

In the Royal Court of Jersey

18th December, 1987.

Mr M (Petitioner)

-v-

Mrs M (Respondent)

The Representation of Mr M and The Representation of Miss

A - Resumption of hearing adjourned on the 2nd October, 1987.

BEFORE V.A. Tomes, Esq., DEPUTY BAILIFF OF JERSEY

Assisted by Jurats Vint and Myles.

Advocate G.R. Boxall for Mr. M

Advocate A. Messervy for Mrs. M

Deputy Bailiff;

In a question of civil contempt for the breach of a Court Order, the criminal standard of proof is to be applied, that is to say that the Jurats have to be satisfied beyond all reasonable doubt that the Order of the Court has been breached. We are not persuaded that we should follow Dorrell -v- Dorrell, 1985 F.L.R. 1089, and require a Representation alleging a civil contempt to set out, seriatim, the nature of the acts alleged to be in breach of the Order, despite the fact that the liberty of the person alleged to be in contempt is in jeopardy. The Representation is not an application for an Order that the Respondent be committed to prison, the prayer of the Representation is merely that the Respondent be convened before the Court to answer for her alleged contempt. The prayer does not seek any specific remedy and is to be contrasted from an Order of Justice which seeks specific remedies after proof of the facts alleged. A Representation alleging contempt puts the Court on

inquiry and we do not intend that our procedure should be hide-bound by rules and precedents. A degree of common sense will be applied, subject always to the principal that the Court must be satisfied beyond all reasonable doubt. The Court is satisfied beyond all reasonable doubt that the Respondent did breach the Order of the Court of the 3rd March, 1987, and that she is in contempt. She was given a very clear warning that the Court Order had to be complied with strictly, and she failed to do so, however, in the mind of the Court no useful purpose would be served by imprisonment in this case and we are going to take the merciful view that the Respondent has purged her contempt by her ready compliance and co-operation over the interim order made on the 2nd October, 1987, for a period now of upwards of two months, insofar as D.            and R            are concerned, and were pleased to hear that by agreement, a degree of flexibility has been possible recently. The Court considers that it is seized of the question of access and as a permanent Order we confirm the Order of the 3rd March, 1987, paragraphs 1(a) and (b) insofar as D.            and R            are concerned. We make no order as to A           , but of course the Petitioner is entitled to re-apply at any time. The Court is pleased to note the ready agreement reached this morning, whereby the Petitioner should have access to D.            and R            between 4.00 p.m. and 8.00 p.m. on Christmas Day, 1987, and we ratify that agreement.

We accept the view expressed by Miss A            that the basic conflict is one between the parents, and that the difficulties over access are in effect the arena in which the conflicts are acted out. We express the opinion therefore, because we have no power to do more, that both parties should agree to a minimum of six joint counselling sessions as outlined by Miss A           ; the time is long overdue when these parties should cease fighting each other. We have judicial knowledge of the fact that there is in existence at least one judgment of the Petty Debts Court for arrears of maintenance, and that the Viscount's department are in receipt of instructions to effect the immediate arrest of the Petitioner on that judgment. Whilst this matter is not before us, we express the hope that the Respondent will take a similar merciful view to that which we have taken of her contempt, and

withdraw those immediate instructions and not re-instate them until the second week of January at the earliest - this will enable the Petitioner to retain his liberty over the festive season and make arrangements for the payment of the debt. However, we make it clear that he cannot be forgiven any non-payment of maintenance for his children. We ask the Greffier to acquaint both the Viscount's officer and Messrs. Pickersgill and Le Cornu with our request.

Authorities referred to in the judgment:

Dorrell -v- Dorrell 1985 FLR 1089

Other authorities referred to:

✓ Halsbury 1986 abridgement para 395, p. 99 re- civil contempt.

