

20th October, 1986

Matrimonial Causes Division

Mr M

-v-

Mrs M

COMMISSIONER DOREY: We are grateful to counsel for their efforts to put all the facts of this case before us and we are particularly grateful to Mrs. Mason for her clear and helpful report. After hearing the evidence of Dr. Holmes, the experienced medical practitioner, and reading the reports by the Children's Office, we do not accept the allegation of Mr M's sexual interference with A. This, however, does not mean that we believe that that allegation was necessarily implanted in her mind by Mrs. M. The second point we want to make is this: we do not find that the children are in any moral danger because of Mr. L's 25 year old conviction. We do not find that they are in need of care and protection because of that conviction.

Finally, after hearing all the evidence including the valuable reports of Mrs. Mason and Mr. Thompson and the argument set before us by counsel, we have to follow the dictum so often laid down by the English Courts that in these cases one cannot deal with general principles, one must deal with these particular children and these particular parents and we agree unanimously that it would not be right to remove these children from the care of their mother.

We therefore order, until further order of the Court, first that the children be in the joint custody of their mother and father. I am sure that Advocate Whelan will explain to his client the rights attached to custody as opposed to care and control. A parent who has custody but not care and control is entitled to have a decision in the major matters such as health, religion and education and in this particular case it would mean that Mr. M would have a right to obtain information - reasonable information, that is - from the schools where the children are and from any hospital where the child is being treated. Secondly, we order that the children be in the care and control of their mother for reasons that we have already given. Third, that there be a supervision order under Article 54/1 of the Children Law in favour of Mrs. Mason. Four, that Mr. M pay maintenance at

the rate of £10 per week, 4 weekly in arrears, such maintenance to be paid either via the Viscounts Department or through the agency of Mr. M's advocate. Five, that there be access in favour of Mr. M, every Sunday, between 2 and 6 p.m. All the children will visit him every Sunday between 2 and 6 p.m. The access will be unsupervised but it shall be in the presence of Mrs. M as far as is practical. Six, that staying access, which we consider in the long run to be desirable, will be arranged at the discretion of the supervising officer when he or she is satisfied that the time for such access is right. And finally, seven, we make no order for costs.

Now there are two further points that the Court wish to make. First, any breach of this order in any way, and in particular by Mr. M failing to pay his maintenance and Mrs. M failing to honour the order as regards access, will be treated as an extremely serious contempt of Court and will be dealt with accordingly. And finally, as regards the moral aspect at the house, we request the supervising officer to visit the house regularly and to report to the Court any danger that she perceives either to the children's moral welfare or to their general health and well being.