

ROYAL COURT
(Matrimonial Causes Division)

25th October, 1991

158.

Before: The Bailiff, and
Jurats Coutanche and Vibert

Between:

R

Petitioner

And:

E

Respondent

Petitioner's application for staying access

Advocate G.R. Boxall for the petitioner;
Advocate J.A. Clyde-Smith for the respondent.

JUDGMENT

BAILIFF: This is an application for staying access by the Petitioner. The respondent wife has care and control of the children. Although it is correct to say that in the Act of the Royal Court of October, 1990, setting out the terms of access those precise words are not used, it is a necessary inference to be drawn from such an Act that where access is given to one party the other party has care and control. We will therefore

start from the fact that the wife has care and control with certain agreed periods of access to the husband.

The parties are now divorced. It is not necessary for us to go into the background other than to say that the divorce was by agreement following a two year separation and the arrangements appear to have worked satisfactorily. At least we have had no evidence so far to suggest that they have not.

Mr. Boxall for the husband, has said that on Tuesday of this week his client learned that the wife was going to take one of the children, M, who is ten, to London for an operation to her sinuses. The wife had previously taken the child to be seen by the surgeon and it was clear that she had to have the operation. The total time the wife is going to be away is no more than three days. She had made arrangements for two young seventeen year olds to help in the house; the household would be supervised by her sister who we are told is deputy matron of a Care Home.

No allegations have been made by the husband that his former sister-in-law is an unsuitable person to have charge of those children during the wife's absence. As regards the seventeen year olds, they will be under the control of this lady; it is true, however, that they are strangers to the children. Mr. Boxall has said it is in the best interests of the children that they should spend three days with the father because they will be in a home they know, the father's home. He has remarried; and there is a stepmother and two other children. It is a four-bedroomed house and therefore the accommodation is adequate. I would imagine that if it were not adequate the respondent would have applied for a variation in staying access. One must start from the basis that Mr. R's house is satisfactory from that point of view.

After the wife had told her former husband on Tuesday of this week that she intended to go away for three days, it is clear to us that immediate steps were taken by the father to arrange, by agreement, if he could, or if not by order of this Court, that he should have the other children whilst their sister was undergoing her operation in London.

We were told that the wife had previously undergone an operation in Jersey and had been away from the home for ten days and that she had only notified the husband of this either the day before or the day after, at any event with very little notice at all, and therefore he had had no opportunity to come to the Court to ask for staying access on that occasion.

Mr. Boxall also told us that it was his intention to go before the Greffier as soon as possible to ask the Greffier to fill the lacuna in the Order which exists at the moment so that in emergencies or in cases of this nature where the wife has to go away, the husband/father should automatically have the children. But if that is so, we do not understand why that application was not made very soon after the wife had returned from hospital.

We have come to the conclusion that it is inappropriate for us to interfere with the existing Order. No evidence has been tendered, although Mr. Boxall offered to have Mr. R give evidence in the box, but we really would find that difficult to evaluate in the absence of contrary evidence and we have had a satisfactory explanation as to why the wife could not be here; she has made her arrangements, she has a job to see to and she is dealing with the children for the husband to collect at five o'clock. I am afraid he is going to be late but we cannot help that.

We really do not feel it right to make an order. If Mr. Boxall wishes in the fullness of time, with plenty of warning and plenty of preparation, (I am not saying that he has not prepared, but time is required for preparation with affidavits and the childrens' reports and so on) to come back to the Court, then of course we will be prepared to listen to him and if necessary make an amended Order.

We think this application was ill conceived and we dismiss the summons with full indemnity costs.

No authorities.