

IN THE HIGH COURT OF NEW ZEALAND  
CHRISTCHURCH REGISTRY

No. M.426/83

BETWEEN

B

1323

Appellant

A N D

B

Respondent

Hearing: 14 September 1984

Counsel: R.J. Murfitt for Appellant  
Isabel M. Mitchell for Respondent  
June Johnson for Child

Judgment: 14 September 1984

---

ORAL JUDGMENT OF HOLLAND, J.

---

I have just had quarter of an hour with this boy and I am really very disturbed. I do not think I have ever seen an instance of a child whose mind has been so poisoned; and at the moment I am of the view that his mother and sister are substantially to blame for that. He is, I think, quite irrational, but he is nevertheless genuine in his hatred of his father and his reluctance to try and be a friend or to go to him. He has told me he will scream all day if he goes to his father and he will do a few other things which he also threatened. He described his father as a creep. That is a term he could only have acquired from his mother or his sister.

Mrs B , I am not blaming you entirely. I do not know where all the rights and wrongs are. All I know is that you and your husband will not talk sensibly to each other. So long as you have a child, and in fact you have two, you have got to. And

if you are as concerned about the child as you said you were in the witness box you will get over your feelings towards your husband to be able to talk to him about your children.

I am not going to vary the order I made which was also effectively the same order as the Family Court Judge made. You have heard what I have said. It may be that your husband will follow the indication I gave and take this access order by degrees. If he does not and he insists on having what can perhaps be described as his pound of flesh so that the order is strictly observed, it is your duty to obey it. The matter can be referred back to me after access and I will see the child again if it is necessary for the Court to continue to make orders pending the hearing of this appeal, but it is my view that the order that the boy be with his father once a fortnight has got ultimately to be observed and I am only suggesting not overnight for the first one or two times so that it can be seen whether the boy can establish some relationship with his father. You will be substantially responsible if he does not because the parent who has custody of a six year old child is the one who influences that child's mind. You have already influenced him, I am quite sure, and you now have the very hard task of trying to influence him the other way that he must endeavour to have some respect for his father. You do not need to have that respect because your marriage has broken but that boy is still a son of his father and the relationship must continue.

I am not going to make any further orders, I am not going to issue any warrants. I do not need to issue a warrant. You are liable to be fined, and if necessary you are liable to be sent to prison for not observing the Court order. I am not issuing that

by way of a threat at the moment because I have sympathy with what you are going through, but you have been quite misguided, and I hope you will take some advice from people who know that no matter what your wishes are it is in the interests of this boy that he be not deprived of a father and you are doing your best to deprive him of it. Now we have to have this period of trial, but I have said before and I repeat it again that a bigoted, unreasonable attitude by one parent is sufficient to persuade me that in some circumstances that parent is not fit to have custody of the child. By addressing my remarks to you I am not saying the bigotry is all on your side. I do not imagine it is for one moment, but you are in the position where you can influence this child because he is constantly with you and he loves you as he should. You have to do the hard thing, notwithstanding the feeling you have for the boy's father, to see that he is brought to respect him and has the opportunity of loving him as well.

I do not want the matter referred back to me unless the parties feel it necessary to do so but if it comes back again I presumably will have to issue a warrant which simply means we are not only going to have the upset of your boy going off to his father but being taken by a policeman to do it. Now I hope he can be persuaded to go, and I hope that the father can at least for two times settle for a few hours maybe on Saturday, a few hours maybe on Sunday, but at least give the boy the security of knowing he is getting home until some confidence can arise. If that won't work then it may be we have to get the appeal off a lot quicker than otherwise, but don't think you are on a winning card there because at the moment in the way things are going if I have to act on this

appeal again I am of the view that the Director General of the Social Welfare Department should be asked to come in with a view to finding a foster home for this child so he can be away from both parents in the hope that counselling can adjust him so that he is able to adjust to both parents rather than the very biased view he has at the moment of one. I want you to understand that because that is the risk you run if you cannot cope with your child. There may be a period when he has to be taken away from you where your influence adverse to his father can be removed and can arrest the situation.

The appeal is to be heard in February and the situation looked at then to ascertain how this boy gets on. You have also got to assist, Mrs B , with your daughter. The counselling was with a view to her seeing her father and ultimately she is going to have to do it. It is a matter of doing it in the best way but you do not have the right to say that neither of your children will see their father, and the more this comes back the more temporary unpleasant measures may have to be taken because I am quite satisfied that it is in the interests of children when they are fortunate enough to have both a mother and father that unless the conduct of one or the other is so extreme they should have the guidance of both. It is not their fault you parted. The matter can be referred back to me if this access business breaks down. The motion for an issue of a warrant is adjourned sine die.

*A D Holland*