

COURT OF APPEAL

28th March, 1994.

67.

Before: The Bailiff, Single Judge.

Between:

GM

Appellant

And:

LM

Respondent

Application by the Appellant:

- (1) under Rule 12(1) of the Court of Appeal (Civil) (Jersey) Rules, 1964, for leave to adduce further evidence to be placed before the Court when it sits to consider the Appellant's appeal against the Judgment of the court below of 30th October, 1992; and
- (2) for an Order that the Respondent pay the costs of and incidental to this application.

The Appellant on his own behalf.
Advocate N.F. Journeaux for the Respondent.

JUDGMENT

THE BAILIFF: I have before me an application by the Appellant for fresh evidence to be admitted before the Court of Appeal when it sits to hear the appeal on the Judgment of the Royal Court of 30th October, 1992. I understand that the Court will sit in the week beginning 18th April, 1994.

At issue between the parties is the question of the children. It is not a question of who was to blame for the difficulties that arose between them.

The interests of the children are to be regarded as paramount. The Children's Department - and sometimes the Probation Service but mainly the Children's Department - is the eyes of this Court. Of course where the Court has had the benefit of having a case before it with witnesses on oath being examined and cross-examined, the Court reaches its own conclusions. But when it does not - and it cannot do so in every case - the Court must rely on the integrity and the total objectivity of the Children's Officer's report.

GM made a similar application to adduce evidence to this Court - in fact to myself - on 10th December, 1993, and I set out in the Judgment of that date the principles that had to be followed in deciding whether to admit fresh evidence.

There are three pieces of evidence for which leave is sought: one is the evidence of E, who has already been heard before the Court from whose decision there is an appeal pending. It is suggested that her new evidence could somehow strengthen her previous evidence as, if it had been put before the court below, that court would have been prevented from attaching only little importance to it. In my opinion, her evidence is of a peripheral nature and not really directed to the welfare of the children.

The same applies to that of F who is said to have assaulted the appellant after I gave my ruling on 10th December. I fail to see how that matter can in any way be of assistance to the Court of Appeal.

The one matter in today's application that gives me some doubt is the transcript. When I sat on 10th December, one of the many requests was that I should order that the transcript be prepared of the injunction hearing - that is to say the hearing that took place between 1990 and 1991, but I ruled (and this is still the position) that the appeal is not brought against those injunction proceedings but against a decision of this Court in respect of the same matters given on 30th October, 1992. Merely because GM has now, at his own expense - and he is to be commended for doing that because to him it is very important - obtained a transcript, or at least has obtained some tapes from which he has had typed certain extracts, it seems to me illogical that the fact that those extracts are available in any way alters the principle of my ruling in December.

Whilst I have every sympathy with GM in the position in which he finds himself, it will of course always be open to the Court of Appeal if it so wishes (and the application can be made to the full Court) to over-rule me and to order that those extracts be put before them.

So far as the other two matters are concerned - the evidence of F and E - I have no doubt that the matters

raised in a long letter which GM wrote to the Children's Officer at the end of last year, and which he will no doubt bring before them again will be examined by them quite objectively.

I do not think that the two matters he refers to are such that they would necessarily have influenced the Court to give a different decision in December. Accordingly, all three applications are refused with costs in the appeal.

AUTHORITIES.

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Court of Appeal (Jersey) Law, 1961: Article 32.

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(1992) Jersey Unreported No. 105; (1989) JLR N.4.

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JLR N.4.

Barnes -v- A.G. (1987-88) JLR 669 C.of.A.

Skone -v- Skone & Anor. (1971) 2 All ER 582.

Mayger -v- Mayger (10th December, 1993) Jersey Unreported C.of.A.