

ROYAL COURT
(Samedi Division)

130.

16th November, 1994

Before: The Deputy Bailiff, and
Jurats Herbert and Potter

Between:

Mr L

Plaintiff

And:

Mrs L

Defendant

Advocate R.G.S. Fielding for the Plaintiff.
Advocate J.D. Melia for the Defendant.

JUDGMENT

5 THE DEPUTY BAILIFF: These are eviction proceedings, commenced by Order of Justice, which have been instituted pursuant to an Order of the Matrimonial Causes Division on 15th April, 1994, and by which Mr L (the Plaintiff) seeks to have his wife, Mrs L (the Defendant) evicted from the former matrimonial home.

10 The history is a little tortuous but it may be summarised as follows:

15 The parties were married in 1973 and there are three children of the marriage now aged 12, 10 and 5. The matrimonial home is and was, at all material times, a property in St. Brelade, which is owned by the Plaintiff.

20 In 1992 the Defendant instituted proceedings against the Plaintiff seeking a judicial separation on the ground of cruelty and, at the same time, or very near thereto, instituted proceedings by Order of Justice containing interim relief which ousted the Plaintiff from the former matrimonial home. The two proceedings were later consolidated and were set down to be heard by this Court over five days commencing 8th February, 1993.

25 Partway through the hearing, on 11th February, at the suggestion of the Court, the parties and their respective legal advisers commenced negotiations concerning terms upon which the proceedings might be compromised. On Thursday, 11th February, 1993, the parties reached an agreement in terms which are set out in the Plaintiff's Order of Justice in the following terms:

- 5 (i) That the Defendant would leave the matrimonial home on 30th April, 1993, provided that she would use her best endeavours to go sooner if suitable accommodation was found;
- 10 (ii) That the children would be in the joint custody of the Plaintiff and the Defendant with care and control to the Defendant and liberal access to include staying access to the Plaintiff.
- 15 (iii) That the Plaintiff would pay to the Defendant a capital sum of £35,000.00 payable as to £30,000.00 on 30th April, 1993, or sooner vacation of the former matrimonial home by the Defendant, and £5,000.00 on the first anniversary of the first payment;
- 20 (iv) That the Plaintiff would bear responsibility for school fees, school insurance, school lunches and general expenditure in connection with school attendance being De La Salle for the two boys of the marriage with Beaulieu in contemplation for the daughter of the marriage when she should attain the age of full time education;
- 25 The Plaintiff would also supervise and pay for the purchase of uniform and games kit as required by the schools;
- 30 (v) That the Plaintiff would pay maintenance at a rate of £45.00 per week per child with annual review on the basis of the Jersey Retail Price Index until further order;
- (vi) That the Defendant would receive the Family Allowance from Social Security;
- 35 (vii) That the Plaintiff would have the benefit of the income tax allowances for the children;
- 40 (viii) That the Plaintiff would pay private health insurance premia with BUPA for the children. That insofar as concerned private health insurance cover for the Defendant, the Plaintiff's then employers agreed to use their best endeavours to ensure that the Defendant might remain a member of the firm's Group Scheme on terms that she would bear responsibility for her own premium;
- 45 (ix) That the contents of the matrimonial home specifically excluding the Plaintiff's wine cellar or wine stock would be divided between the parties by agreement and that failing such agreement the President of the Law Society
- 50 would be asked to nominate an independent arbiter;

5 (x) That the Plaintiff would bear responsibility for the cost of the children's medical and dental expenses net of any available subsidy on the basis that full consultation would occur between the parties in relation to the children and that the Plaintiff would be fully and continuously apprised of any medical treatment of a non-routine nature undergone by the children;

10 (xi) That each of the parties would retain his and her own car;

(xii) That the whole life policies of insurance written in the name of the Defendant would be assigned by her to the Plaintiff;

15 (xiii) That each party would bear his and her own costs.

20 Subsequently the Defendant denied that any agreement had been reached and the Plaintiff accordingly issued a summons praying that the two sets of proceedings ought to be stayed or dismissed on the ground that the parties had entered a binding compromise.

25 On 29th April, 1993, this Court, for the reasons given in a judgment delivered by the learned Bailiff, declared that a binding agreement in the terms set out above had been reached between the parties on 11th February, 1993, and ordered that the proceedings be remitted to the Matrimonial Causes Division to consider whether the agreement ought to be ratified. The Defendant subsequently appealed against that judgment but it appears that the appeal has
30 not been pursued.

35 On 15th July, 1994, after hearing argument from counsel, the Matrimonial Causes Division of this Court ratified the agreement, noted the Plaintiff's undertaking not to remove the Defendant from the matrimonial home until three months from 15th July, 1994, and ordered that the petition for judicial separation be stayed and that the Order of Justice be struck out three months from 15th July, or sooner should the Plaintiff regain possession of the matrimonial home before that date.

40 The Defendant has lodged a notice of appeal against the decision of the Court ratifying the agreement but has not applied for any stay of execution of that Order. It is not disputed that the Defendant has failed to comply with the Order of the Court and
45 is still in occupation of the former matrimonial home with the three children.

50 The Plaintiff, in the meantime, is living in very unsatisfactory accommodation. He has obtained from a friend the use of an office 18 ft. by 12 ft. which has a sink with running water, but is otherwise devoid of proper facilities. He enjoys, pursuant to the agreement, staying access and the children spend a

night with him every so often, camping in this one room. There are no cooking facilities and the Defendant is accordingly obliged to take the children out to restaurants on evenings when he is exercising access, which involves considerable expense.

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The Plaintiff was made redundant from his work as a conveyancing clerk in August, 1994. He intends to set himself up in business on his own account from the former matrimonial home which he asserts he is unable to do from his present accommodation.

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He has placed before us a certificate from his doctor, which states that he is suffering from stress and from hypertension caused by his matrimonial problems and his living conditions. His counsel asks the Court to order the eviction of the Defendant by mid-January, 1995, so that she and the children are permitted to remain in occupation of the property over the Christmas holiday.

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The Defendant told us, very frankly, that she had made little effort to find alternative accommodation since the Order of the Matrimonial Causes Division in July, 1994. Her explanation was that she had appealed to the Court of Appeal and although she had made some enquiries, particularly of the Housing Department, she put it to us that she had not considered it appropriate to commit herself whilst she was pursuing her appeal. In that connection it appears that she has not yet filed her case, but that it will be filed in December. The appeal is not likely to come on, unless there is an extraordinary sitting of the Court, until Monday, 3rd April, 1995.

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The Defendant also placed before us a medical certificate showing that she was also suffering from stress, anxiety and depression in relation to the uncertainty caused by these proceedings.

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Miss Melia urged us to consider the balance of hardship. There were three children of the family, of which the Defendant had the care and control pursuant to the agreement and the Plaintiff's need for a four bedroomed house was not urgent. She submitted that the *status quo* should be preserved until the appeal. She conceded that the Plaintiff was entitled, pursuant to the Court's decision of 15th July, 1994, to an eviction order, but she asked for a delay in execution until the conclusion of the appeal.

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We have found this a very difficult decision. There was an agreement which was to have been implemented as long ago as April, 1993, that the Defendant would vacate the property with the children in consideration of a money payment. Although the long delay which has occurred since that time is, in part at least, due to extraneous factors, it is now some 18 months since that agreement was due to be given effect.

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We have considerable sympathy for the Plaintiff and, indeed, considered whether a very short delay was not appropriate.

5 On the other hand there are the interests of the children to be considered. However it must be said that if the Defendant had taken proper steps to seek out alternative accommodation, particularly since the agreement was ratified in July, the interests of the children might well have been better served.

10 Be that as it may, we have had to include in the balance the fact that the Defendant has appealed to the Court of Appeal. If we were to grant a delay until mid-January, as suggested by the Plaintiff's counsel, the Defendant and the children would of course have to vacate the property at that time.

15 If the Court of Appeal were subsequently to reverse the decision of the Matrimonial Causes Division to ratify the agreement, the position would revert to that which obtained in April, 1993. The agreement would technically still stand but its ratification by the Matrimonial Causes Division would have been overturned. In effect, therefore, the agreement would be a dead letter and the parties would be back to where they were when negotiations commenced during the proceedings in February, 1993.

20 We think that the ouster would revive, and that the Plaintiff would be obliged to vacate the former matrimonial home in favour of the Defendant and the children. Such a yo-yo effect upon the children would, in our judgment, be potentially damaging and disruptive for them. It is the risk of such an eventuality which has led us to decide that the Defendant should be given an opportunity to prosecute her appeal before the eviction order becomes effective.

25 We are not going to leave the date of execution open ended. We accordingly grant an eviction order but delay its execution until Monday, 10th April, 1995. Clearly, if the Court of Appeal upholds the Defendant's appeal, this order will fall away. We have expressed ourselves in this way because we expect the Defendant in the meantime to do two things.

30 First, she must do all within her power to ensure that the appeal is heard by the Court of Appeal during the week beginning Monday, 3rd April, 1995. We - that is to say the Court as presently constituted - would not be sympathetic to any extension of that period on the ground that the appeal had, for one reason or another, not been brought on. Secondly, she must, in the meantime, make strenuous efforts to find alternative accommodation. This is not so much in her interest as in the interests of the children, the two eldest of whom in particular need to know where they will be living if their father returns to the property on 10th April, 1995.

5 We appreciate that this judgment may be disappointing to the Plaintiff. On the other hand he does now have a fixed date, subject to the decision of the Court of Appeal, upon which he knows that he will be able to return to the former matrimonial home. He may therefore, in the light of that knowledge, be able to make his own alternative arrangements for better accommodation during this limited period.

Authorities

4 Halsbury 44: paras. 401-413, 435-505.

