3pages.

ROYAL COURT

(exercising the Appellate Jurisdiction conferred upon it by Article 10 of the Separation and Maintenance Orders (Jersey) Law, 1953).

133B.

20th September, 1990

Before: The Deputy Bailiff, and
Jurats Vint and Hamon

Between: Mr F — Appellant

And: Mrs F — Respondent

Appeal against decision of Petty Debt's Court of 16th January, 1990, whereby custody of the second child of the marriage was awarded to the respondent; the tenancy of the matrimonial home was transferred into the respondent's name; and the appellant was ordered to pay £15 per week towards maintenance of second child.

Advocate P.C. Sinel for the appellant.
Advocate R.J. Renouf for the respondent.

JUDGMENT

DEPUTY BAILIFF: We feel that we must say something about the Child Care Officer's report.

In February, 1986, she was recommending care and control of both boys to the appellant, but felt that the position should be reviewed.

In July, 1988, she recommended that the respondent remain in the matrimonial home with both boys in her care and control.

In December, 1988, she recommended that the boys be not separated and felt strongly that the question of care and control of the second boy must be finally settled.

In May, 1989, she had had no contact with any member of the family after 1988. She reported the wishes of each party and made no recommendation but warned the Court that any award to the appellant would entail the eviction of the respondent and the first boy.

On the 13th July, 1989, she changed her mind. Having had no further contact with any of the parties, but having had one interview with the second boy, she reported that he would now prefer to live with his father and that he was of an age and maturity to have his wishes given serious consideration. The Court has noted that the second boy was then 13 years and 8 months old; and on a single interview with a boy of that age the Child Care Officer would have transferred care and control with the resultant eviction of mother and brother from their home. A factor that the second boy had not been asked to consider and comment upon.

In those circumstances we consider that the Magistrate was entitled, having taken note of the expressed wish, to take the view that it should not carry much weight.

The Child Care Officer thought in 1988 that the second boy's future should be finally settled. It was so settled by the Magistrate in January, 1990. We are surprised that in the circumstances she should have apparently been willing to lend herself to an effort to disturb that final determination so soon after it was made, bearing in mind that it will last only until November, 1991, when he will be 16.

The other point which we wish to make with some strength is that Judges do not live in a vacuum. This is not a case for everything to be proved beyond reasonable doubt. A Judge deciding an issue of this kind has to use his judicial knowledge about, for example, the housing

situation in Jersey and about the attitudes of the parties that he has seen and heard before him over a period of days.

In our view the Magistrate was entitled to be influenced by the desirability of the two boys being brought up together; about the advantage of maintaining the status quo until the second boy reaches the age of 16; about the difficulties of obtaining housing if the status quo was changed; and about possible difficulties of access if the present arrangements were changed.

The Magistrate was familiar with the case and had the advantage of hearing the parties. There are no grounds for us to say that he erred in the exercise of his discretion, therefore the appeal is dismissed.

No authorities.