

ROYAL COURT
(Samedi Division)

69.

29th March, 1994

Before: F.C. Hamon, Esq., Commissioner, and
Jurats Coutanche and Hamon

Between:

A

Plaintiff

And:

B

Respondent

Application, *inter partes*, by the Plaintiff for an 'ouster' injunction to be imposed on the Defendant.

Advocate Mrs. M.E. Whittaker for the Plaintiff.
Advocate R.G. Morris for the Defendant.

JUDGMENT

THE COMMISSIONER: This is an application by a wife for an ouster order against her husband. By way of background the parties were married on 1st October, 1966. There were two children of the marriage. The daughter C lives in the matrimonial home with the parties.

On 24th March, 1994, the wife obtained a decree nisi against her husband on the grounds of his cruelty towards her and it is clear from reading the petition that it highlighted a long descent into alcoholism, with all those attendant problems.

Mrs. Whittaker, for the wife, brought an application originally *ex parte* for these ouster proceedings, supported by affidavit. Mr. Morris replied in turn with affidavit evidence.

We were concerned this morning when we were faced with this affidavit argument that really that was not the way for us to proceed. It seems to us that ouster is a drastic order at the

best of times and its effect on the person being ousted may be very serious. We agree with Mr. Morris that ouster should be regarded as a last resort but there were reasons, which we are asked by both counsel not to detail why the wife, who has obviously put up with these problems caused by her husband's drinking over a period of time, felt that matters had been seriously exacerbated in the last couple of days, hence the bringing of the action.

Whilst we can see that ouster actions may be granted *ex parte*, we would feel that an *ex parte* application for as serious a matter as this should only be granted or heard in extreme emergency, or when there is a very real danger of serious injury or irreparable damage, and it was for that reason, when we were faced by counter affidavits, that we asked counsel for an *inter partes* hearing where ^B could give his version of events and be cross-examined should that be necessary. As it happens good counsel has prevailed and we have now a consent order in an unusual form. The consent order is to the effect that we are able to make an order preventing the husband from "*molesting, annoying, threatening or assaulting*" the wife, or attempting to do so "*by any means whatsoever and at any place whatsoever*". Both parties in fact give that undertaking one to the other.

Both parties undertake not to bring any alcohol into the matrimonial home and the husband agrees not to drink alcohol for the next seven days as that is a prerequisite for him obtaining entry to "Margaret House", which may have a room to accommodate him when the order comes into effect.

The husband has also agreed that he will attend the alcohol abuse centre at 11.15 a.m. tomorrow, 30th March, and following that interview he will seek such further medical assistance as is advised to him. Most importantly the husband agrees to leave the matrimonial home, by 11.00 a.m. on Tuesday next, 5th April. Each party will bear his or her own costs to the application.

Although the order is a consent order, it is still an order of the Court and we must point out that any breach of the order, albeit given by consent, will be viewed as a serious breach by the Court should matters have to be brought back to it.

We would like to take this opportunity of thanking both counsel for settling the matter in the way that they have.

Authorities

Poignand -v- Poignand (7th February, 1991) Jersey Unreported;
(1991) JLR N.9.

Walker -v- Walker [1978] 3 All ER 141 C.A.

Bean on Injunctions (1st Ed'n): Chapter 10: Matrimonial
Injunctions and Similar Orders: p.p. 117-118.