

ROYAL COURT
(Samedi Division)

67.

19th May, 1993

Before: The Bailiff, and
Jurats Myles and Herbert

Between:

Mr B

Plaintiff

And:

Mrs B

Defendant

Application by the Defendant for an Order lifting the injunction in the Plaintiff's Order of Justice preventing the Defendant from removing or taking any steps to remove the child from the jurisdiction.

Advocate Miss D.M.C. Sowden for the Defendant.
Advocate Mrs. D. Lang for the Plaintiff.

JUDGMENT

THE BAILIFF: This is a summons to lift an injunction taken out in July, 1992, by the husband preventing the wife from taking the child of the marriage, M away from Jersey.

The couple have been in Jersey for something like 16 or 17 years. They are originally from Madeira and are Madeirans. There are relations of both parties in Jersey, but only relations of the wife in Madeira.

M was born in 1990, and is therefore a very young child. At present he is living with his mother and there is no evidence to suggest that she is not a good caring mother. Equally no evidence has been adduced today to suggest that the father is not a good father. Indeed, he has given evidence of his love and affection for the child and is paying £75 per week for the child's upkeep together with that of his wife.

It is quite clear to us that the marriage appears to be ended and we were told that there will be, or may well be, in approximately a year's time an application for a divorce on the grounds of two years' separation which took place, *de facto*, in March of this year.

We were also told and we heard allegations that the husband had been guilty of a matrimonial offence and therefore, as Mrs. Lang for the husband pointed out, it is open to the wife to bring a petition, if she has the evidence, before the expiration of two years.

We were asked to lift the injunction; we were not asked to make a decision on custody, care and control. The Court ordered a report to be prepared by the Children's Officer about M which we have had before us. There are recommendations in that report which are germane to the question of custody, care and control, but not we think, at this stage, such that we have to follow them. We have to decide whether the injunction should be lifted having regard to the circumstances I have mentioned and to the relative hardship and distress which would occur to both the husband and the wife, depending on our decision.

This is a case where both husband and wife, if the injunction is lifted, will have different results for.

If the injunction is lifted, it is quite clear to us that the child will go with his mother and live in Madeira. That means he will be cut off from his paternal relatives in this Island and the chances of their going to see him are fairly remote. Indeed, his grandmother said she would not or could not go.

If, on the other hand, he stays here, he would still have some maternal relations, but the wife has said that she would be frightened to keep the child here because the husband might remove him from Jersey and because of that and of the threat, she says, he has made to do so, she has not allowed him to see the child since April.

In passing, we would observe that if she really has that fear, she has not availed herself of her option to take out an injunction, rather than merely denying the husband access and then alleging the reasons for doing so at today's hearing.

Under all the circumstances we think that we are not going to lift the injunction. A case has not been made out as to why we should. I repeat: we are not being asked to sit, as the Matrimonial Causes Division of this Court, to decide the eventual custody care and control of the child. That will be a matter to be dealt with in due course by that Division. We therefore do not lift the injunction; it will remain; and we also order the wife to

provide reasonable access to the husband for as long as the injunction is in force.

In reaching our decision we have had regard to two other factors. The husband stated he was willing to renew the offer he had made to his wife on two occasions, namely to leave his present flat, so that she could have it for herself and M ; however the wife, through her counsel, has said that she would not accept that offer because the flat has too many unhappy memories. Secondly, the husband has given an undertaking to this Court that if we kept the injunction in place he would not take the child away from the jurisdiction. Of course Miss Sowden is right in saying that an undertaking of that nature is not the same as an injunction; but its significance will not have escaped Mrs. Lang, who will no doubt explain to her client that if he breaks that undertaking, such a breach could be something that could tell against him when the action gets to the Matrimonial Causes Division.

Accordingly the summons is dismissed and the injunction remains and we order reasonable access to be provided by the wife to the husband. If it cannot be arranged amicably, the parties will have to come back to this Court.

No authorities.