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2nd OCTOBER, 1987

Before the Deputy Bailiff assisted by Jurats J.H. Vint and B. Myles.

Mr M

-v-

Ms M

JUDGMENT

DEPUTY BAILIFF: I apologise for the delay but the Court was considering certain aspects of the supervision order. I want to deal with that before the Court resumes its consideration of Mr. M's Representation. I wish to dispose of the matter of the Representation of Miss A of 9th June, 1987 which is, in effect, an application for a Matrimonial Supervision Order made under Article 54 (1) of the Children (Jersey) Law 1969, on the 20th October, 1986, to be discharged. I do so, notwithstanding the absence of Miss A who is ill, and is unrepresented this morning, but I have examined the Representation papers in conjunction with Advocate Miss Nicolle, who was instructed on Miss A's behalf. Unfortunately, the examination has shown up a number of administrative errors.

Firstly, by Act dated the 29th October, 1985, the Court ordered that pursuant to Article 54 (1) of the Children (Jersey) Law, 1969, the children, A, D, and R be under the supervision of the Education Committee.

On that occasion the Court made an interim order for one year for the custody, care and control of the children but made an open-ended supervision order. Neither the words spoken by Mr. Commissioner Dorey nor the Act of the Court place any limitation on the supervision order and we believe no limitation was intended. Therefore, when the Court on the 20th October, 1986, purported to make a new supervision order under the same provision of the law, it should have first rescinded the order of the 29th October, 1985, but did not do so. Accordingly, to cure that defect, the Court now rescinds the order of 29th October, 1985, that the children be under the supervision of the Education Committee.

Secondly, the order of the 20th October, 1986, named Valerie Anne Mason, a Probation Officer, to be the supervising officer. It is to be noted that the power in Article 54 (1) is to order that a child shall be under the supervision of an officer appointed under Article 54 as a welfare officer, or under the supervision of the Education Committee.

Article 54 (2) provides that where the Court makes an order for supervision by a welfare officer, the officer responsible for carrying out the order shall be such probation officer as may be selected by the Court and specified in the order. Thus, the Court selected Mrs. Mason and specified her name and the appointment was non-transferable except by the Court, which under Article 54 (5) is empowered from time to time by an order to vary any provision made in pursuance of the Article. When Mrs. Mason resigned from the Jersey Probation Service to join a similar service in England, she ceased to be a Probation Officer as defined in the law. Because no application was made to vary the order it must be regarded as having lapsed upon the resignation. Accordingly, the Court declares that the order of the 20th October, 1986, has lapsed. Although the Court by its Act of the 3rd March, 1987, recognised that Miss A was "de facto" supervising the children, she was never appointed by the Court, which alone has the power to do so.

Accordingly, the Court declares that there is no supervision order which could be discharged and indeed no order in existence that the children be subject to supervision.

Now that completes the formal part of that which I wish to say, but of course the situation now remains that the Court has a power to make a supervision order and either counsel, if they believe one should be made or not made, can address us on that point in due course, as well as all the other matters. As at now, we go back to a situation of "carte blanche" as far as the supervision order is concerned with none whatsoever in existence. As I said, Miss A is ill, we have a medical certificate to show that she is unable to attend Court, and therefore the position the Court faces is a question of whether further to defer matters in order to hear her or whether to invite counsel this morning to address us. We think we should try, if possible, to further this unfortunate matter and invite both counsel to address us this morning on the evidence heard so far and on whatever submissions they wish to make, and then the Court would consider whether it can deal with the question of contempt and with the question of future access without waiting to hear any further evidence.

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Judgment

THE DEPUTY BAILIFF: We have heard enough to be satisfied beyond any doubt that the respondent is in contempt and we so declare. We leave over the question of any punishment for that contempt until we have had the opportunity to hear Miss A and until we have had the opportunity to appraise the degree of co-

operation that we receive from the respondent on the interim arrangements that we now make.

As an interim order we confirm the Order of the 3rd March, 1987, paragraphs 1 (a) and (b) insofar as D and R are concerned. So far as A is concerned, we suspend the Order of the 3rd March, 1987, thus it will be her choice for the present at least whether or not she accompanies her younger sisters. We shall not, however, accept any excuse that the two younger girls refuse to get into the petitioner's car. Moreover, we wish to make it clear that A does remain subject to the orders of the Court and it is not to be presumed that the Court will not at a later stage require A to see her father.

We have seriously considered that if access cannot be made to work, and having heard A, if it would not be better in the interests of the children to put all three children into permanent care, and that is a prospect which the respondent faces if she will not co-operate with the present arrangements.

We do not fix a date for a further hearing or a period for this interim arrangement. If disaster should strike in the interim we expect counsel to return to the Court and we are prepared to sit as at present constituted in as short a delay as possible. When Miss A is fully recovered, perhaps Mr. Hawkes will acquaint me with the fact so that I may then fix a date in consultation with the learned jurats and with both counsel.

ADVOCATE MESSERVY: Sir, the point I would like to make is this in so far as the respondent is concerned I was armed to address you on various matters.

THE DEPUTY BAILIFF: But not whether contempt had in fact occurred.

ADVOCATE MESSERVY: Indeed, in fact, I am so armed. There are a number of points that I would wish to put before you including indeed.....

THE DEPUTY BAILIFF: I see, well in that case, I think we better leave that question open, but we shall take a very great deal of convincing Mr. Messervy.

ADVOCATE MESSERVY: Sir, I will do my level best.

THE DEPUTY BAILIFF: Very well, we shall leave that question open.