

ROYAL COURT
(Samedi Division) 23.

31st January, 1995

Before: F.C. Hamon, Esq., Commissioner,
and Jurats Gruchy and Potter

Between:

A

Petitioner

And:

B

Respondent

Order under Article 53 of the Children (Jersey) Law, 1989.

Advocate R.G.S. Fielding for the Petitioner.
Advocate A.P. Roscouet for the Respondent.
The Solicitor General representing the
Education Committee.

JUDGMENT

THE COMMISSIONER: The parties were married in 1984 at St. Ouen's Church. The two children of that marriage, C and D, were born in September, 1984, and in September, 1985, respectively.

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The disturbing background to the association is well documented in the children's report dated 8th September, 1988. The marriage was clearly a marriage of conflicting personalities punctuated by episodes of verbal and physical aggression between husband and wife.

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On 13th March, 1991, the wife successfully petitioned the husband for divorce and the marriage was dissolved by reason that the parties had lived apart for a continuous period of at least two years immediately preceding the presentation of the petition.

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A memorandum of agreement was ratified on 12th July, 1991, by consent. It gave the parties joint custody of C and D; the wife was given care and control and the husband was given reasonable access to the children, each and every Sunday. The husband agreed to pay £30 per week to the children's further maintenance, support and education. Though not entirely relevant

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to this hearing we would note in passing that the husband has not recently paid maintenance to the children.

5 The wife married BL on 17th August, 1991. The children live with them.

10 The question of access by the husband to the children has been the subject of almost continuous acrimony between the parties and has led to numerous Court actions. We do not need to rehearse them here. As a Commissioner, but with different Jurats, I have heard and adjudicated on several of them.

15 We recalled on p.5 of the Judgment of 20th May, 1994, that in February, 1994, the Children's Service wrote as one of its conclusions:

20 *As the Court will be aware, there have been numerous attempts over the past few years to ensure continuity of access. It is certainly not in the children's best interests that there have been so many returns to Court for the dispute to be resolved".*

25 We read further in the Judgment of "these emotionally damaged children".

30 The Court has been concerned with difficulties of access for seven years. In the report of 24th November, 1994, which has been updated for us, the Child Care Officer from the Children's Office concluded that "Despite numerous Court Orders and the Supervision Order there has been absolutely no improvement and the acrimony between the parties is more entrenched than ever. The effect that this acrimony has had on the children's well-being is now of grave concern. It is considered by all the professional staff who have been involved with the children that the stresses they are under are having a detrimental effect on their mental health". The Supervision Order, referred to in that extract from a very detailed report, was made by this Court on 7th June, 1993, in accordance with Article 54 of the Children (Jersey) Law, 1969.

40 The evidence of the two days of hearing has left us in some despair that this difficult case will ever resolve itself satisfactorily. Let us first consider the law and the duties that we consider that we have under the law. By Article 53 of the Children (Jersey) Law, 1969:

45 *"Where the court has jurisdiction to make provision as to the custody of a child by virtue of Article 25 of the Matrimonial Causes (Jersey) Law, 1949, or of this Part of this Law and it appears to the court that there are exceptional circumstances making it impracticable or undesirable for the child to be entrusted to either of the parties to the marriage or to any other individual, the*

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court may if it thinks fit make an order committing the care of the child to the Committee".

5 In Knight -v- Elwell (1976) JJ 391, the Court of Appeal, at p.394, said this (and this is the only case that the Solicitor General appearing for the Education Committee has been able to find in the Table where Article 53 has been invoked):

10 "It appears, from a reading of Article 53 that, as one would expect, the legislature regarded an order of the Court removing a child from the care of his parents and putting him in the care of the Education Committee as an extra measure, to be taken only in exceptional circumstances, those being, as the Law itself makes clear, 15 circumstances in which it is impracticable or undesirable for the child to be entrusted to either of the parents or to any other individual. An application under Article 53 is, therefore, an application which must be supported by evidence of exceptional circumstances justifying the 20 taking of an extreme course".

25 In R -v- G (1984) 3 All ER 460, Sir John Arnold, looking at a similarly worded provision of the Matrimonial Causes Act, 1973, signalized the word "entrust" in the statute in this way:

30 "The condition of the operation of that section is that the court is satisfied that there are exceptional circumstances making it impracticable or undesirable to entrust the child to either of the parents or any other individual. By that verb I understand the section to be describing a state of affairs in which the parent or other individual is clothed with the totality of the responsibility for the upbringing of the child. Nothing 35 short of that, in my judgment, amounts to entrusting the child to that parent or individual. Not only is that in my view the natural meaning of the words but in the context in which it finds itself, in a context which contrasts that entrusting with the committing of the child to the local authority, it seems to me inevitable that the 40 largest interpretation must be given to the word 'entrust'."

45 That could mean that if the wife were unwilling or unable to allow access to the husband, that would reflect on her capability of satisfactorily bringing up the child and render it undesirable or impracticable to entrust the child to that parent.

50 Let us examine the salient points of evidence that have been brought to our attention.

It is clear from what we have heard and the numerous reports that we have read that there are severe problems developing with

the children. Of D in the children's report dated 22nd November, 1994, we read this, at paragraph 4 (iv):

5 " D is a child of low ability, who even with the most stable of backgrounds, would have struggled at school. However, it is distressing to have witnessed a child deteriorate so profoundly. He is clearly under immense emotional strain and is now unable to cope with even the most simple of tasks. In addition to these pressures his standard of dress and hygiene are poor and despite attempts by the school to address this with A
10 . there have been no sustained improvements".

15 D has physical problems which are because of his age not yet operable. There are difficulties with his speech and drooling. He has suffered from epilepsy. Dr. Ince described this as 'petit mal'; there have been no recent occurrences. In passing we must say that Dr. Ince, whose practice had treated the children from birth and both parents had no concern over the way the children were being treated. His concern was with the recent
20 emotional state of the mother.

We read the report of Miss Margaret E. Brown, an Educational Psychologist. She has not, it must be said, been able to devote a great deal of time to interviewing D . She saw him for half an hour in July, ten minutes in September and then for approximately one hour on a one-to-one basis. Her conclusion was that D is emotionally disturbed by the conflict between his natural parents. The mother has remarried and lives with her husband in a farm at Les Landes that she owns having inherited a number of properties from her parents.
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The stress is adult imposed and she had no doubt at all that D would benefit from a period of short term assessment away from the emotional conflict. She agreed with us that removal from home to 'La Préférence' would be very upsetting for him. D is clearly attached to his mother.
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One of D's teachers, Mrs. Mary Bate, at another school since last year, told us of the problems. She helped to prepare a report. It shows a child who appears to be distressed a great deal of the time. He is disruptive. He gets up from his place and wanders around. He was often very tired. Mrs. Bate of course had close personal contact with D . Mrs. Renouf the head teacher at the school did not. The staff discuss all the children, and any problems that those children may have in the staffroom daily. She spoke particularly of D smelling noticeably; strong enough, she told us, to cause a teacher to "wish to gag". She had sent a copy of her report to the mother. There had, since Christmas, been an improvement. However, the mother had burst in on Mrs. Renouf in her office before school on the Tuesday before the hearing. She had D with her. The
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5 mother had shouted and sworn at Mrs. Renouf. This was not something that Mrs. Renouf had experienced before. Since that time D and C have treated her with great disdain and without respect. She agreed that, if the children were taken into care, it would be traumatic to remove them from their peers, but difficult for them to continue to be educated at Les Landes, which is very near to the farm.

10 We have dealt in some detail with D . It is not conceivable that the children be separated at this time. The pressures upon C appear also to be very great. He appears genuinely concerned for his mother and that she might harm herself if her children were taken from her. In one of the confidential reports there is a statement. It is at p.3 of the report dated 15 13th May, 1994, which confirms what we have heard in this Court. James has much information which he could not have gleaned for himself. The report reads:

20 *"All of this information must have come from someone and it is information which he does not need to know and should not know".*

25 We can only instinctively understand the emotional pressure that this small boy must be under. This fits in completely with the description given to us by Miss W , Miss C , the father's aunt, and indeed by the father himself, that when the children are taken back home to Les Landes after a visit, they had become very quiet. Miss W said that it was noticeable that they had changed from excitement to sadness. Once she had even 30 wondered if they were still in the car, so quiet had they become.

This does not mean physical fear, but we are certain it is demonstrative of the deep emotional stresses which they are under.

35 Mrs. Sarah Brace is a qualified social worker. She has a good relationship with D and C , but the mother deeply resents her involvement, as she appears deeply to resent anyone interfering with what she considers to be her absolute right to the children. Mrs. Brace had never seen children so aware of the problems that beset this family. The mother is seeing a 40 psychologist at the moment at the recommendation of Dr. Ince and certainly matters have improved since our last order concerning Christmas access.

45 We do not believe that the mother can change easily. It may be that, as Mrs. Brace put it in her report, *"the mother's behaviour is entirely due to the stresses and strains of these numerous court proceedings"*. That may well be so; her behaviour has become increasingly neurotic. But that does not mean that she 50 does not love her children, nor does it mean that she wishes them harm. But there are concerns voiced by the Children's Officer

that the mother's ability to care for the children may be independent of the disputes over access.

5 The children's report of 22nd November, 1994, gives three possible courses of action. First, that the Court takes no further action. That would, without a doubt, deny the children access to a genuinely caring father of whom they are both fond. Secondly, that the Court award care and control to the father. That is not a feasible option because of the father's work commitments and accommodation. In any event the father wishes to
10 comply with the recommendations of the Solicitor General.

15 The third option for a care order is the one under consideration. Mr. Fielding who has argued for his client with great courtesy and fairness suggested as a fourth option that the children remain with the mother and that this application is put back for three months.

20 There is a report by a Children's Officer, Mr. Coomer, dated 8th September, 1988, which in our view describes the mother very well (at p.6):

25 *"She appears grimly determined to have only her own narrow viewpoint recognised and has on occasion proved totally inflexible when variation in the agreed access arrangement has been sought on entirely reasonable grounds".*

30 The mother gave her evidence with conviction but sadly with little credibility. When she denied swearing at Mrs. Brace in a telephone call, we believe Mrs. Brace. When she denies swearing and shouting at the Headmistress of Les Landes School, we accept Mrs. Renouf's version of events as true.

35 We totally reject the mother's explanation of how C came to read the school report of 17th October, 1994, in her car; how he refused to hand it back to her until he had digested it and explained it to his younger brother.

40 We believe that the mother, perhaps through fear, perhaps through a hatred of the husband and her distrust of authority, has told the children far more than they should know. We are extremely doubtful that the mother's affidavit of means of 23rd February, 1995, is a true reflection of her assets structure.

45 The boys appear happy enough in their home environment. They play with some of the children of their neighbours. If a neighbour, Mrs. H, is right that she had seen the children very distressed because their father had supposedly told them that they would be taken away and never see their mother again, what
50 are we to make of the evidence of Mr. KC who runs the Youth Club at St. Owen that when the children arrived they used to telephone their father.

We heard from relatives of the husband that C and D were very happy in their presence, but would only acknowledge them secretively if at all when they met them and they were accompanied by the mother.

Their personal cleanliness has become something of a major dispute between the mother and the father. Perhaps the father is a paragon of cleanliness, perhaps the mother is not. We are more concerned with the emotional state of these two children than their state of bodily cleanliness, but it is quite wrong that D in particular or either child should arrive at school dirty and in soiled clothing.

There have been 14 Court Orders since 1988 concerning access to the children. We have, after anxious thought, decided not to see the children ourselves. Much of the psychological problems that have arisen are due to the awesome difficulty that C, in particular, has in not causing distress to his mother while remaining loyal to her and to his father. To see the children would, in our view, only increase that difficulty.

We have also anxiously considered Mr. Fielding's suggestion - and we repeat that we do not concede that the mother could have had more sensitive and fair representation that she has received from Mr. Fielding - that we delay matters further. That is, in our view, a temptation to shelve the problem which we must resolve.

C and D have a right to free and undisturbed access to each of their parents. The mother has been in possession at some time of considerable wealth. We have, as far as possible, avoided the contentious issue as to how her funds have apparently been dissipated. She told us that the children "want for nothing". Sadly they do. They need a stable and unemotional base from which they can both know and appreciate the good and bad sides of each of their parents.

The father wishes the children to be taken into care. We asked Mr. Fielding at one point to put the question as to whether the mother could accept that as a temporary solution in the interests of her children. We adjourned. We have every confidence that he explained the matter fairly and sympathetically. The mother did not, after that, return to Court.

We remain convinced that this is a case of exceptional circumstances which make it impracticable or undesirable for the children to be entrusted to either of the parties of the marriage. Nor can we see that it is practicable for the children to be entrusted to any other individual. There is only Miss C or Mr. DC, who is a widower living with his two daughters aged 12 and 17, who could be considered.

In the final paragraph of her report, Mrs. Brace wrote:

5 *"It is acknowledged that any option pursued with this
family is fraught with difficulties and we do not
underestimate the possible ramifications. However, it is
essential that the children are protected from the
enormous emotional pressures to which they are currently
subjected"*.

10 The concerns of this Court, as indeed the concerns of the
Children's Office, are predominantly with the children, but the
mother can, if she wishes to make a real effort, take stock of the
15 situation and possibly stabilise it. In that context we are going
to make the order sought by H.M. Solicitor General on behalf of
the Education Committee under Article 53 of the Children (Jersey)
Law, 1969, and now make that Order committing the care of the
children to the Committee. However, we will recommend that the
20 children remain *pro tem* in the actual care of the mother. If this
experiment should fail and the mother should not subjugate her
firm prejudices to the interests of the children then the
Education Committee will at its discretion be able to remove the
children from the mother without the expense and delay of further
25 recourse to the Court. The mother must essentially listen to
advice from her counsel and from the Children's Office. If she
fails to send the children to school, clean and properly clothed,
or if there is a continued marked deterioration in the children's
emotional development, or if she wantonly breaches an access
order, then the order as we have said will be enforceable.

30 The Children's Office and the school have to monitor the
situation closely. If the mother's co-operation is essential then
the father must also show tolerance and understanding and consider
himself equally responsible for the well-being of his two sons.

35 If the Order is enforced, it is not intended that either
parent should be denied reasonable access to the children. It
would clearly be helpful for the mother to continue to receive the
psychological treatment that she has commenced. The Order, if
40 enforced, shall not extend thereafter beyond three months without
further Order of this Court.

Authorities

Matrimonial Causes (Jersey) Law 1949: Article 25.

Children (Jersey) Law, 1969: Article 53, 54.

Knight -v- Elwell (1976) JJ 391.

Rayden's "Law and Practice in Divorce and Family Matters" (14th Ed'n): para. 41.

F -v- F (1959) 3 All ER 180.

R -v- G (1984) 3 All ER 460.

Rakusen, Hunt & Bridge: "Distribution of Matrimonial Assets on Divorce" (3rd Ed'n) (1989) paras. 4.3.1 *et seq.*

