

Mag 1.1.

APPEAL BY WAY OF CASE STATED UNDER 15.4.99
THE MAGISTRATES' COURTS (NORTHERN IRELAND) ORDER 1981

BETWEEN:

SARAH MUNRO

78 Beechwood Avenue
Bangor

represented by Murray, McCourt, Kelly

Applicant

AND:

LEE MUNRO

42 Ballyhalbert Gardens
Bangor

not legally represented

Respondent

CASE STATED by Daniel Magill, Resident Magistrate in respect of his adjudication at a Magistrates' Court sitting at Newtownards in the County Court Division of Ards

1. On the 15 day of April 1999 the applicant applied by virtue of Rule 10A of the Magistrates' Courts (Domestic Proceedings)(Amendment) Rules (Northern Ireland) 1999 for leave to make an Ex-parte Application under Article 23 of the Family Homes and Domestic Violence (Northern Ireland) Order 1998 for a Non-Molestation Order under Article 20 of the said Order.
2. I granted leave to make the Ex-parte Application and then heard the application.

Despatched to Murray McCourt Kelly - Solicitors on this date

Deputy Clerk of Petty Sessions
14 June 1999

3. Having considered the evidence and having regard to the provisions of Article 23(1) and (2) of the 1998 Order I exercised my power under Article 23(1) and made a Non-Molestation Order under Article 20 of the said Order.
4. In making this Ex-parte Order I had regard to Article 23(3) of the said Order which states -

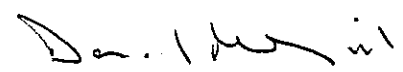
".... (3) If the Court makes an Order by virtue of paragraph (1) it shall afford the respondent an opportunity to make representations relating to the Order as soon as just and convenient at a full hearing".

5. I included in the Order the following paragraph -

"This Order shall take effect forthwith and shall remain in force until 14 May 1999 at which time you will have an opportunity to make representations relating to the Order".

6. I was not referred to any reported cases by the applicant.
7. The applicant did however contend that an Ex-parte Order could be of indefinite duration and questioned whether there was any necessity to give a "return date"
8. The question of the Court of Appeal is this -

"Was I correct in law when I made the Ex-parte Non-Molestation Order in making the Order until a specific date for the purpose of affording to the respondent an opportunity to make representations on that specific date as to the Order".


Resident Magistrate

I enclose the following documents:-

- | | | |
|--------|---|--|
| Form 1 | - | Application for Non-Molestation order (lodged after court) |
| Form 7 | - | Non-Molestation Order Ex-Parte |

**FAMILY HOMES AND DOMESTIC VIOLENCE (NORTHERN IRELAND) ORDER 1998
NON-MOLESTATION ORDER EX-PARTE
ARTICLE 20**

Sarah Munro
of 78 Beechwood Avenue
Bangor

Petty Sessions District of North Down

Applicant

County Court Division of Ards

Lee Munro
of c/o McConnell Kelly & Co
Solicitors
45 Main Street
Bangor

Respondent

ORDER

By the Resident Magistrate sitting at **Newtownards** on **15 day of April 1999**.

Upon the hearing of an application for an order under **Article 20** of the abovementioned order.

IT IS ORDERED THAT

The respondent, is forbidden to use or threaten violence against the applicant.

The respondent, is further forbidden to intimidate, harrass or pester the applicant.

The respondent, is excluded from 78 Beechwood Avenue, Bangor forthwith.

This order shall take effect forthwith and shall remain in force until 14 May 1999 at which time you will have an opportunity to make representations relating to the order.

ORDERED BY MR MAGILL
Resident Magistrate

on 15 day of April 1999

IMPORTANT NOTICE to the Respondent LEE MUNRO

This order gives you instructions which you must follow. You should read it all carefully. If you do not understand anything in this order you should go to a solicitor, Advice Centre or Citizen's Advice Bureau. You have a right to ask the court to change or cancel the order but you must obey it unless the court does change or cancel it.

You must obey the instructions contained in this order. If you do not, you may be guilty of an offence, and you may be sent to prison and/or fined.

PARTICULARS OF SERVICE

Served the within order on the 16 day of April 1999,

at McConnell Kelly & Co 45 Main Street Bangor.

by ~~delivering a copy to the respondent personally~~ fax.

Signed Deane

SCHEDULE

FORM F1

Part 6
CROWN & COUNTY COURT
OFFICE
DIVISION OF ARDS
19 MAY 1999
RECEIVED

APPLICATION FOR A NON-MOLESTATION ORDER/
AN OCCUPATION ORDER

Family Homes and Domestic Violence (Northern Ireland) Order 1998

(Petty Sessions District of)
NORTH DOWN

APPLICANT:

SARAH MUNRO
78 Beechwood Avenue
Bangor

(County Court Division of)
ARDS

RESPONDENT:

LEE MUNRO
c/o McConnell Kelly Solicitors
45 Main Street
Bangor

Please read the accompanying notes as you complete this form

1. About You (the Applicant)

Title: Mrs
Name: Sarah Munro
Address: 78 Beechwood Avenue
Bangor
Telephone: 461222
Date of Birth: 5/11/73
Solicitor: Sinéad Larkin LLB
Murray & McCourt
1 Dufferin Avenue
Bangor
Telephone: 270000
DX: 2550 NR. BANGOR 2

2. About the Respondent: (the person to be served with this application)

Name: Lee Munro
Address: c/o McConnell Kelly Solicitors, 45 Main Street, Bangor
Date of birth: 21/1/76

3. The Order (s) for which you are applying:

This application is for:-

A Non-molestation Order

An Occupation Order

Tick this box if you wish the Court to hear your application without notice being given to the Respondent. The reason relied on for an application being heard without notice must be stated in the statement in support.

4. Your relationship to the Respondent:

(Please tick only one of the following. The accompanying notes, on Section 4, will help you to decide which category is most applicable to you)

1. Married

2. Were married

3. Cohabiting

4. Were cohabiting

5. Both of you live or have lived in the same household

6. Relative - state how related:-

*

7. Agreed to marry - give the date the agreement was made. If the agreement has ended state when:-

*

8. Both of you are parents of or have parental responsibility for a child

9. One of you is a parent of a child and the other has parental responsibility for that child

10. One of you is the natural parent or grandparent of a child adopted or freed for adoption, and the other is:-

- (i) The adoptive parent or
- (ii) A person who has applied for an adoption order for the child or
- (iii) A person with whom the child has been placed for adoption or
- (iv) The child who has been adopted or freed for adoption

State whether (i) (ii) (iii) or (iv)

11. Both of you are parties to the same family proceedings
(see also Section 11 below)

5. Application for a Non-molestation Order

If you wish to apply for a Non-molestation Order, state briefly in this section the Order you want.

Give full details in support of your application in your supporting evidence.

SEE ATTACHED STATEMENT OF EVIDENCE

6. Application for an Occupation Order

If you do not wish to apply for an occupation order - please go to section 9 of this form

A. State the address of the dwelling house to which your application relates:-

*
*
*
*

N/A

B. State whether it is occupied by you or the Respondent now or in the past, or whether it was intended to be occupied by you or the Respondent:-

*

The accompanying notes on Section 6 will help you to decide which of the following categories are most applicable to you.

C. State whether you are entitled to occupy the dwelling house:

Yes

No

If yes, explain why:-

*

D. State whether the Respondent is entitled to occupy the dwelling house:

Yes

No

If yes, explain why:-

*

On the basis of your answer to (C) and (D) above, tick one of the boxes 1 to 5 below to show the category into which you fit.

1.

A spouse who has matrimonial home rights in the dwelling-house or a person who is entitled to occupy it by virtue of a beneficial estate or interest or contract or by virtue of any enactment giving him or her the right to remain in occupation.

If you tick box 1 state whether there is a dispute or pending proceedings between you and the Respondent about your right to occupy the dwelling-house.

2. A former spouse with no existing right to occupy where the Respondent spouse is entitled.
3. A cohabitant or former cohabitant with no existing right to occupy where the Respondent cohabitant or former cohabitant is also not so entitled.
4. A spouse or former spouse who is not entitled to occupy, where the Respondent spouse or former spouse is also not entitled.
5. A cohabitant or former cohabitant who is not entitled to occupy, where the Respondent cohabitant or former cohabitant is also not entitled.

Matrimonial Home Rights

If you do have matrimonial home rights please:

State whether the title to the land is registered or unregistered (if known):

If registered, state the Land Registry folio number (if known):-

If you wish to apply for an Occupation Order, state briefly here the Order you want. Give full details in support of your application in your supporting evidence.

7. Application for additional order (s) about the dwelling house

If you wish to apply for any of the orders listed in the notes to this section, state what order you would like the Court to make:-

*

8. Mortgage and rent

Is the dwelling-house subject to a mortgage?

Yes

No

If yes, please provide the name and address of the mortgagee:

*

Is the dwelling-house rented?

Yes

No

If yes, please provide the name and address of the landlord:

9. At the Court

Will you need an interpreter at the Court?

Yes

No

If yes, please specify the language:

N/A

If you need an interpreter because you do not speak English, you are responsible for providing your own.

If you need an interpreter or other facilities because of a disability please contact the Court to ask what help is available.

10. Other information

State the name and date of birth of any child living with you or staying with or likely to live with or stay with you or the Respondent

Lee Munro	18/9/98	} Natural children
Emma Munro	31/10/97	
Shelby Munro	2/7/93	
Christopher Munro	20/2/90	

State the name of any person living in the same household as you and the Respondent, and say why they live there:

N/A

11. Other Proceedings and Orders

If there are any other current family proceedings or Orders in force involving you and the Respondent, state the type of proceedings or Orders, the Court and the case number. This includes any application for an Occupation Order or Non-molestation Order against you by the Respondent.

N/A

This application is to be served upon the Respondent.

Signed:

Sarah Munro

Date:

14/4/99

STATEMENT OF EVIDENCE

BETWEEN

Sarah Munro
78 Beechwood Avenue
Bangor
County Down

AND

{Applicant}

Lee Munro
C/o McConnell Kelly, Solicitors
45 Main Street
Bangor

{Respondent}

On the 12th April 1999 Mr Munro entered the home and an argument ensued in relation to a remark he had made to my mother about me.

He came towards me and grabbed me with both hand by the neck and proceeded to attempt to choke me, while saying "Don't you Fing shout at me".

I managed to release myself. Three of the children witnesses this incident and started to cry. Mr Munro then left the house.

The police were called to the house.

There is visible signs of the bruising on my neck. I therefore ask that the Court have the application ex-parte, as I fear that if the Respondent were given notification of this application it may place both me and the children in danger.

There is a history of violence by Mr Munro towards me. For example at Christmas 1998 I had to move to Bangor to get away from Mr Munro as he had beaten me severely. In October 1997 he hit me when I was pregnant and I had to attend Clelland Park Surgery in relation to this incident.

I would like the Respondent excludud from 78 Beechwood Avenue, Bangor.

Signed:

Sarah Munro

Dated:

14 April 99.