

29/80

FAMILY COURT OF AUSTRALIA at ADELAIDE

In the Marriage of ANGELIS (JC and O)

Murray J

28 July 1978 — (1978) 35 FLR 265; 4 Fam LR 337; [1978] FLC 77,631 (¶90-503)

FAMILY LAW – CONTEMPT OF COURT – ORDER RESTRAINING HUSBAND FROM ENTERING FORMER MATRIMONIAL HOME OR REMOVING CHATTELS THEREFROM – ALLEGED BREACH OF ORDER – WHETHER NECESSARY TO PERSONALLY SERVE ORDER ON HUSBAND PRIOR TO COMMENCING CONTEMPT PROCEEDINGS – APPLICATION FOR CONTEMPT SERVED ON HUSBAND'S SOLICITORS – HUSBAND APPEARING WITHOUT COUNSEL ON RETURN OF APPLICATION – WHETHER PERSONAL SERVICE OF APPLICATION ON HUSBAND REQUIRED – WHETHER APPROPRIATE TO DISPENSE WITH PERSONAL SERVICE OF APPLICATION ON HUSBAND: FAMILY LAW ACT 1975, S39; FAMILY LAW REGULATIONS, REGS 15, 137; HIGH COURT RULES, O62.

On 27th October 1977, an order was made by consent in the Family Court of Australia at Adelaide that H. would vacate the former matrimonial home by 18th November 1977. Further orders were made restraining H. from entering the said premises except for the purpose of access and from removing therefrom any items of household use or ornament. When the orders were made H. was not in court but was represented by counsel. On 29th November 1977, W. filed an application seeking an order that H. be arrested and brought before the court to show cause why he should not be dealt with for contempt. The application was not served personally on H. but was served on his solicitors. In support of the application, W. alleged that on 13th and 15th November 1977, H. had attempted to remove items of household use and ornament from the former matrimonial home. She further alleged that on one of those occasions the local police were called who showed H. a copy of the orders made on 27th October 1977. On the return of the application H.'s counsel submitted that W.'s application could not proceed because it was necessary to prove personal service of the order upon H. prior to the alleged breach and further that it was necessary to personally serve H. with the application alleging the contempt.

HELD: 1. Although r187(5) of the *Family Law Regulations* requires personal service on the alleged contemnor of an application alleging wilful disobedience of a decree of the court, the purpose of the regulation is to ensure that the alleged contemnor knows what is being alleged against him and that he has the opportunity to defend himself. As H. had not been prejudiced by non-compliance with r187(5) of the *Family Law Regulations* and was fully aware of the allegations being made against him, it was appropriate to dispense with the need for W. to have complied with the requirements for personal service.

Ex parte Alcock (1875) 1 CPD 68; 33 LT 352;, applied.

In the Marriage of Sahari (1976) 25 FLR 475; (1976) 11 ALR 679; 2 Fam LR 11, referred to.

2. There is no requirement that prohibitory orders made by a judge of the Family Court of Australia be served personally on an alleged contemnor prior to the bringing of proceedings for breach of such orders.

D v A & Co (1900) 1 Ch 484, and

Ex parte Langley; Re Bishop (1879) 13 Ch D 110 (CA), applied.

3. In the absence of personal service of prohibitory orders on an alleged contemnor, the applicant seeking enforcement of the orders must prove to the court beyond reasonable doubt that the alleged contemnor had adequate notice of the orders prior to the committal of any alleged breach.