ROYAL COURT

15th June, 1988

Before: Sir Peter Leslie Crill, Kt., C.B.E., Bailiff of Jersey
assisted by Jurats G.H. Hamon and C.L. Gruchy

Between: Mrs E — Plaintiff

And: Mr E — Defendant

Advocate A.P. Begg for the plaintiff
Advocate S.J. Habin for the defendant

JUDGEMENT

BAILIFF: The hearing this morning arises from the issue by myself of an ouster Order on the 10th June, 1988, requiring the defendant, Mr E to leave the matrimonial home,

In the event the defendant did not leave as ordered and we have dealt with that matter earlier during the hearing.

The matter has come before us on a summons issued by the defendant requesting the Court to lift the ouster Order and to reinstate him in the matrimonial home. There is no doubt that the home is the matrimonial home, even though it is also a possible development site or house and also a place from which the defendant, who is a property developer, conducts the paper side of his business.

The parties were married on the 12th September, 1981, having lived together before. There is a child recognised by the defendant as a child of the marriage in the sense that he has accepted the child into the family consisting of the plaintiff, the defendant and the child, R who is now aged thirteen, very nearly fourteen.

The wife's case is put like this: throughout the marriage she has been subjected to abuse and assault by the husband, and it culminated on the night of the 9th June, 1988. As a result of the events of that night to which I shall return in a moment, she left the premises and has now returned after the husband had left them. When she says she is unable to continue to live with the husband, indeed it is not only intolerable that she should do so, but there would be, in the words of the Court of Appeal in the case of T -v- L, Unreported Judgment 1977/9 dated the 20th September, 1977, if she did continue there, or if the husband remained there with her, some real anticipation of serious trouble between the parties.

It is interesting to note from the evidence of Dr Williams who came to Court to testify on behalf of the wife, that she had been a patient of his since the 15th June, 1974, and he was first consulted by her as regards marital problems on the 5th January, 1982, when the husband had kicked her causing extensive bruising to her right leg and other places. That, it is to be observed, was nearly some four months after the marriage. Thereafter there was a history of consultations over the years culminating in one on the 12th November, 1986. All these were consultations resulting, the wife told us, and the doctor repeated what the wife had told him, as a result of attacks by the husband. Now, of course it is quite true, as the learned President said in the Court of Appeal in the case I have just cited of T -v- L that quite often medical evidence must to a large extent be dependent upon the facts as related by the patient to the doctor, coupled with the fact that of course the patient has recited these matters. But although the doctor was subjected to some very strong cross-examination by Mr Habin, he was quite firm and he made two points: firstly, that there was no evidence of alcohol abuse in the wife. There is no note in the records of her case, that either he or any of his partners have suspected this. Secondly, he was quite clear that he did not think there was any other way,

indeed it was not true there could be any other way in which these injuries had been caused, although it was put to him very strongly, as I have said, that some if not all of them could have been caused as a result of the wife injuring herself whilst falling due to being under the influence of drink.

Furthermore, although the defendant gave us some details of what he had done to help his wife when she was under the influence of drink in the matrimonial home even he admitted that not all the injuries related by the doctor were caused through the wife falling over or hitting herself when she was under the influence of drink. Again, the doctor gave evidence that he had prescribed sleeping tablets for the wife only a week ago. So we start off with the position that through the married life there has been a history of marital stress and marital violence by the defendant husband towards the plaintiff wife. That violence culminated, as I have said, in the events of the night of the 9th June. There is a conflict of evidence between the parties, the worst part of the night, according to the wife, was when, after some argument upstairs on the landing, she had gone to a spare bedroom where she was going to sleep. According to the wife the husband overturned the bed, according to the husband he just pushed the bed aside, but that really is not very important. After that the wife stated that there was some argument on the landing, the child was concerned, came out of her bedroom and went downstairs, the husband followed the child downstairs to the lounge, the wife followed a short while afterwards. The wife said she saw the husband raise his hand in a karate-type gesture and strike the child on the left hand.

The husband on the other hand says he never did anything of the sort, any injury that occurred to the child was as a result of being pushed once or possibly twice into her bedroom by him on the landing and anything that took place, took place on the landing and he certainly did not go downstairs, he only went down after his wife and child had left the premises and he found two pairs of shoes on the outside doorstep.

Be that as it may there are a number of independent facts which have come out in the evidence which we have heard. There is no dispute that the two smaller fingers of the child's left hand were injured, or at least one little finger was injured, it was strapped to the other one, I think, and

there was evidence put in of a certificate by the doctor at the hospital to that effect. It is suggested by Mr Habin that from the evidence given by the child, who told us that she was holding out a cushion, having been struck already in the lounge on the head by her stepfather - holding a cushion in her right hand, she took her left hand away and she was then struck, could not support her suggestion that the injury was caused in that way. We are satisfied that R is a truthful young lady and even her stepfather admits that she does not lie. Where there is a conflict of evidence between the stories of the husband and wife and R , we have accepted, unequivocally the evidence of the wife and R on this point. Therefore, we have found that the child was hit in the way she has described and the injuries were caused as suggested in the Order of Justice which led to the injunction. Following, of course, the events I have just related the wife and child were helped by a neighbour and there is no doubt that their condition was one of being very upset. Mrs F looked after them very well; she noticed they had nothing on their feet and both of them had to be consoled.

Given that position, and given the husband's wish to return to the house: is this a reasonable order for us to maintain? There is one other matter I should mention and it is this: I said the house was possibly going to be used as a development unit, although it is the matrimonial home and because of that the husband keeps his paperwork in the house and therefore conducts his development business from the house. It has been suggested by Mr Habin that even if we were to find that the injunction should continue, that we should - I think he did not say this, but I think this is what he meant - we should allow the parties to see if they could not arrange some kind of division over the property so that each could occupy a separate part and avoid the difficulties which have hitherto, we have found, existed between them.

There is one other point I want to mention, the police themselves, or at least one policeman, said there was no evidence of alcohol or drink when he saw Mrs E on the night of the 9th June.

Therefore we find that even if there had been some drinking by Mrs E it was not sufficient to cause the injuries which we have had described to us, nor was it sufficient to lead to the difficult situation. The situation is due entirely we think to the husband, who we accept is under stress; he admits he is under stress, and he admits he is short-tempered as a result of that stress, with the result that he has behaved towards the wife in the way in which she has alleged. We are satisfied on that point. Naturally, the satisfaction, as Mr Habin would no doubt wish us to stress, is on the balance of probabilities, as this is a civil case, but we are quite satisfied that this is so. Having said that we have to apply the law. We have examined the cases of N -v- P, which is a judgment given by the Court on the 15th March, 1985, Bassett -v- Bassett, (1975) 1 A.E.R. 513, and the case of Hall -v- Hall, (1971) 1 A.E.R. 762. I have already mentioned T -v- L

In the case of Hall -v- Hall, there is the well known dictum of Lord Denning which I referred to in the Pinson case at page 147.

> "I would like to say an Order to exclude one spouse or the other from the matrimonial home is a drastic order, it ought not to be made unless it is proved that it is impossible for them to live together in the same house. Such an order ought not be made unless the situation is impossible. I would add it is important as well to have regard to the interests of the children".

Well, we have no doubt that so far as R is concerned, it is in her interest that she should not see anything more of her stepfather than is absolutely necessary.

I then went on to say that that dictum of Lord Denning had been modified in the case of Bassett -v- Bassett, and I now read from the judgment of Mr Justice Cuming Bruce at page 87:

> "I extract from the cases the principle that the Court will consider with care the accommodation available to both spouses and the hardship to which each will be exposed if an order is granted or refused and then to consider whether it is really sensible to expect

> the wife and child to endure the pressures which the continued presence of the other spouse would place on them. Obviously inconvenience is not enough, equally obviously the Court must be alive to the risk that a spouse may be using the instrument of an injunction as a tactical weapon in the matrimonial conflict".

I pause there a moment to examine the three matters referred to in that passage. We are satisfied that it should not be too difficult for the defendant to find as a single man for the purposes of this argument, a man on his own at any rate, to find some accommodation, even in the month of June in this Island for the time being, and I say for the time being as a result of what I am going to say in a moment. It is not really sensible, as things now are, to expect the wife and child to endure the pressures which the continued presence of Mr E would have on them if he continued to reside there. We are not expressing any view as regards whether the spouse may be using the instrument of an injunction as a tactical weapon, we have had no evidence on that point at all and we do not think it is a matter to which we need express ourselves. We have no indication that she is so using it.

The cases I have referred to were in fact added to slightly in another case which Mr Habin has supplied us with and that is the case of B v M, a judgment given on the 18th July, 1978. In fact, more matters were referred to in that case, and another case mentioned of Walker -v- Walker. In Walker -v- Walker, Ormerod L.J. said at page 539: "Those in my judgment are the guidelines together with those mentioned by Godfray L.J. that the Court should adopt in dealing with this type of application". He then cited his approval of what I have just mentioned from the judgment of Mr Justice Cuming Bruce. So the guidelines have been laid down quite clearly in previous cases and we are applying them and have applied them to the facts of this case.

Summing up we think firstly, there is a real anticipation of serious trouble between the parties, including R , were the husband to remain in the house. Secondly, it is an intolerable situation for the wife and daughter to continue to live there with the husband. Thirdly, we have no doubt that the balance of hardship lies firmly with the wife and daughter.

Therefore the injunction is going to continue for the time being. I use those words advisedly, because I referred to this a few moments ago. We think that it ought not to be impossible, having regard to the size of the house, and the fact as I have already mentioned, the husband conducts the paperwork of his business from there, for both counsel to work out with each party a plan which would enable the house to be divided into two parts so that each part of the family could live in a separate part without direct access to each other by using separate entrances, and we were shown a small plan which showed this might be possible. But we are not expressing any view until we know whether it has been explored. It should be examined and if it is possible then the conditions and variations and alterations to the property which must be necessary will have to be approved by the Court. If that were to be the case we would of course add to it, as Mr Habin has said, a non-molestation order which would have to be observed very carefully.

We will of course order as we do now that the defendant must be able to visit the home, either accompanied by a police officer, or by agreement to assist him in drawing up plans to carry out what we have in mind. What we really are saying is this: the present situation is such that the injunction must remain, but if it is possible to alter the house so that the parties can live amicably side by side without being, so to speak, in each other's pockets and subjecting the wife and daughter to the situation which we have already said is intolerable, then we would not be averse to approving such an agreement. For for the time being the husband must stay away, but he will have access of course by agreement with his wife, either with a member of your staff, Mr Habin, or with an honorary police officer to collect his papers so that he can carry on his business from outside the premises for the time being. The husband must stay away until some proper arrangements have been made, but it may not be possible. If there is a dispute as to whether it is not possible, then we will have to resolve that dispute, but prima facie, we think the house is big enough and could be divided in such a way as not to subject the wife and daughter to the very real risk which we have already mentioned.

The cost of today's hearing will be paid by the husband.

ADVOCATES HABIN/BEGG: (Inaudible on the matter of costs).
BAILIFF: Taxed costs.

Authorities cited

T -v- L (20/9/77) - Court of Appeal decision Unreported Judgments 1977/9.

B -v- M (18/7/78) Unreported Judgments 1978/3.

N -v- P (15/3/85) - 1985-86 J.L.R. 144.

Bassett -v- Bassett (1975) 1 All E.R. 513.

Hall -v- Hall (1971) 1 All .E.R. 762.