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ROYAL COURT
(Matrimonial Causes)

18th October, 1989

Peter Douglas Harris, Esq., Greffier Substitut

C. - v - M.

Application by the Petitioner
for staying access to the
two children of the marriage.

Advocate A. P. Roscouet for the Petitioner
Advocate Whittaker for the Respondent.

JUDGMENT

The Greffier Substitut:

This is an application by the petitioner for an order permitting him to have staying access to J and M, the children of the marriage, for the period 21st to 29th October, 1989, such access to be exercised outside the jurisdiction of the Court for the purposes of a holiday in or around Liverpool, staying with the paternal grandparents.

Unfortunately there has been a long and bitter contention between the petitioner and the respondent in this case on the question of access and the respondent has consistently refused staying access to the petitioner for whatever reasons. The respondent has de facto care and control of the children but no orders have been made or sought concerning the legal custody of them; this must therefore be deemed to remain vested in the petitioner solely.

It was argued on behalf of the respondent that it would be wrong to allow extended staying access when none had been enjoyed by the petitioner by virtue of any orders presently valid. Medical reasons were also put forward as good reasons to disallow the application. Allegations were made that the younger child, M, suffered from epilepsy, although an informed medical opinion refuted the suggestion. It was also argued that should access be allowed as sought, the respondent herself might suffer. This matter was, to a certain degree supported in a letter from the respondent's doctor, though it was not pursued in any detail and, in any event, we are concerned with the welfare and best interests of the children, not of either of the parties.

The respondent, although made aware of the petitioner's wishes at least six weeks ago argued that it was an insufficient period of notice. No reasons for refusal of staying access were even put forward during that period in any correspondence between the respective lawyers. The reasons now put forward do not, in my view, constitute valid arguments against allowing staying access out of the jurisdiction. I am accordingly satisfied that, access being the right of each child, it would not be against their interests to allow the father to take them with him on holiday to Liverpool to stay with the paternal grandparents. I am further satisfied, from reading the report of a Social Worker in the Liverpool area, that the conditions at the grandparents' home are eminently suitable and that the welfare of the children will be paramount in the minds and actions both of the petitioner and of his parents and wider family. The application is supported by

the Child Care Officer who has had a close oversight of the case for nearly three years. Nothing which I have heard would lead me to reject the Child Care Officer's recommendations. I am also satisfied beyond reasonable doubt that a change of environment, if only for a period of seven or so days, can only be of lasting benefit to the development of these children.

The petitioner will have staying access to J. and M. from 6.15 pm. on Saturday, 21st October, 1989, until 5.00 pm. (or in the event of any delays in the return flight from Liverpool, until such time as may reasonably elapse between the flight arrival and the time taken to deliver the children into the respondent's care) on Sunday, 29th October, 1989, for the purposes of taking the children out of the jurisdiction on holiday to Liverpool.

The petitioner will give written undertakings - [a] that he will return the children to the jurisdiction at the end of the period of staying access [b] that he will take no steps to make the children Wards of Court whilst he is within the jurisdiction of the High Court of England and Wales or of the Court of Session in Scotland, and [c] that he will respect any special dietary needs of the children which the respondent will immediately set out in a statement to be delivered to the petitioner or his legal adviser no later than 1.00 pm. on Friday, 20th October, 1989.

The respondent is enjoined that any failure on her part or of any other person on her behalf or acting on her instructions, to comply with or thwart, directly or indirectly, the operation of this order, may be referred immediately to the Royal Court by way of proceedings for contempt.

The respondent will pay the costs of these proceedings to date and the further consideration of the remaining applications in the petitioner's summons will be adjourned to a date to be fixed.

Finally, whilst it may fall on deaf ears, I think it not inappropriate to quote, at this juncture, the judicially expressed view of Lord Cairns in *Symington v. Symington* [1875] Law reports, 2 Scotch and Divorce Appeals, House of Lords at p. 415 when he said:-

"On both sides there ought to be a careful opportunity of access, so that none of the children may grow up without as full knowledge and as full "social communication" as the case will admit of with both parents."

AUTHORITIES:

Symington-v-Symington (1875) Law Reports, 2 Scotch & Divorce Appeals, H.L. p.415.