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ROYAL COURT
(Matrimonial Causes Division)

21st August, 1989

Before: The Bailiff and
Jurats Mrs. Myles and Mrs. Le Ruez

Between:	M	Petitioner
And:	N	Respondent

Application by the Petitioner:

1. THAT the provisions of paragraph 5 of an Order of the Royal Court of the 9th January, 1989, granting the Respondent staying access to C, child of the former marriage between the parties, at his home in London, or elsewhere in the British Isles be deleted;
2. THAT the periods of access shall take place in Jersey and shall be selected in accordance with the provisions of paragraph 5(c) of the said Order;
3. THAT sub-paragraphs 5 (d) and (e) of the said Order be deleted; and
4. THAT the Respondent pay the Petitioner's costs of and incidental to this application.

Advocate R.J. Michel for the Petitioner
Respondent on his own behalf.

JUDGMENT

THE BAILIFF: This is a summons by M (the petitioner) against W, her former husband (the respondent) asking the Court to vary an Order that was made by the Court, differently constituted, on the 9th January this year. It is not necessary for us to repeat the background to this summons except to refer to the judgment mentioned above. That judgment decided that, notwithstanding the recommendations contained in a report of the Court Welfare Officer, Mr. Hawkes, and of Mrs. Mason, that the respondent should have staying access to C, the child of the former marriage, outside Jersey.

There were a number of reasons which led the Court to its conclusion in January. Firstly, there was a recognised and accessible place in London where access could be exercised. Secondly, at that place in London, the respondent had established a firm relationship with V (whose children would also be there) and thus C, who is now ten, would have a firm and loving home where he could spend part or all of his time when he went to England with the respondent. There is no doubt, reading the judgment, that it is those two matters which influenced the Court in giving the respondent staying access outside Jersey.

This summons now seeks to remove that Order and to allow W access to C only whilst he (the respondent) is in Jersey.

The circumstances have changed since the Court made its Order in January inasmuch as it has been difficult for documents to be served on the respondent in England. To say that he has been evasive would probably not be putting it too high.

However, it is not that point which concerns the Court today. The Court has to ask itself whether there is in England, a place where the respondent could exercise access to C similar to the one which the Court in January felt was suitable.

We understand from the evidence of Mr. Rowe, an enquiry agent, that the earlier premises are no longer available. We also understand that although W's relationship with V (we are happy to note) is as close as ever, she is in fact living and working in Jersey. Therefore, she would not be available on a permanent basis to look after C were W to take C to England.

It was hinted to us by the respondent that some of the period of proposed access would be spent with his stepmother. It is quite clear that there is a warm relationship between his stepmother and the petitioner inasmuch as she wrote to the petitioner following the death of Z, the petitioner's daughter by an earlier marriage.

In addition to the fact that V would no longer be in England and that the previously established premises are no longer available, two other things have occurred. There has been the death of W's father, the grandfather of C and the death of Z, his stepsister, both of which have affected C considerably. So far as Z's death is concerned, we have had evidence that C should remain in Jersey with his mother to get through the grieving period as best he can. We accept that a small boy may not grieve as long and as deeply as an adult, but some time is certainly needed.

Therefore, we have to take all these matters into account in deciding whether it would be right to vary the Order which the Court made in January. We have no affidavit from the stepmother, Mrs X, under which she might have said that she would have been prepared to receive C into her home. In fact, when she was seen by one of the enquiry agents she did not know where her stepson was or what his address was.

Altogether there is a lack of stability in the proposed arrangements which the respondent would have us sanction and we think that these arrangements would be unfair to impose on C. We see no reason to deprive W of access. We agree with the words of Commissioner Vibert in the Court's judgment in January, when he said: "The relationship of a father is important to a son, as well as to the father, and we consider that it is in the best interests of the child that he be allowed to stay with the Respondent, this now being the best and only practical form of access".

There was a further passage on page 7 where the Court said: "And in saying what we have about the importance of the father/son relationship, we do not wish to suggest that the position of L in relation to C is otherwise than of the highest value and significance. Indeed, we look to L " [who is the present husband of the petitioner] "as a major source of affection and guidance of this boy". We note from the affidavit that he is giving such guidance and affection. Altogether we do not in any way wish to undermine W's right to see his son but we think, for the reasons I have mentioned, that it would be not in C's best interest to maintain the present Order. Therefore we grant the summons and we vary the Order of the Court made on the 9th January by deleting the provisions of paragraph 5 granting the respondent staying access to C at his home in London, or elsewhere in the British Isles. We Order that the periods of access shall take place in Jersey and shall be selected in accordance with the provisions of paragraph 5 (c) of the Order of the 9th January, that is to say by giving proper notice. Notice has already been given in a letter dated the 5th July from Mr. Michel and we cannot, in passing, agree with W that because a party's lawyer writes to the other party that is in any way undermining the other party's authority or is harassing him. We can find nothing in Mr. Michel's letters which are other than helpful and an effort to try and make the proper arrangements. In his letter of the 5th July, Mr. Michel suggested that the time for access would be from the 31st August to the 8th September, 1989. We will so Order this morning that staying access in Jersey is to be exercised between those periods. We would also want to add that before that access is exercised, the respondent shall notify the petitioner or Mr. Michel where that access in Jersey is to be exercised. Indeed if it were to be exercised in conjunction with V, we should be very happy, but that is entirely a matter for

the respondent. Therefore, Mr. Michel, I think that is all you need. We delete paragraphs 5 (d) and (e) of the Order of the 9th January because they become redundant.

ADVOCATE MICHEL: It is important to know where he is going to stay.

BAILIFF: Yes, well it must be a condition of the access being exercised that an acceptable place is found.

ADVOCATE MICHEL: I think it would be important to have an order, Sir, as soon as possible, so that W understands exactly where he is going.

BAILIFF: Oh, yes.

ADVOCATE MICHEL: So that there will be no ambiguity at all.

BAILIFF: No, no, W understands what we're saying. Certainly you'll see the child but you'll see him in Jersey between the 31st August and the 8th September inclusive. You have to notify the Greffier where ... Do you want (indistinct)

ADVOCATE MICHEL: (indistinct)

BAILIFF: Notify the Greffier where you propose to exercise that access and also Mr. Michel Mr. Michel, do you wish to receive it or your client?

ADVOCATE MICHEL: Either, Sir.

BAILIFF: Well, either M or Mr. Michel, W, where you are going to exercise this access in the next fortnight or so, approximately. I repeat that should it be in conjunction with V, in relation to what the Court said before, we would be perfectly happy, but there must be a fixed address in Jersey. If you want to take him to Sark or Guernsey, or a day in France, that's alright. I see no reason why not. Is that not possible?

ADVOCATE MICHEL: C doesn't have a passport.

BAILIFF: He hasn't got a passport? No, you can't go there, alright, but if you want to go to

(Indistinct - all talking at once)

BAILIFF: If you want to go on to any of the other Channel Islands, and I'm told Herm's quite nice because I've stayed there, you can take him there.

W: Sir, if the address that I give for the access is not acceptable, will we have to come back to Court again?

BAILIFF: I hope not, but we may have to, if necessary. Just see what happens. What about costs for this morning?

ADVOCATE MICHEL: No application.

BAILIFF: No application for costs. Very well, W, no application for costs,
so we make no order for costs in connection with today's hearing.

Authorities

None.

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