

JERSEY / JUDGMENT

T v M [2003] JRC 208 (14 November 2003)

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judgment

the COMMISSIONER: 1. This is a summons by T. against her former husband M. to extend the power of arrest ancillary to a matrimonial injunction for a further six months from today. 2. On 16 th January, 2002 the wife was granted an ex parte interim injunction excluding the husband from the former matrimonial home, restraining him from approaching her place of work or the schools attended by her children unless in the case of emergency. The ex parte injunction included a non molestation order. It contained a power of arrest under article 3 of the Powers of Arrest (Injunctions) (Jersey) Law 1998. 3. The Order of Justice contains very serious allegations of mental, verbal and physical abuse which include allegations of marital rape and of coercion by the husband of the wife to have sexual intercourse with another man in front of the husband. All of those allegations are strenuously denied and have never come to proof. 4. The proceedings since the Order of Justice was filed have been protracted. 5. On 25 th January, 2002 there was an inter partes hearing. By consent the interim injunction was to remain in force until 31 October, 2002. The power of arrest also remained in force until that date. By consent the wife was given liberty to apply to extend the period of the injunctions and of the power of arrest if necessary. 6. On 11 th March, 2002 the husband admitted to a breach. He had been arrested as a result of that breach. He was admonished, warned as to his future conduct, and ordered to pay the costs on standard basis. 7. On 8 th November, 2002 a further application by both parties extended the injunctions and the power of arrest for a further six months with liberty to apply. 8. On 4 th February, 2003 a further Consent Order extended the orders for yet a further six months. They have now lapsed by effluxion of time. During this period, on 12 th March, 2003, the Court granted a decree of judicial separation by reason of the fact that the parties had lived apart for a continuous period of at least one year preceding the presentation of the petition and the respondent husband consented to the decree nisi being granted. The financial ancillary matters are set down to be heard in January of next year. 9. This morning we heard from the wife who wishes to extend the arrest order and from the husband who does not. The evidential hearing was far from satisfactory. There was an allegation that the wife's best friend, M. M. had been telephoned and threatened by the husband. Mrs M. M. was not in the Island today and therefore was not heard. There was an allegation that the husband was a heavy drinker and at that point became irrational. The husband produced details supplied to him by Jersey Telecom of his land line and his mobile phone. There is no record of his phoning Mrs M. M. on 9 th October, 2003, the date of the alleged complaint. As to his drinking, he informed us that he was a lifeboat man and

on call twenty four hours a day. He would have to drive to the lifeboat station if a call were made and he had on average seven minutes to arrive at station. 10. We find it impossible to assess the evidence on the basis of the wife's affidavit. As we have said the power of arrest lapsed in August of this year. The allegations, which have not been proved, make for chilling reading. We have observed the wife in the witness box. She is clearly under very great stress and this stress has no doubt been increased by the fact that she has only just been made redundant at her place of work. We would have been greatly helped by an up-to-date prognosis from Dr Sharkey or from Tina Baker, the consultant clinical psychologist. The reports that we have are both dated 24 th October, 2002. Advocate Lawrence informed us that both Dr Sharkey and Mrs Baker were ill. 11. The Powers of Arrest (Injunctions) Jersey Law 1998 states that the Court may " if it considered it necessary to do so for the protection of any persons referred to in the injunction " attach a power of arrest. 12. Our law is different to that under the Family Law Act 1996 and we do not need to refer to English authorities. We would, however, say that there will be many cases where an absolutely automatic power of arrest would be quite inappropriate. The Court has to exercise a balancing act. 13. As the parties approach the hearing on ancillary matters where conduct is to be assessed, the emotional strain on the wife, howsoever it has been brought about, will increase. The husband who lives with his sixteen year old son in another part of town says that he fears that the wife will make false accusations against him and as it is he jumps up and goes to the window at night whenever car lights shine outside as he fears the police may be calling. 14. We have to make a decision and we have made it with some difficulty. The husband is clearly able to fend for himself. He is a lifeboat man, he is taking a course in engineering, he works at the abattoir and he has a sixteen year old son who lives with him. The wife has three daughters and has taken students in the summer to live in the former matrimonial home. 15. She is, for whatever reason, quite clearly in a vulnerable state. She was almost incapable of giving evidence and she is suffering great mental distress. The report of Dr Sharkey, albeit dated October of last year, does say at one point "She is very clearly hyper vigilant regarding her husband and has described intrusive recollection. She is chronically anxious and appears somewhat emotionally numb" . We agree with Dr Sharkey that there is a real risk of deterioration in her mental health and we feel that the balancing risk of removing the power of arrest in favour of her husband would affect the wife's stability. 16. We therefore re-impose the injunctions and the power of arrest for a period of six months. We have to say that we have not pre judged the evidence in any way and this decision must not affect the hearing in January on ancillary matters. 17. If, in the future, the wife were found to have made false accusations concerning breaches of the injunction, we would then review our decision. 18. In the particular circumstances we feel that each side should bear its own costs unless either party wishes to argue otherwise. 19. We would say this in conclusion. If a further extension were to be required at any time, we would not entertain it without up-to-date psychiatric reports to hand. No Authorities Page Last Updated: 27 Mar 2017 BAILII: Copyright Policy | Disclaimers | Privacy Policy | Feedback | Donate to BAILII

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