Neutral Citation [2013] IEHC 379

**THE HIGH COURT**

**[2011 No. 67 M]**

**IN THE MATTER OF THE JUDICIAL SEPARATION AND FAMILY LAW REFORM ACT 1989 AND IN THE MATTER OF THE FAMILY LAW ACT 1995**

**BETWEEN**

**J. E.**

**APPLICANT**

**AND**

**D. E.**

**RESPONDENT**

**JUDGMENT of Mr. Justice Garrett Sheehan delivered on the 26th day of July, 2013**

**Introduction**

1. This is an application by J.E. to vary an access order made herein on the 24th May, 2012. Mr. E. seeks unsupervised access to his two children and requests the Court to put in place a comprehensive access programme.

2. The applicant represented himself and the respondent was represented by Mr. Shortt B.L., instructed by the Law Centre in Longford.

3. In this judgment I will refer to J.E. as the applicant and D.E. as the respondent.

**Background**

4. The applicant J.E. and the respondent D.E. were married in 1996 and there are two dependent children of the marriage; N. born in May, 2000 now thirteen years old and K. born in January, 2004 now nine years old.

5. The order which the applicant wants the Court to vary reads as follows:-

> "1. The plaintiff/respondent (J.E.) to have supervised access with the children, N.E. and K.E. each Sunday from 3.00pm to 6.00pm and each Wednesday from 6.00pm to 7.00pm (access with N. to take place only if N. wishes to attend for access).
>
> 2. First access to take place on Sunday, 27th May, 2012.
>
> 3. Mr. E's mother to act as supervisor for the access.
>
> 4. The children, K. and N. (only if she wishes to attend) to be collected by the supervisor at the swimming pool car-park and returned there by the supervisor.
>
> 5. The supervisor is to notify D.E. if access is not going to be availed of by J.E.
>
> 6. The defendant/respondent to be at liberty to issue a notice of motion to dispense with the consent of Mr. E. for both children to attend psychiatric/psychological services in the event that Mr. E. not giving his consent for same within two weeks from the date hereof and all proper information having been given to him."

6. It is clear from the booklet of orders filed herein by the respondent, that there is a long history to this litigation. In particular the Court notes the order of the High Court made on the 15th March, 2012, which provides, *inter alia*, that the applicant is not to issue any motion or application for hearing without prior leave of this Court.

7. The Court also notes the order of the Supreme Court made on the 6th July, 2012, which states as follows:-

> "It is ordered:-
>
> (i) That the application for interim access as sought in said notice of motion dated 27th day of June, 2012, be refused.
>
> (ii) That the High Court order herein dated 15th day of March, 2012, be stayed / said stay limited strictly for the purpose of making one application by way of notice of motion to the High Court within four weeks from the date hereof for a variation of the existing order (Ms. Justice Clark) given on 24th May, 2012 – any other application being brought to the High Court must be brought subject to the terms of the existing High Court order dated 15th day of March, 2012, and the court doth make no order for costs."

8. The applicant duly issued a notice of motion on the 17th July, 2012, returnable for the 20th July, 2012, and filed his own affidavit on the 17th July, 2012. The respondent filed a replying affidavit on the 24th July, 2012, and a further affidavit on the 13th March, 2013.

**Submissions**

9. Prior to the present access order the Court had been furnished with a s. 47 report prepared by a senior clinical psychologist, J.N., who provided two reports, one dated the 7th December, 2007, and the other dated the 12th March, 2008.

10. The applicant attacked the manner in which the clinical psychologist approached her work and submitted that her conclusions ought not to be relied on. He further asserted that supervised access constituted emotional abuse of the children.

11. The applicant submitted that the respondent had alienated his daughter, and impeded his access to his son. The applicant also told the Court that his mother was no longer available to supervise access.

12. Counsel for the respondent submitted that as the applicant had failed to file a further affidavit as directed by the Court on the 15th March, 2013, the application to vary should be dismissed.

**The Views of the Children**
13. This Court had intended to give judgment in this matter on the 12th July, 2013, but decided shortly before then that the updated views of the children should be obtained. While there was no suggestion by either the applicant or the respondent that either of the children presently wanted unsupervised access with their father, the Court decided nevertheless to seek their views on this matter in a manner that would cause them the least distress.

14. The Court requested the respondent's solicitor to approach a Mr. K, who had been nominated by the respondent as one of five people in a position to assist the Court, to see if he would interview the children and simply ask each of them what their present view was in relation to unsupervised access with their father. I had hoped that it might have been possible to establish their views in a short space of time.

15. This matter was listed for mention to see how this was progressing for the 23rd July, 2013. On that date, the Court was informed that Mr. K. had been engaged in a lengthy telephone conversation by the applicant and, as a result, Mr. K. wanted further clarification before proceeding to conduct any interview.

16. The applicant agreed that he had made the telephone call to Mr. K. and agreed with the contents of the note of this telephone conversation handed into Court by counsel for the respondent, but he did state that there had been a lot more said in the conversation than was contained in the note.

17. The applicant submitted that any evidence that Mr. K. might now give would be contaminated as a result of his conversation with him.

18. In view of the applicant's behaviour in this matter and the delay that this unwarranted interference with the Court's work had caused, counsel for the respondent was asked to assist the Court in ascertaining the views of the children. Counsel for the respondent told the Court that as he understood the position, the most recent views of the children expressed in the last year were that neither child wanted unsupervised access with their father at the present time.

19. While the Court did not consider that the applicant had succeeded in contaminating any evidence that Mr. K. might have given, it was not prepared to allow the application to be delayed further and therefore holds that the children's views have been communicated to it in a reliable way by counsel for the respondent.

**Conclusion**
20. In considering the applicant's submissions, the Court notes that the only evidence in this case supporting the applicant is his own affidavit.

21. It is this Court's view that this grounding affidavit fails to address in an adequate and meaningful way how a variation of the present order of this Court would be in the best interests of either child.

22. Although given an opportunity to file a further affidavit to enable him to put in sworn form any further matters he wished the Court to consider, the applicant chose not to do so. In so doing, he chose not to put in affidavit form his objections to the five people nominated by the respondent to undertake a further s. 47 report. Furthermore, he did not take the opportunity to put in affidavit form his apparent inability to find a suitable person to supervise his present access entitlement, nor did he put in affidavit form any other matter he wished to raise in support of his application.

23. The court has also considered the affidavits filed by the respondent herein which, *inter* alia, sets out the extensive efforts made by the respondent's solicitor to find experts who might have been willing to prepare s. 47 reports for the Court.

24. The applicant told the Court that he objected to all those persons proposed by the respondent and as the Court has already noted, he chose not to put his objections in writing nor did he put details of the person who was apparently acceptable to him in affidavit form for this hearing

25. In considering what weight to attach to the applicant's evidence, this Court has also taken into account the manner in which the applicant conducted his case and, in particular notwithstanding his apology, his contempt in the face of the Court when he ignored this Court's warning to desist from attempting to raise certain matters relating to the respondent.

26. The Court notes para. 17 of the respondent's affidavit in which she states that the applicant was able to make public appearances and take part in public debates at a time covered by a certificate of illness produced to this Court in support of an application for an adjournment of the hearing of this application.

27. The Court holds that the children do not presently wish to avail of unsupervised access with their father.

28. The Court also holds that the children have been adequately heard in the circumstances of the present application by counsel for the respondent's direct reply to the Court's question.

29. The Court holds that it is unable to rely on the evidence of the applicant.

30. The Court holds that the applicant has not established as a matter of probability that it is in the best interests of either of his children that the access order made herein be varied at this time and accordingly, the application to vary the said order and put in place a comprehensive access programme is refused.

31. For the sake of clarity, all reliefs sought by the applicant in the notice of motion dated the 17th July, 2012, grounding this application are refused.