ROYAL COURT

3rd April, 1989

Before: The Bailiff
and Jurats Vint & Blampied

Mr T -v- Mrs T

Mr. T , on his own Behalf.
Advocate J.G. White for Mrs. T

JUDGEMENT

BAILIFF: This case is a continutation of an earlier judgement which this Court delivered, although differently constituted, on the 23rd June, 1987. Since then the parties have been divorced. At tha time they were not and the position is that although the decree nisi has been obtained on the 12th October, 1988, the decree absolute has not yet been granted but we are informed that it is in the course of being applied for.

Therefore the first thing I ought to say is that there is no question of a reconciliation whatsoever between these two parties. It is apparent from our previous judgement that they were very far apart then and as far as we can see they are equally as far apart today, but with this one difference as I have pointed out, they are now divorced. Therefore the most one could expect is some form of conciliation, that is to say to set about examining the future of their only child, F with a common purpose of her well-being.

Unfortunately for reasons which I don't think it is necessary to go into but which were canvassed much more fully in the Court's judgement of the 23rd June, 1987, neither party is able objectively to sit round a table with the other and discuss the child's future. Certainly of course there has been an offer by Mr. Hawkes and at this stage the Court would like me and I'm very happy to do so, to commend Mr. Hawkes for his efforts in trying to what he quite rightly called break the stalemate between the parties. But the proposals which Mr. Hawkes suggests have with them one

flaw if that is the right word. They require that F be brought into the arrangements so that there would be interim access arrangements supervised under very careful arrangements it is true, but nevertheless access to the father.

We have heard from Dr. Fogarty and Dr. Falla of the effect that previous access had and the change in the child that has taken place since access has stopped.

If access were to be continued, even under the carefully thought out arrangements of Mr. Hawkes, Dr. Fogarty is still of the opinion that the circumstances would not be ideal as F's attitude would be one of fear and although that fear would be diminished it would still be present even if other people were there. So far as F herself is concerned, Mrs. T has given evidence and we have also heard from Dr. Falla of her great improvement at school in the way in which she has begun to settle down as a normal little girl and to recreate her life, albeit with one parent.

It is quite true and we do not wish to differ from any of the observations advanced to us by Mr. T who has done a great deal of work in preparing his case and we accept that this was done with the best objective possible, that is to further the interests of his child and he has produced a number of authorities from eminent persons with whom we do not wish to find fault. Nevertheless, although they are general principles, the Court has to apply those principles to each particular case, and we ccannot apply the principles if, to do so, completely objectively would mean in effect to cause a small child of eleven or nearly twelve to revert to that state of anxiety from which she has been reprieved as a result of our previous Order.

So far as taking into account what the child may wish herself, we are satisfied again from the evidence of Dr. Fogarty and Dr. Falla that she is capable of forming an opinion although for the reasons the Court set out in it's previous Judgement, that opinion is not in any way binding on the Court and all we have to be satisfied is that it is an expression of opinion she genuinely feels. But it is worth while pointing out that in the Order accompanying the Judgement of the Court there was a direction by the Court that the injunction was to be continued unless the said child

herself expresses a wish for access to her father, and we have heard from Mrs. T that if at any time F were to express a wish to see her father she would not be prevented from doing so.

Of course, if the Court could foster relationships with both parents which means in effect with Mr. T without destroying the relationship with Mrs. T , the Court would do it's best to do so and that is a proposition which one finds on page 139 of one of the authorities cited to us by Mr. T which is a book called Divorce Matters written by three eminent authors, one of whom was a Lord Justice of Appeal and for many years sat in the Family Court. But, we are left with the question which was very fairly put by Mr. Hawkes when he gave his evidence and inspite of stringent cross-examination by Mr. White, he maintained a very fair and objective balance as indeed we would expect him to do throughout. He concluded that fundamentally there was a continuing dispute between the parties which could not be in the long term interest of F , and with that we agree. We adverted to that position in our last judgement but the position is as Mr. Hawkes said that there is a very fine balance whether the fears of F on the one side should be discounted to some extent or should we then consider the points of view of the parents, particularly Mr. T in the hope that they could come together for the purpose of re-instating Mr. T's access, but we had to examine the undoubted rights of Mr. T to come back to this Court and balance it with the child's fears which we think are there. We had to ask ourselves whether those fears are unfounded in the sense that they were put forward for the wrong reasons or were untrue. We cannot find that they were untrue or put forward for the wrong reasons, and therefore we were left with the position that there are, in the opinion of this Court still fears in the child's mind about having to be forced to see her father.

Now, in the report of Mr. Hawkes it appears that Mr. T initially was prepared to accept a voluntary form of counselling with Mrs. T but the moment it became clear that she would not do this, and I think I should say although so far the Court's Judgement appears to have been somewhat critical of Mr. T , Mr. Hawkes's report indicates that apart from the question of joint counselling in the presence of F , Mrs. T has been completely co-operative. As I say, when it became apparent that there

was not going to be this voluntary counselling with F present on the part of Mrs. T , Mr. T then changed his request which he has made to this Court that we should order compulsory counselling and suggest that if either party refused to attend, (he well knows that means Mrs. T), a sanction would be imposed by the Court for contempt. We are not minded to do this because we think that counselling by it's very nature requires the co-operation and good will of any person attending it, even though they may have some reservations about its success. We accept that to deprive a father of access to his child is a very grave step and we have no intention, at this stage, permanently of doing so. This is exactly what we said in our last case in which the authorities on the question of access were reviewed and I needn't repeat them here.

F will be entering a difficult phase of childhood, particularly for a young girl. She will be twelve in June and for the next two years, we have little doubt that there should be nothing done by either parent, it goes without saying, and certainly by this Court which would upset the child any more than she has been upset in the past. That being so, we think that she needs the guidance and care which she is getting from her mother at the moment without challenge or interruption by her father and accordingly we are not prepared to reinstate the Order of Access even to the limited extent proposed by Mr. Hawkes, but to allow Mr. T to come back to this Court asking again if the position is changed in two years time, that is to say on or before, a little over two years, the 30th June, 1991, but we note that Mrs. T has said that she will not prevent F from seeing her father if she so wishes and I know the Court can rely on her to see that this is carried out if she does voluntarily express the wish. It may well be that she will mature, that as she goes through this period she will wish to see her father, we certainly hope so. We don't wish to deprive Mr. T of his right, but we have to balance that with the effect it has had in the past, without any doubt, on F with the fear that it would have in the future. Accordingly the application is dismissed.

MR. T : I would ask the Court Sir if it would be possible for me to write to F from time to time and perhaps whether Mrs. T would co-operate in seeing that the letters reach F ?

BAILIFF: Just a moment. Mr. White?

ADVOCATE WHITE: I'll just take instructions. Mrs. T Sir, is quite happy to abide by that request subject only to saying that she would of course ensure that any letter is brought to the attention of F , but she can't force F to read them, she can do no more than give it to her and leave it to F to decide herself whether or not she wishes to take note of it, to reply or to anything else.

BAILIFF: Well that's very fair Mr. T . Your former wife will give any letter you write to F to her and leave it to F to decide what to do.

MR. T : I would like to say Sir that the business of coming back in two years time I will have to consider very carefully because it seems that every time I come back the Court makes the same decision.

BAILIFF: It's up to you Mr. T . Well it's only twice. Anything else?

MR. T : I would ask Sir that costs are shared because I feel that we are dealing with the welfare of a child which is a shared responsibility of both parents and I feel that the Court indicated that I should come back after F has (inter)..

ADVOCATE WHITE: I have discussed this with Mrs. T and she accepts that Mr. T was invited to come back today and she also accepts that he was justified in pursuing his appliction given the recommendations of Mr. Hawkes, so she would be happy for an Order that each side bears their own costs.

BAILIFF: Right, very well, each side no order for costs.

ADVOCATE WHITE: I have just one other matter Sir. As ancillary to the Order I think it would be prudent for an Order to be made in the same terms as last time and that was (inter)...

BAILIFF: The Act of the Court you mean?

ADVOCATE WHITE: The Act of the Court itself Sir, which provided that if a further application is made further reports should be obtained, and I think to avoid what happened this time the Court ;might order that reports should be obtained not only from a welfare officer, but also from Dr. Fogarty as a Court witness.

BAILIFF: Yes, but according to the Act of the Court it says "that further reports be prepared after the 31st May", and you would say if any application is to be made after the 30th June 1991 further reports to be prepared from Mr. Hawkes and Dr. Fogarty?

ADVOCATE WHAITE: That's what I would ask for, yes Sir.

BAILIFF: Very well, but if there are any requests under the official Act, and if either party want additional reports I can see no reason why they can't have them.

ADVOCATE WHITE: That is for them, they can call (inter)...

BAILIFF: That is for them, they can call whom they like. They mustn't be restricted, I mean one side can't say to the other you can't have any more reports.

ADVOCATE WHITE: No, I intend that.

BAILIFF: Very well, thank you.