

1976
July 30

[TRIANTAFYLLIDES, P., STAVRINIDES, HADJIANASTASSIOU, JJ.]

—
LOULLA G.
ECONOMOU
(No. 1)
v.
GEORGE K.
ECONOMOU

LOULLA G. ECONOMOU (NO. 1),

Appellant,

v.

GEORGE K. ECONOMOU,

Respondent.

(Civil Appeal No. 5598).

Civil Procedure—Appeal—Adjournment—Appeal against part of order for custody of children—Stay of execution granted ex parte—Application to adjourn hearing of appeal on the ground that another counsel, also retained by appellant, and who did not appear before trial Court, is absent abroad—Delicate position of counsel for appellant due to his efforts to reconcile the parties—Application granted subject to terms.

5

This was an application for adjournment of the hearing of an appeal against that part of an order, for the custody of the two elder, out of the three minor children of the parties, whereby the said two children were allowed to be taken to Greece, in order to stay there with their father for a certain period. The application was made on the ground that another counsel, also retained by the appellant to appear for her in the appeal, and who has not appeared before the trial Court, was absent abroad. Counsel for the appellant explained that a second counsel was retained because of, *inter alia*, the delicate position in which he had found himself due to his efforts, at the trial, to reconcile the parties as regards their dispute about access to their children.

10

15

Stay of execution of the complained of part of the custody order was granted to the appellant when she applied *ex parte* on July 1, 1976.

20

Held, we have decided, not without some difficulty, that we should not refuse the adjournment of the hearing of the appeal, but that we should grant it on condition that, if the appellant is going to take advantage of the order for stay of execution, which was granted *ex parte* by the trial Court, she will be bound to allow them to stay here with the parents of the respondent, or with either of them for a period of 15–17 days.

25

Application granted.

30

Application.

Application by the appellant for the adjournment of the hearing of her appeal against the part of the order of the District Court of Nicosia (Papadopoulos, D.J.) dated the 12th June, 5 1976, (Application No. 14/76) which allowed the two elder out of the three minor children of the parties to be taken to Greece in order to stay with their father, the respondent, "for a period between 15-17 days during the summer months only".

G. Ladas, for the appellant.

10 *Chr. Demetriades*, for the respondent.

The decision of the Court was delivered by:-

15 TRIANTAFYLIDIS, P.: This is an appeal against that part of an order for the custody of the two elder out of the three minor children of the parties which allows the said two children to be taken to Greece in order to stay there with their father, the respondent, "for a period between 15-17 days during the summer months only".

20 The order appealed from was made on June 12, 1976; the appeal, by the mother of the children, was filed on June 25, 1976, and on July 2, 1976, notice was given to the parties that the appeal had been fixed for hearing on September 27, 1976.

Then, on July 10, 1976, counsel for the respondent applied that this appeal be heard as an urgent one during this Court's summer vacation. As a result, it was fixed for hearing today.

25 In the meantime, the appellant applied *ex parte* on July 1, 1976, to the trial Court for a stay of execution, pending the outcome of this appeal, of the complained of part of the custody order, and such stay was ordered on July 8, 1976. It appears that the respondent's side came to know only today of the order for stay of execution.

As the issue of the possibility of obtaining the said order for stay of execution from the trial Court has not been raised at all in argument before us in this appeal, we shall make no pronouncement, of any kind, in this connection.

35 Today counsel for the appellant has applied for an adjournment of the appeal on the ground that another counsel, also retained by the appellant to appear for her in the appeal, and who did not appear before the trial Court, is absent abroad;

1976
July 30
—
LOULLA G.
ECONOMOU
(No. 1)
v.
GEORGE K.
ECONOMOU

1976
July 30
—
LOULLA G.
ECONOMOU
(No. 1)
v.
GEORGE K.
ECONOMOU

counsel for the appellant has explained that a second counsel was retained by his client because of, *inter alia*, the delicate position in which counsel for the appellant had found himself due to his efforts, at the trial, to reconcile the parties as regards their dispute about access to their children; counsel for the appellant has stressed that, in the circumstances, he feels that it is essential that this appeal should not be heard in the absence of the second counsel who has been retained by his client.

5

It was, further, stated, in support of the application for an adjournment, that there is involved in this appeal the rather serious issue of whether the trial Court could have made an order allowing the children to go to Greece where they would be outside the jurisdiction of the Cyprus Courts.

10

On the other hand, counsel for the respondent has argued that if the appeal is not proceeded with—and in view of the existence of the order staying execution—the respondent will, in effect, be deprived completely of the possibility of having the children with him in Greece during this year's summer, for the prescribed in the custody order period, and, thus, grave hardship will be caused to him; we were told that the respondent is a very busy man and it is practically impossible for him to come to Cyprus in order to spend any time with his children here.

15

20

We have weighed all the elements involved in the very difficult situation before us, and we have decided, not without some difficulty, that we should not refuse the adjournment of the hearing of the appeal applied for by the appellant, but that we should grant it on condition that, if the appellant is going to take advantage of the order for stay of execution, which was granted *ex parte* by the trial Court (with the result that the children will not leave Cyprus during the current summer), she will be bound to allow them to stay here with the parents of the respondent, or with either of them, for a period of 15–17 days to be specified by the respondent, who will be, of course, at liberty to come and stay with them during such period for as long as he may be able to do so.

25

30

35

If the respondent does not want to have the above condition implemented then, depending on the outcome of this appeal, he will be at liberty to exercise his right of taking the children to Greece later on for a period of 15–17 days at any suitable time during the year.

40

The appeal will be heard on September 23, 1976, at 4.15 p.m.

If respondent wishes to take any proceedings before the trial Court in relation to the stay of execution, which was granted *ex parte*, he is not in any way precluded from doing so in the meantime.

- 5 The question of costs for today shall be decided at the end of the proceedings.

Order accordingly.

1976
July 30
—
LOULLA G.
ECONOMOU
(No. 1)
v.
GEORGE K.
ECONOMOU