

Sages

ROYAL COURT

24th May, 1990

72.

Before: F.C. Hamon, Esq., Commissioner, and
Jurats Myles and Hamon

Between:

D

Plaintiff

And:

H

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.

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
Appleyby. 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, De Guelles Home Bakery Limited -v- Le Nosh Limited
& Simon Knapp and we dealt in that judgment with the importance of
practice direction and we there said when considering the well-known
case of Walters -v- Bingham 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.