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21st September, 1987

MATRIMONIAL CAUSES DIVISION

Before The Deputy Bailiff, assisted by Jurats H. Perree and J.J. M.Orchard.

Representation of M D C -v- Mr C .

Judgment

THE DEPUTY BAILIFF: The Courts in a case of this kind cannot deal with general principles but must deal with the particular child and these particular parents. As Mr. Boxall said, this is by way of an interim application and there is no application by the defendant for care and control. Therefore B will remain in the care and control of the plaintiff and the injunction restraining the defendant from removing B from the care and control of the plaintiff will remain in full force and effect subject only to the variation as to access that we make hereafter. It is important in cases such as this that there should be regular access between the non-custodial parent and the child. It is not merely that the interest of the parent is concerned, regular access is a benefit to the child itself. It is only in the most exceptional circumstances that a father will be deprived of all access to his child, and we do not find such exceptional circumstances here. It is true that in certain cases in the past, the Court has directed that access should be exercised in the presence of a child care officer, but sadly these cases are increasing to such extent that the Court must have regard to the realities of the situation and the resources available, and should only involve the Childrens office in supervising the access if no alternative can be contemplated. Moreover, supervised access in that way is likely to prevent the relationship between parent and child from developing naturally to the benefit of the child. The case of W. -v- H (1980) Jersey

Judgments 13 is not directly in point because there were there intense feelings of bitterness on the part of the wife towards the husband, said to amount to hatred. There is no such bitterness here, but only a fear, which is understandable, that the defendant may remove the child from the jurisdiction or from her care and control. There is no real justification for a fear of removal simply from care and control within the jurisdiction because that would be a breach of injunction for which the defendant could be arrested and brought back before the Court. The only problem is the possible removal from the jurisdiction. The connecting link between these two parties is the three children. We refer to three children deliberately because they are sisters and brother and the plaintiff brought up the two elder children of the defendant during the marriage, and in the long term we hope it will not be necessary to alienate the one from the other two. Perhaps, if our Order today is successful it would be possible to progress to staying access with or without the plaintiff present, but it would be premature to do so now. The Court takes the view that access by the defendant to B to be exercised solely at or around La Mielle would not be practicable, except for very short periods, or satisfactory because some at least of the access periods should be spent with N and D. We appreciate there is risk that the defendant will breach our trust, treat us with contempt and remove the child from the jurisdiction, but that is a calculated risk that we and the plaintiff must share together. There is much to weigh against it, because the defendant would have to remove a family of three, give up his place of residence of fourteen years, give up his home and abandon his business such as it is. We are going to take that risk, but we require from the defendant an undertaking given personally in open court that he will never remove B from this jurisdiction without the prior order of the Court. On that basis the Court orders that the defendant will have unsupervised access to B on every Sunday between the hours of 10.00 a.m. and 6. p.m. The defendant to collect and return the child on each occasion. Also access on one additional week day, on

a day to be agreed between the parties, between the hours of 2.p.m. and 6.p.m. In the event of failure to agree the day, the matter to be referred back to this Court, and again the defendant to collect and return the child. If the defendant obeys both the order made today and otherwise the injunction and conducts himself properly in every way towards the plaintiff, the Court will be prepared, after a delay of at least six months to hear an application for staying access on an overnight basis at weekends.

Now Mr. C you have heard what I have said, will you please stand up. Are you prepared to give to the Court your personal undertaking that you will never remove B from this jurisdiction without the prior order of this Court. (Mr. C gives undertaking).

Authorities referred to in Judgement

W -v- H (1980) Jersey Judgements. 13.

