit.

Advocate N.F. Journeaux for the plaintiff, Advocate R.G. Morris for the defendant applicant.

## JUDGMENT

COMMISSIONER HAMON: On hearing argument from both counsel we have agreed to abridge time in this summons to lift injunctions.

The case concerns serious allegations of cruelty against a minor child, aged four.

The Order of Justice led to interim injunctions being obtained against the defendant husband in this way:

- "1. THAT upon service of this Order of Justice upon the Defendant, the Defendant shall immediately vacate the said property, in Saint Helier, and remove himself or be removed to a distance of two hundred yards in any direction of the said property aforesaid.
- 2. THAT service of this Order of Justice on the Defendant shall bring into effect immediate injunctions restraining the Defendant:-
- A From assaulting, molesting, threatening, interfering, verbally abusing or otherwise contacting or communicating with the Plaintiff or either of the said children at the property and elsewhere or from attempting to do so:
- B From approaching within a distance of two hundred yards in any direction of the said property.

These allegations were surprising because the only allegation of cruelty contained within the Order of Justice was a series of allegations of cruelty against A the four year old. And there were no allegations of cruelty whatsoever made against A who was born A January, of this year, nor against the plaintiff wife.

The affidavit in support of the Order of Justice was in itself unhelpful in that it merely confirmed the truth of the paragraphs on the Order of Justice. That can hardly be called a full and frank affidavit.

An application for an Order under the Separation and Maintenance Orders (Jersey) Law, 1953, is to be made before the Petty Debts Court next Wednesday on the ground that on or around April, 1990, and on other dates prior thereto the defendant husband has been

guilty of persistent cruelty to the child of the complainant, namely A.

The summons before us today is a summons to lift the injunctions. It is not accompanied by an affidavit in support.

As long ago as the 5th August, 1982, the Inferior Number of this Court considered applications by Barry Shelton and Anthony Shelton for an Order raising certain interim injunctions in force by virtue of the service on them of one Order of Justice at the instance of the Viscount and of one Order of Justice at the instance of John Henry Appleby. In his judgment the learned Bailiff said:

"Therefore as a practice direction the Court is going to rule that it will not consider in future applications to lift injunctions - unless those applications are supported by affidavits".

In fact we tested the matter in a case that we heard on the 8th February, 1990, <u>De Guelles Home Bakery Limited -v- Le Nosh Limited & Simon Knapp</u> and we dealt in that judgment with the importance of practice direction and we there said when considering the well-known case of <u>Walters -v- Bingham</u> these words at p.4 of our judgment:

"We would go further. We feel that the decision in Shelton, with which we entirely agree, has created a precedent which we consider to be binding upon us".

Therefore because there is this binding decision of the Royal Court and because the interests of a minor child are protected and we do not go in any way into the merits of the case, we are not prepared, in the circumstances, to hear the application further to lift the injunction.

We would go further than that in that because the allegations as we say are serious and we make no finding whatsoever on those allegations, but because they are there we are going to direct that the children's office be instructed to supply a report as soon as is feasible on the family situation to this Court, with copies to both Advocate Morris and Advocate Journeaux.

We would not wish the direction to apply for this report in any way to hinder the proposed hearing next Wednesday on the Separation and Maintenance Order. That is our direction and we are not prepared to go further on the hearing of the summons.

## Authorities cited:

- Shelton -v- Viscount of the Royal Court (5th August, 1982) Jersey Unreported.
- De Guelles Home Bakery Limited -v- Le Nosh Limited & anor (8th February, 1990) Jersey Unreported.