4 pages.

ROYAL COURT
(Samedi Division) 77.

24th April, 1997

Before: The Judicial Greffier

In the Matter of the Request of the local Court of Aachen, Germany in the Matter of the Service of Process and Taking of Evidence (Jersey) Law, 1960, as amended.

Between	Franz Heinrichs	Petitioner
And	Linda Parkes-Heinrichs	Respondent

Application for an Order that the Royal Court investigate the social and family situation of a child of the above-mentioned parties within the framework of mutual judicial assistance under the Hague Convention on civil procedure.

JUDGMENT

THE JUDICIAL GREFFIER: The local court of Aachen, Germany made the above-mentioned request by letter addressed to the Royal Court of Jersey. The request has found its way to the Solicitor General who agreed to present it to me by way of application.

The relevant statutory provisions in Jersey are contained in Articles 3 and 4 of the Service of Process and Taking of Evidence (Jersey) Law, 1960 as amended in 1985 by the Service of Process and Taking of Evidence (Amendment)(Jersey) Law, 1985.

Article 3 reads as follows:-

"

ARTICLE 3.

Application to Royal Court for assistance in obtaining evidence for civil proceedings in a court or tribunal outside the Island.

Where an application is made to the Royal Court for an order for evidence to be obtained in the Island and the court is satisfied -

(a) that the application is made in pursuance of a request issued by or on behalf of a court or tribunal ('the requesting court') exercising jurisdiction in a country or territory outside the Island; and

(b) that the evidence to which the application relates is to be obtained for the purposes of civil proceedings which either have been instituted before the requesting court or whose institution before that court is contemplated,

the Royal Court shall have the powers conferred on it by the provisions of this Part of this Law."

It is clear from the above quotation that there must be an application made in pursuance of the request rather than merely a request from another court. However, in this case, the learned Solicitor General, by rendering her assistance has allowed that issue to be by-passed.

The relevant sections of Article 4 read as follows:-

" ARTICLE 4.

Power of Royal Court to give effect to application for assistance.

(1) Subject to the provisions of this Article, the Royal Court shall have power, on any such application as is mentioned in Article 3 of this Law, by order to make such provision for obtaining evidence in the Island as may appear to the court to be appropriate for the purpose of giving effect to the request in pursuance of which the application is made; and any such order may require a person specified therein to take such steps as the court may consider appropriate for that purpose.

(3) An order made under this Article shall not require any particular steps to be taken unless they are steps which can be required to be taken by way of obtaining evidence for the purpose of civil proceedings in the Royal Court (whether or not proceedings of the same description as those to which the application for the order relates); but this paragraph shall not preclude the making of an order requiring a person to give testimony (either orally or in writing) otherwise than on oath where this is asked for by the requesting court."

The difficulty that I faced in relation to this matter is that Article 4(1) clearly relates to the obtaining of evidence and Article 4(3) provides that an Order cannot be made for steps to be taken which cannot be required to be taken in Jersey proceedings by way of obtaining evidence.

The nearest parallel to what is being requested here would be an Order by the Royal Court for the production of a report by a Children's Officer. In my view, such an Order is actually a request to the Children's Office for them to produce such a report and is not an Order for evidence to be taken. Once a Children's Officer has made investigations then he or she can be called before court in order to give evidence of what is then to their personal knowledge but it does not seem to me that they can be compelled, under our system of law, to first investigate.

Indeed, what is being proposed by the local court of Aachen would appear to be much more consistent with the continental system of jurisprudence in relation to which investigations conducted by the judicial authority are commonplace. The Jersey system is based upon the English system of civil law which is adversarial in nature rather than investigative.

Accordingly, I came to the conclusion both that what was being proposed was not the obtaining of evidence as we understand it in Jersey and that I could not make the Order requested because of the clear terms of paragraph (3) of Article 4 of the Law.

Accordingly, I refused the application although, in so doing, I was left with serious misgivings that Jersey may not, by virtue of the terms of our current statute law be fully complying with the terms of the Hague Convention on civil procedure.

Authorities

Service of Process and Taking of Evidence (Jersey) Law, 1960, as amended: Articles 3,4.

Service of Process and Taking of Evidence (Amendment) (Jersey) Law, 1985