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ROYAL COURT
(Matrimonial Causes Division) 114.

2nd July, 1992

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

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Between: M **Petitioner**

And: W **Respondent**

Representation of Court Welfare Officer, seeking directions over access arrangements by the Respondent to the child of the marriage.

Advocate R.J. Michel for the Petitioner.
The Respondent on his own behalf.

JUDGMENT

THE COMMISSIONER: This is an application by David Peter Trott, the Welfare Officer in this case, who seeks the Court's directions as to access to D by the respondent.

The parties were married on 11th October, 1977, and the marriage was dissolved by decree absolute on 31st October, 1983.

D, the subject of this application, is the only child of the marriage and was born in 1979. He is, therefore, just over 13 years of age.

We need not concern ourselves with the past history of the case. The question of access has three times concerned this Court in judgments of 9th January, 1989, 21st August, 1989, and 13th July, 1989. The facts are summarised in those cases and do not concern us in the matter that we have to decide.

The nub of the matter is contained in the representation. It refers to the arrangements regarding access contained in the Order of 13th July, 1990. In that Order the Welfare Officer, who was at the time Mr. Christopher Hawkes (whom Mr. David Trott replaced by

Order of this Court on 28th June, 1991) was invited to return to Court for directions should the need arise.

The representation goes on:

> *"That D .... is refusing to have any further contact with his father and notification of this fact was given by letter dated 8th May, 1992, addressed to the Deputy Bailiff. That the access arrangements made on 13th July, 1990, are not working and the facts need to be set before the Court, neither party having filed a summons in the matter".*

It does seem strange (were it not for the way that matters were explained to us) that D has now expressed himself so forcefully when, on 13th July, 1990, the Court said this:

> ***"Mr. Hawkes, who saw the child for 45 minutes alone, on the tennis court away from the main house, left us in no doubt as to the child's wish to see his father, he did not much care where, as long as he could see him and as frequently as possible. We are sorry but fully appreciate, that the child is experiencing a fundamental emotional conflict in that he loves both his parents, does not wish to act in such a way as to upset his mother and yet is torn by his natural desire, as a growing boy, to enjoy a regular and increasing relationship with his father. It is not to the credit of either parent that the child finds himself in this situation of emotional conflict, which could so easily have been avoided".***

The Court went on to say, a paragraph later:

> ***"However, circumstances have changed again; Mr. Hawkes was left with a very strong impression that this case is moving into a new chapter; the child is eleven years of age and is reaching a stage in his development where his own identity is beginning to emerge and, in our opinion, he should not feel prevented from regular contact with his father".***

It is clear that a fairly traumatic event has occurred to create the present situation. We can, apparently, pinpoint that watershed to a tennis tournament that took place on or about the 26th August, 1991. Access had until that time been generally good. We say "generally good" because Mr. Trott told us that many of these regular periods of access were regarded by D as being happy and a good experience; there were times when D had returned unhappy and disillusioned with W. The main source of complaint by D was that on several occasions W had not paid him sufficient attention and appeared to be trying to influence him against his mother.

It is clear that the relationship between W and the mother (who has now re-married) is not good. Mr. Trott told us that D expressed frustration about W missing several of the weekly telephone calls. He also reminded us that in May, 1991, his predecessor Mr. Hawkes, had commented that it seemed to him that " D had to do all the running". It appears that the two periods of access prior to his decision not to see W "went generally well".

Let us now quote verbatim from Mr. Trott's report:

"4. *On 26th August D rang me at home in a very upset and emotional state saying that he did not want to see his father again. It transpired from later telephone calls and a home visit that W had attended a tennis tournament in which D was participating. D asserted that W had talked loudly and been generally 'rude' throughout the match. At the end of the match he told me that W had congratulated the opponent on winning but had not approached D to commiserate with him - this is all strongly refuted by W. D told me that this had reminded him how "horrible" his father could be and of some of the previous access periods when he had felt neglected and rejected. What was clear was that the uncertainty about his contact with W, expressed to both myself and Mr. Hawkes over the previous four months, had come to the fore and that D decided that he no longer wished to have contact with his father. I tried to persuade D to see his father on three occasions during the "cooling off" period but each time met with no success. Indeed D held the view that I was pressurising him to see his father. On 31st March, 1992, I went to see D and he was still insistent on not wishing to see his father. I was in the process of writing to the Court of this development when W made contact.*

Conclusion

5. *What is abundantly clear from the events of the past nine months is that D does not wish to have contact with his father at this point in time. Whether this is because D genuinely dislikes his father or because he feels the pressure of being a pawn in the continuing ill-feeling between his parents would be pure conjecture. It is also abundantly clear that W wishes to continue to play a part in D's life. There is therefore an impasse. In my view to compel D to see W against his will could run the risk of further alienating D from his father. It is acknowledged that this is very painful for W to accept. He feels that D should respect him and should therefore continue to see him regardless of D's expressed wishes. I cannot agree with this*

conclusion and am of the opinion that in matters such as this the child's needs and interests should be paramount. My view is that D's wishes are genuinely held and that any enforced contact could be distressing for him and therefore not in his best wishes.

6. *My professional opinion is that the only way forward in this case is to allow D to make his own decision as to whether he wishes to see W. This will certainly not occur in the immediate future but may occur through the passage of time. It is accepted that such a conclusion is painful to W but I feel that if he wishes to resume contact in the future there is a greater chance of a good relationship developing between them if D wishes to see him of his own free will than by compelling an unwilling child to see him now.*

7. *In light of the above it is also my opinion that there is little purpose in this Service continuing to be involved in this case at this juncture. Should, however, D wish to resume his relationship with his father I would be willing to facilitate such a meeting. I would suggest, however, that in that event D will be sufficiently mature to make his own arrangements for contact after the initial meeting".*

Mr. Trott discussed the matter with D on several occasions, on two in particular he stayed with him for half an hour to an hour. The last time he saw him was on the 31st March (he has not seen him since). At that time D was calm and they walked in the grounds of his home. Mr. Trott was convinced that it was not a "question of pride" - he raised that very point with D. He seemed happier in his mind, more settled and more outgoing than when Mr. Trott had seen him previously. There was a time in April of this year when W was attempting to see D, but because he was taking a common entrance examinations to a College (he was successful in these) it was not thought that this was a good time. However, and this is an important point, on the 13th May Mr. Michel acting for the mother wrote to Mr. Trott (he had apparently found it difficult to ascertain W's address) in these terms:

> *".... M is concerned that for D to meet with his father at a time when he is both sitting Common Entrance exams and in the final two weeks before he sits the main block of exams, would be disconcerting, disruptive, and probably sufficiently emotionally disturbing to destroy such chances as D has to pass those exams so as to gain entrance to his chosen public school. With those parameters in mind, and wishing, nevertheless, to take every reasonable step to ensure that W does have an opportunity of seeing his son, M proposes*

that such access takes place on either Saturday the 13th or Sunday the 14th June.

As you are aware, the Common Entrance exams take place over the five days commencing the 1st June. M has already planned, booked and paid for a long weekend holiday with the family to Venice, starting on Saturday the 6th June and returning to Jersey on Wednesday the 10th June. It is proposed that during the course of that holiday she explains the position to D so that on his return he is aware of the proposed meeting with his father.

D may, if history repeats itself, declare that he has no wish to meet his father. If that is so, M will contact you, with a view to your discussing the matter with D . Whether he does in fact meet his father on the day chosen by his father (either the Saturday or the Sunday) will be a matter for you and D . M is anxious not to interfere in Charles' decision".

Mr. Trott did not pass this offer on to W , who nothing about it. His intentions were of the best. He did not wish W to be let down. We think that he was wrong not to communicate with W about this letter, although we fully understand his reasoning which was motivated by kindness, but which can only have the effect of giving the impression, however erroneously, that he had closed his mind on the matter. He has not, as we have said, had any contact with D since the 31st March. W has had no contact with his son now for 27 weeks.

It does seem to us that before we make a decision, we must know if D continues in his attitude. It is three months since he was asked about it. We were told that D is a sensitive and emotional 13½ year old who would be able to cope with a situation where he would be questioned.

We suggested that the Court might see D on this point. Mr. Michel seemed surprised at such an idea and felt that an officer of the Court - and he meant Mr. Trott - should be the person. He saw that W was anxious about Mr. Trott's attitude towards the problem which had been, for him, highlighted by the letter of the 13th May.

We would, however, remind Mr. Michel that on the 13th July, the learned Deputy Bailiff said this:

Had it not been for the excellent report and evidence of Mr. Hawkes the Court might well have decided to see the child in Chambers itself. The Court prefers the procedure adopted by Mr. Hawkes".

Mr. Michel cited to us some authorities all of which were helpful but each of which really turned on its own particular facts. We have considered them carefully. We need cite only one, Churchard -v- Churchard (1984) FLR 635, where Ormrod, LJ said this (it is a case that dealt with the refusal of children to see their father):

> ***"It is a very sad and tragic case, as I have said, but it is one of those cases in which the problem of access has proved to be insoluble in spite of immense effort by all concerned. The syndrome is one with which all judges in the Family Division, and those exercising jurisdiction in family cases, are familiar. Fortunately, it does not occur very often but when it does, in my experience, it is usually exceedingly intractable and very difficult to deal with indeed. I think the difficulty in dealing with it arises mainly because most of us understand the nature of the trouble but it seems to occur mostly in children of this sort of age - 10 and 8 - and it takes the form of an implacable refusal by the children to see their father and a very determined stance being taken by their mother (or the custodial parent) in support of the children and their refusal and an almost equally implacable determination by the non-custodial parent to achieve access. I use the phrase 'achieve access' intentionally because I do not think that in these cases the parents pay very much attention to the real welfare of the children concerned. The battle is a battle essentially between parents continuing from the past".***

And again, at p.639, the learned Judge said this:

> ***"The only thing in the circumstances is for the parents to behave like adults and accept the situation which has come about for whatever reasons. The law is not omnipotent. Frequently, as we all know, there are situations which courts have to accept. All they can do is to impose consequences. In this particular case there are no consequences that the court can impose, even if it thought fit. The reality has to be acknowledged therefore. Reality in this case is that the children cannot be compelled to see their father in the present circumstances. He must accept that".***

We believe that W does accept that. He behaved before us very reasonably and very properly. He merely says: "Let me be sure that nothing has changed".

We asked Mr. Michel to address us, at the close of this morning's hearing, on the question of the powers of the Court to see the children in a case where, like any other, and however much we may sympathise with one or both of the parents, the guiding rule for the Court must be the paramount interests of the child.

Some of the authorities which he cited to us are in point. First, he quoted from Rayden on Divorce (16th Ed'n): p.1012, where the learned author says this at para. 40.18:

> ***"Power of a Court to see the children - views of the children:***
>
> ***The court will be assisted in ascertaining a child's ability to understand the issues involved in the proceedings and to ascertain the wishes by the guardian ad litem where one has been appointed to safeguard his interests, or by the welfare officer where a report has been requested. The rules make no provision for the court to see the child privately, but in the high court and county court it is a matter for the judge to decide in the exercise of his discretion whether or not to do so. It is undesirable for a judge to promise children that he will not disclose what they have said to him, since it is necessary to give the parties the opportunity to deal with any matters which the children divulge and which may influence the judge in reaching his decision. The views of the children are an important factor and one of the matters to which the court must have regard in the Act of 1989 although they may not be conclusive. And we are not, of course, dealing with the Children's Act 1989 or any such English Statute Law".***

And then Mr. Michel cited to us two cases, the first of these was In re A, (minor's wardship) (1980) 1 FLR 100 at p.101, and he quoted to us this passage:

> ***"And when a local authority is party to wardship proceedings of this kind it is important that an independent person should see the children and ascertain what their views and feelings about the situation are; just exactly as would be done if the conflict was between parents or a parent and another relative. And, moreover, in cases such as the present it is of great assistance to the court if an experienced welfare officer visits the home of the mother, and not only sees it, sees the mother in her own home surroundings; but is able to make enquiries and report on the kind of life that she is living and the kind of people with whom she is associating. So concerned was I about the absence of any independent report about these children that I arranged yesterday afternoon for them to be brought up to this building and seen by one of the welfare officers attached to the Family Division".***

Finally, he read to us from another case, D -v- D (1981) 12 FLR 74, at p.76 where Ormrod, LJ said this:

> ***The judge did not see the child, I think he may actually have declined to see her. The first ground of appeal is the***

remarkable one that the learned judge failed to see the child and ascertain her wishes although invited to do so by counsel. If ever a matter was a personal matter for the judge it is a question of seeing or not seeing children. It is a highly sensitive decision both for the child and for the judge himself. And a judge in my judgment is fully entitled to make up his own mind without any kind of criticism from this court about whether or not to see children. It is a very delicate situation indeed, in my experience, and it can be extremely embarrassing to a judge when he can see already the likelihood that he will come to a decision which is adverse to the wishes of the child. One cannot get involved in an argument with a 11 year old (or as in this case a 13½ year old) ***and it is doubtful whether any useful purpose is served by interviewing a child of this age only to make a decision contrary to her wishes. That does not do very much to reinforce her trust in adults. For my part I fully understand the learned judge's decision in this case not to see the girl is entirely right and as Mr. Roberts has recognised there is no basis whatsoever for criticism of his conduct in that respect".***

All that is very helpful. The Court reposes every confidence in Mr. Trott and wishes that confidence to be known. Our decision is in no way to be taken to be a criticism of the slightest kind of Mr. Trott's ability. However, because W might have a sense of grievance over the letter of the 13th May, we have decided to see D and we would like to see him at 9.30 a.m. on Monday morning. If that cannot be arranged Mr. Michel will tell us so.

Mr. Michel spoke to us of "the headmaster's study" and the fear to which D might be put. We would hope that this will not be the effect. We expressly ask both parents to exercise restraint and particularly the wife.

D returns from holiday on Friday evening and we would would not wish his weekend to be traumatised in any way by this decision. We say this particularly because we see that nervousness in adults will only communicate itself to the child and that is the last thing that we want.

Authorities

Rayden on Divorce (16th Ed'n): p.1012.

In re A, (minor's wardship) (1980) 1 FLR 100.

D -v- D (1981) 12 FLR 76.

Sheppard -v- Miller (1982) 3 FLR 124.

Churchard -v- Churchard (1984) FLR 635.

Re B, (a minor) (access) (1984) FLR 648.

Devon County Council -v- C and another (1985) FLR 619.

Re KD, (a minor) (access: principles) (1988) 2 FLR 139.