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ROYAL COURT
(Matrimonial Causes Division) 114.

9th June, 1994

Before: The Deputy Bailiff, and Jurats Bonn and Myles.

Between:	R	**Petitioner**
And:	S	**Respondent**
And:	G	**Party Cited**

Contempt: breach of interim access orders.

Advocate P. de C. Mourant for Representor/Petitioner.
Advocate A. P. Begg for Respondent.

JUDGMENT

THE DEPUTY BAILIFF: This is a Representation brought by R (to whom we shall refer as "the Petitioner") inviting the Court to find that her former husband S (to whom we shall refer as "the Respondent") is in contempt of Court by reason of his refusal to allow her access to the two children of the marriage.

The Court pronounced a Decree Nisi on the 19th June, 1991, and on the same day ratified a memorandum of agreement between the parties relating to the children, ancillary matters, and costs. The relevant part of the memorandum of agreement provided:-

> *"1. That the Petitioner and the Respondent shall have joint custody of the children of the marriage namely* D *, born in August 1987, (hereinafter referred to as* D *) and* E *born in July 1989, (hereinafter referred to as* E*).*

2. *That the Respondent shall have care and control of* D *and* E .

3. *That the Petitioner shall be afforded such reasonable access to* D *and* E *as may from time to time be agreed between the parties hereto."*

We were not told what transpired between June, 1991, and July, 1993, but it appears that differences arose as to what was "reasonable access" because an application was made to the Greffier Substitute. The application came before the Greffier on the 1st July, 1993, by which time the parties had resolved their differences and agreed a schedule specifying how access was to be accorded between the 3rd July, 1993, and the 26th December, 1993. The arrangement was broadly that the Petitioner should have access on three Saturdays out of four and on one of those Saturdays the children would spend the night with their mother and remain for the week-end. These arrangements expired at the end of 1993. Towards the end of that year thought was given to arrangements for the first six months of 1994. We heard conflicting evidence as to how the new schedule came into existence but we are satisfied that a revised schedule was eventually agreed and implemented until the 2nd April, 1994. This schedule provided for access in very similar terms to the schedule attached to the order of the Greffier of the 1st July, 1993.

Unfortunately by this time problems had surfaced. We interpose to state that the Respondent had re-married in November, 1992, and on the 28th October, 1993, his second wife F gave birth to a son. It appears that about that time the Respondent and his wife began experiencing difficulties with the two girls. The Respondent told us that they became more ill-mannered and awkward, and the younger child began wetting her bed on occasions. The Respondent did not link this behaviour to the arrival of the new baby. He attributed these changes in behaviour to the absence of any settled routine of living seven days in one place. He said that the children's behaviour was noticeably worse after they had spent the day with their mother. F confirmed this evidence and said that the children became morose and uncommunicative. These behavioural difficulties tended to spoil their week-ends.

As a result there were discussions in or about February, 1994, between the Petitioner and the Respondent in a public house. In essence there was no disagreement as to what was said. The Respondent stated that he found the situation unsatisfactory and proposed that access should henceforth be restricted to two weeks in the summer or, alternatively, that care and control of the two children should be assigned to the Petitioner with the Respondent having access only for a two week period in the summer. He asked for an urgent reply. There was then a second meeting in the same public house when the Petitioner said that neither of these

proposals was satisfactory to her and that she preferred the existing arrangements. Subsequently there was a long telephone conversation late that night. There was a disagreement as to the date on which this conversation took place but we do not regard that as being material. The conversation went on for some two hours and involved at different times both the Petitioner and the Respondent and their respective new partners; it was undoubtedly heated and during the course of the conversation it was made clear by or on behalf of the Respondent that until agreement could be reached on the revised arrangements, access would be denied.

The Respondent candidly admitted that by revised arrangements he meant an agreement that one or the other would have care and control of the children with the other enjoying only restricted access of some two weeks a year. The Petitioner described this as an ultimatum and we think that that is a fair description.

Thereafter although the revised schedule provided for access on the 16th and the 23rd April, 1994, the Respondent did not attend the usual rendezvous at which the children were to be transferred from one party to another. Indeed, since the 2nd April, 1994, access has not taken place.

Advocate Mourant invites us to find that the refusal of the Respondent to honour the terms of the agreement reached and to afford reasonable access amounts to a contempt of the Order of the Court. In response Advocate Begg argues that there was no agreement; he submits that his client is obliged to afford the Petitioner access to the children only when there is agreement as to how and when this access should be exercised. His client did not regard the schedule adopted for the first six months of 1994 as forming part of the Order of the Court.

In our judgment the memorandum of agreement confers a right of reasonable access upon the Petitioner. That memorandum was ratified by and incorporated into the Order of the Court of the 19th June, 1991. The Petitioner's right of reasonable access was not qualified or restricted by the Order of the Judicial Greffier which ratified the schedule of precise dates for the last six months of 1993. A refusal to accord any access pending agreement on terms wholly different from those which have operated for some considerable time is a failure to abide by the Order of the Court. That does not however mean that the Respondent is necessarily in contempt; as Advocate Begg rightly submitted, we need to be satisfied beyond reasonable doubt that there was a wilful or deliberate refusal to obey the Order of the Court. Applying that strict legal test we are not so satisfied. We express our disapproval of the tactics employed by the Respondent. We formed the impression that he was a man not easily deflected once he had reached a conclusion and we think that he was determined to impose his own view of what was reasonable access; in effect, as Advocate Mourant submitted, he took the law into his own hands. We are not

convinced however that when he did so he knew that he was in breach of the Order of this Court. His attitude may also have been coloured by the legal advice which he had received. We find therefore that the Respondent is not in contempt of Court.

The prayer of the Representation goes on to ask the Court to order the Respondent to allow access by the Petitioner to the children. As we have already indicated, we are satisfied that there was an agreement between the parties which was embodied in the schedule for the first six months of 1994. Indeed the parties acted upon the schedule until the 2nd April, 1994. It was not open to the Respondent, off his own bat, to set aside that agreement. He had and has an obligation to comply with it.

For the avoidance of doubt we therefore order that the Respondent allow access by the Petitioner on the 11th, 18th, and 25th June, 1994, between 9.30 a.m. and 6.00 p.m. as agreed.

Before closing, there are two further matters which the Court desires to raise. First, none of the members of the Court has been given the impression that the interests of the children are being given paramount importance in the arrangements which have been made and certainly in the arrangements which have been suggested for access to them. By way only of a minor example, we do not consider that an arrangement to hand over the children outside a shop like two warring parties exchanging hostages in a neutral zone is likely to be in the best interests of the children. Difficult as it may be, both parents have a duty to behave so far as they can in a respectful and civilised way towards each other and that duty is shared by their respective new partners. We are aware that the Probation Service can sometimes help in offering advice on conciliation in the interests of the children and we express the hope that the parties might consider taking advantage of the services offered by the Probation Service. Secondly, we agree with both counsel that we are not in a position to make any final Order on the question of access. Nevertheless we are now seized of the matter, albeit on an application relating to an alleged contempt, and we have the power to vary the Order made by the Court on the 19th June, 1991. The first duty of the Court is to have regard to the interests of the children. We have noted the contents of the report of the Children's Service of the 11th May, 1993, and in particular the following passage which begins under the sub heading 'Children'.

> *" D and E are two attractive bright lively and friendly children. D attended a Nursery Unit and then transferred to the main school in March, 1992; she has settled well and is happy there. D obviously has a close bond with her father and now that the access arrangements are following a regular pattern she is increasingly showing a stronger attachment to her mother and enjoys the access visits. E has*

attended the same Nursery Unit since September, 1992. She has also settled very well and is very happy there. She has a very close bond with her father and again enjoys the access visits to her mother.

Conclusions and recommendations.

Both D and E have made it clear in their own simplistic way that they wish for both parents to be involved in their lives".

It is obvious that it is in the children's best interests that access visits should be maintained regularly and consistently. As a result of the Respondent's failure to honour the arrangements for the first six months of this year, these small children have been deprived of access to their mother for a period of over two months. As a result of our order, they will now see her again on three occasions this month. We think that it would be highly undesirable if there were to be another gap with effect from the beginning of next month while arrangements were made for a hearing before the Judicial Greffier. With the best will in the world, its seems to us that in default of an Interim Order a further gap in access could very well occur. We repeat that we are not in a position to make any definitive order. There may be some substance in the contention of the Respondent and his wife that weekly access is disruptive; we do not know. On the other hand, we are quite certain that to allow a period - perhaps a relatively lengthy period, in the context of a young child's experience - to pass without any access by the mother would be undesirable. In the exercise of our power under Article 32 of the Matrimonial Causes (Jersey) Law, 1949 (as amended) we vary the Order of the Court of the 19th June, 1991, by ordering that, in default of agreement between the parties, - and we emphasize that phrase - with effect from the 1st July, 1994, the Petitioner shall have access every two weeks to the children, the first date to be Saturday 9th July, which will be a stop-over access until Sunday 10th July, and thereafter on a fortnightly basis until further order. It is our intention that every access date should involve a stop-over until the following day. We understand that on account of the accommodation occupied by the Petitioner it may not be possible for such an arrangement to be made. In that event, our decision is that access should operate on the same basis as before that is to say on three Saturdays out of four, with one of those Saturdays involving a stop-over. Finally we order that the costs of this application be paid by the Respondent on a taxed basis.

No Authorities