

ROYAL COURT  
(Samedi Division)

11th April 1997

70.

Before: Sir Peter Crill, K.B.E, Commissioner, and  
Jurats Vibert, Qu er e

Between	Y	Plaintiff
And	P	Defendant

Application by the Defendant for leave to serve a notice of appeal on the Defendant against the decision of the Greffier Substitute, Family Division, of 26th February, 1997, granting unsupervised access by the Plaintiff to the Parties children , notwithstanding that the time limit prescribed by Rule 15/2(2) of the Royal Court Rules 1992 for serving such a notice has expired; and

Application by the Defendant for a stay of the said decision of 26th February 1997, and a substitution therefor of an order for supervised access, pending determination of the appeal.

Advocate R.J.F. Pirie for the Defendant  
Advocate A.R Binnington for the Plaintiff

JUDGEMENT

THE COMMISSIONER: This is an application by way of summons by Miss P seeking leave to file a notice of appeal out of time against the judgment of the Greffier Substitute on the 26th February 1997 which dealt with access by the Plaintiff to two small children. The Applicant had lived with the Plaintiff and had had the two children by him.

The order of the Greffier Substitute was that on the first three occasions after the making of his order, beginning on the weekend of the 1st and 2nd March 1997, access should be supervised in accordance with an earlier order made by the Greffier Substitute on the 11th December 1996, but thereafter on the next six occasions access would be unsupervised provided it did not exceed two hours. There was a further order that an application by the Plaintiff for access thereafter should be adjourned to a date to be fixed. The first thing the Court has to decide is whether we should give leave to serve a notice of appeal out of time; Mr Pirie for Miss P has been very frank and accepted responsibility for the delay of some two and a half to three weeks. Mr Binnington for Mr Y has pointed out that this was not the first time in which delays had occurred due to Mr Pirie's difficulties as a single practitioner. I think it is right for me to say that the Court, whilst appreciating the difficulties of single practitioners cannot change the usual rules which apply when considering applications of this nature, but as it is the welfare of children - and very young children at that - which is at stake in this application, we are minded to grant leave to file and to serve a notice of appeal out of time; but such costs as may have been thrown away by this delay - and both parties are legally

aided, but there may be some - shall be paid by Mr. Pirie personally.

5 When we come to the next point, that is to say the application by Miss P that we should stay the unsupervised access to the children pending determination of the appeal, it is a slightly more difficult decision in as much as we have no affidavit before us from Miss P which is normally required in applications of this nature. If we were to make such an order Mr Binnington has suggested that in deciding whether an appeal would be nugatory there could three matters to take into account.

15 Either his client is a child molester - but the words of the report is that such an allegation is unsubstantiated - or secondly Miss P has genuine, but groundless fears, expressed in a document which was before the Judicial Greffier Substitute on the 26th February which sets out in graphic detail what is said to have been told to her by her children, which, if true, would give rise to considerable fear for the welfare of the children; and thirdly there are no grounds for her allegations which are in fact only made through malice.

25 Behind all this is the fact that the children have not yet been seen by a child psychologist and whilst it is right for the Court to take careful note of the decisions reached after a very full examination of the children and the allegations, by competent people, nevertheless, a child psychologist's opinion as to whether such allegations are likely to be made and whether they are fantasy or not, and what effect they would have on the children, and so on and so forth is something that should be before the Court before it can make an order which it is satisfied it would be just to make. It is for that reason - notwithstanding that we do not have an affidavit from Miss P ; and notwithstanding the tests Mr Binnington quite properly put before us about the question of rendering the appeal nugatory - that we are going to make the order as requested in paragraph 2 of the summons: we substitute supervised access for the unsupervised access, but there are two provisos to our order. Firstly, the appeal shall be expedited and heard within four weeks from today; and secondly we have noted that Mr Pirie has undertaken to pay the costs of the supervisor and we order that he shall do so.

45 As both parties are legally aided, the order I have already made as regards costs being thrown away by the delay has already covered today's hearing.

Well we are grateful to both counsel for their help.

No Authorities