

to the tendency of the husband at times to drink too much and to lose control of himself. He also accepted the wife's evidence that the state of disharmony between the parties was considerably greater than the husband was able to appreciate. In awarding the wife custody he accepted particularly the view of Mrs Mazey senior, the husband's mother, that it was a little unrealistic of him to contemplate a permanent custodial role and that in her view the appropriate custodial parent was her daughter-in-law. Possession of the matrimonial home obviously followed the placing of custody. It was generally accepted at that hearing, and it was not suggested to the contrary today, that the children ought not to be split up, but that they should all go into the custody of the same parent.

Mr Mazey has found it extremely difficult to accept the breakdown of his marriage and the orders the Court made, although his mother thinks that he is now beginning to do so. But for some considerable time he manifested that unacceptance in a variety of ways which caused difficulties in access and some distress to the children. It appears that from time to time he involved them in his distress, and quite unwittingly I expect brought a certain amount of pressure to bear on them and on their emotions. That of course is something that must not happen. Not only is it not good for the children but it will also prejudice his own relationship with them and so bring about the very thing that he fears most, which I am sure is a real break in that relationship. He has now appealed against the decision of the Family Court Judge but the appeal is limited to questions of custody, access and occupation of the matrimonial home. He wants to have custody of his children

and he wants to have them in the family home so they can remain close to their friends, their school and their familiar environment. He says that if he obtains custody he will allow his wife liberal access.

Since the Family Court orders were made certain events have occurred which should be mentioned. The first is that in January of this year the husband, as was his obligation in accordance with the Family Court order, moved out of the home and went to live in what appears to be rather squalid conditions in Woolston in a building which forms part of the base from which he operated his contracting business. The eldest daughter, D who perhaps had the greatest affinity with him of all the children and whose attitude towards her two parents was ambivalent right up until the time of the Family Court hearing, spent a number of days with him after he moved out of the family home, but eventually she returned to her mother and her brother and sisters, and I am told that her attitude has now changed somewhat in that she now prefers to be in the custody of her mother.

Mr Mazey has been self-employed as a rubbish and general cartage contractor but that business seems now to have disintegrated, partly because Mr Mazey can no longer drive, but more particularly I think because the business was clearly in a very precarious financial state for some time, and now the vehicles on which it is dependent are no longer road worthy, and the resources do not appear to be available to repair them. So Mr Mazey has gone onto the unemployment benefit and spends his time trying to patch together what he can of his vehicles and of his business. Then the loss of his licence in March

1984 for a period of 12 months as a result of his second offence of driving with excess breath or blood alcohol created problems with access. Those problems had begun early on because of his difficulty in accepting the consequences of the Family Court order, but now he found transport to Kainga at weekends extraordinarily difficult to arrange, and that in turn made it all the more difficult so far as his wife was concerned in getting him to go away again once he had come there for access. She says she had problems of various kinds with him including him coming to see the children the worse for liquor, and generally making a nuisance of himself. Whether or not that was so does not matter a great deal for present purposes, but it did prompt counsel at the time this case was due to be heard at the beginning of September to seek a variation of the Family Court's access order. At that time, because of the attitude of D the order was that Mr Mazey should have access to her every second Sunday, and to the other three children every alternative Sunday, between the hours of 10.30a.m. and 7p.m. I was asked to deal with the access question on very limited information, but I was content to proceed on the basis of a proposal from Mr Rutledge, counsel appointed by the Court to represent the interests of the children. I fixed access on an interim basis once a fortnight for all the children together, either at Kainga or at the home of Mrs Mazey senior. This unfortunately has been a most unsuccessful change in the arrangements because Mr Mazey has not seen the children since the order was made. He is most reluctant to go out to Kainga because, as the result of the orders made in the Family Court as much as anything, he is not

permitted to go into the former home; transport is very irregular; and he finds problems in taking the children to the only recreational facilities nearby because there are no toilets and no cooking facilities. I suspect that Mrs Mazey, who does not want him in Kainga at all, has not volunteered any co-operation such as the provision of lunches that they could take with them and so assist him with access at Kainga. So, for one reason or another, he has not thought it appropriate to go out there. He does have the very firm view that if he is going to see the children, he ought to be able to see them in their own home but it has to be accepted that he cannot do that without Mrs Mazey's permission and whether she is disposed to give that is largely up to him.

So far as his mother's place is concerned there are again problems with transport. There is not a great deal to do at her house and she admits the children get bored. There are bus stops nearby and certain expeditions can be made to other places but there are problems about that, especially on Sundays when the timetable is infrequent. But that house as a base, with the facility of travel in a bus, is a lot better than nothing. Unfortunately Mr Mazey, perhaps as a result of his mother's participation in the custody proceedings, does not feel on the best of terms with her and is not very happy about exercising access at her home.

The appeal comes before me against that background. I have not had the usual reports from Welfare and other people but I have had the assistance of Mr Rutledge as counsel and also the assistance of Mrs Mazey senior, who strikes me as an

eminently sensible practical person who can see this whole problem in perspective.

Mr Mazey says that he ought to have custody because his wife gets upset at times with the children; because he thinks he has greater feelings for home and family than she does; and because he is concerned about the moral effects on the children of a relationship which she is beginning to develop with a Mr

Mr who is some years older than either of the parties, is someone they have both known for a number of years. He is a divorced man and he has apparently spent the night out at the Kainga house on a couple of occasions. I am told that ^{the} idea that he should do that originated because of concern about prowlers in the vicinity. And Mrs Mazey suspects her husband in that respect. Whether that is so or not I do not know, but it does seem to me that it is most unwise in the present situation of these parties and of these children for another man to be introduced so obviously into the family circle by staying the night there with the mother. I deprecate that as being a rather thoughtless thing for the children's mother to have done, whatever the reason that may initially have prompted it.

Mr Mazey says he has stronger feelings of home and family than his wife, although he acknowledged that for most of the time prior to the separation, because of the nature of his employment, he was either working or sleeping when the children were up and about, so the opportunity for developing a close relationship with them did not present itself. I rather suspect, after reading all the evidence and looking at the material in the form of photographs and descriptions of the

home and so on, that perhaps these feelings have come to the fore much more now that he has been deprived of the security of home and family than at the time he was able to enjoy them. Perhaps he took them for granted, as sometimes we all tend to do. That however is the basis of his claim for custody. He says that if he obtains custody, because the children need a full-time parent he would go on to the domestic purposes benefit. He has demonstrated his capacity to care for the children on a short term basis from time to time. He is quite a good cook. But the state the house and grounds were in makes one wonder how good he would be as a house-keeper. He is a simple man with very strong and direct views, does not read the papers but knows what he thinks is right and that is the way he goes. He says he has others to call on to help him if he gets custody. He has a sister who does not appear to have been close and he has not asked her because there would be no need to do that: she would naturally come to his aid. The same can be said about his mother, although she says there would be a limit to what she could do to help him. He says he has friends who would help and they naturally have not been consulted about his proposals as yet. He says that his tendency to drink too much is under control now, although that may be because the medication he is taking means he must not drink. One cannot but express a certain amount of concern at the extent/^{to which} he was able to provide materially for his family in the past: although that is not of course the most important thing. Moreover, he has become very depressed as a result of the separation and Court orders and has attempted suicide. He is still in a state of nervous tension and stress but sadly

enough he has not thought fit to take any counselling. I do wonder how he would be able to cope with four children on his own. He is to be commended for wanting to make the effort, wanting to make up for what he describes as his lost years, but I think it is very, very optimistic now for him to believe that he could possibly cope with the very great responsibility of managing four young children. That is a view his mother shares, and I think she is right about that.

Mrs Mazey's claim to custody is really that she is the one who has provided the stability of mothering over the years. There has been no criticism of her as a caretaker other than the point about Mr Her husband acknowledges that she is otherwise a good mother. There is no evidence that she has trouble in handling the children. There have been difficulties with , going back apparently prior to the last hearing. They may be the result of her awareness of stresses between her parents. Mrs Mazey has had the good sense to take her to family counselling and it appears that the problem may now be under control. I have before me reports from the school and it seems that the children, especially the three older ones, are doing very well - the younger has been there only a short time - and that I think speaks quite a deal for the stability of the life into which they have now settled. I think it would be wrong to disturb that stability and make a change which really has little to commend it other than Mr Mazey's goodwill.

As far as the children are concerned the two eldest have clearly expressed to Mr Rutledge a preference to remain with their mother, the little one is too young to ask, and I suspect

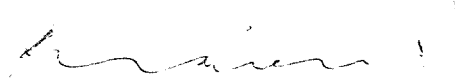
that is probably the position with the third: I do not know what her attitude is. There can be no question as I have said of dividing the children.

For these reasons, I think that the Family Court Judge was right in giving custody to the mother. And nothing has been put before me which would persuade me that I should take a different view on this appeal. Custody must therefore remain with the mother. I hope that Mr Mazey will see that that is being done, as best the Court can, in their interests and that he can come to terms with that and do his best to establish a good relationship with them during periods of access. Because as they grow older, their own wishes are going to be respected and the way in which he deals with them now will determine very much the way they respond to him in the future.

I am concerned about access. It is most important there be access and for access to be successful from the point of view of both the children and the parent exercising it, it must be a pleasant and relaxed experience. It is clear the present arrangements are far from satisfactory, temporary though they are. The position will improve greatly once Mr Mazey gets his driving licence back. Some of the difficulties that have been raised about the present arrangement are, I suspect, more imaginary than real and some initiative on Mr Mazey's part could well overcome them. The question was explored whether Saturday would be a better day than Sunday. It appears that is not so, although I would have thought that if Mr Mazey was going off to feed animals on Saturdays, that is the very thing he might share with his children. Maybe there are transport difficulties about that. At the moment I can

see no alternative to the present access apart from leaving open to him the right to choose a Saturday rather than a Sunday. I think the interim order could well be varied to that effect so that his mother would be informed before say 6pm on the Thursday prior to the access weekend whether he wishes to have the children on the Saturday or the Sunday. Apart from that I find it very difficult to see any other solution. I cannot help thinking that with a little more imagination on his part and the use of buses from his mother's place, time consuming though that might be, now the summer months are here there must be lots of things the five of them can go off and do and have a satisfying day even though it is far from ideal.

It follows from this that the order for possession of the matrimonial home must remain. The appeal will therefore be dismissed save only that the access order is varied in the way I have indicated. I think also that the parties ought to have the right to come back to this Court on the access question. Up to 14 December, if after reflecting on the result of today some other proposal or some other agreement arises, leave will be reserved to apply further on the question of access.



Solicitors:

Lane Neave Ronaldson, CHRISTCHURCH, for Appellant
Benseman Murfitt & Co, CHRISTCHURCH, for Respondent