

Orders of the Royal Court.



II
1979

IN THE ROYAL COURT OF THE ISLAND OF GUERNSEY

The 24th day of January, 1979, before Charles Keith Frossard, Esquire, Deputy Bailiff; present:— Stanley Walter Gavey, Esquire, O.B.E., D'Arcy George Le Tissier, Walter Francis Robin, Richard Alan Kinnerly, Esquires, Harry Wall Poat, Esquire, D.S.O., M.C., A.D.C., Richard Brook Sutcliffe, Richard Oliver Symons, Albert Richard McCartney Straw, Esquires, Frederick William Winslow Chandler, Esquire, D.S.O., D.F.C. and Lionel Walter Sarre, Esquire, M.B.E., K.P.M., Jurats.

No. 2 Order, 1979

ENTITLED

The Court of Appeal (Guardianship Proceedings) (Appeals) Rules, 1979

THE ROYAL COURT, in exercise of the powers conferred upon it by subsection (2) and subsection (3) of section twenty-two of the Law Reform (Age of Majority and Guardianship of Minors) (Guernsey) Law, 1978, and of all other powers thereunto enabling it, hereby makes the following Rules:—

Interpreta-
tion.

1. (1) In these Rules, unless the context otherwise requires, the following expressions have the meanings hereby respectively assigned to them, that is to say:—

“affidavit” means a declaration in writing which is deposed to on oath or affirmation or solemn declaration by the declarant and which complies with the provisions of Rule 18 of these Rules;

“appeal” means an appeal to the Court under the provisions of subsection (1) or subsection (3) of section twenty-two of the Law and “appellant” and “respondent” shall be construed accordingly;

“consular officer” has the meaning assigned to it by the Interpretation Act, 1889, registered on the twentieth day of March, nineteen hundred and twenty-six;

“the Court” means the Court of Appeal constituted under the provisions of Part I of the Court of Appeal (Guernsey) Law, 1961;

“the Island of Guernsey” includes the Islands of Herm and Jethou.

“the Law” means the Law Reform (Age of Majority and Guardianship of Minors) (Guernsey) Law, 1978;

“the Ordinary Court” means the Royal Court sitting as an Ordinary Court;

“the Registrar” means the Registrar of the Court;

“regular armed forces of the Crown” means the Royal Navy, the regular forces as defined by section two hundred and twenty-five of the Army Act, 1955, registered on the first day of September, nineteen hundred and fifty-six, the regular air force as defined by section two

hundred and twenty-three of the Air Force Act, 1955, registered on the first day of September, nineteen hundred and fifty-six, the Women's Royal Naval Service, Queen Alexandra's Royal Naval Nursing Service and Voluntary Aid Detachments serving with the Royal Navy.

(2) The Interpretation (Guernsey) Law, 1948, shall apply to the interpretation of these Rules as it applies to the interpretation of an enactment.

(3) Except where the context otherwise requires, any reference in these Rules to any enactment shall be construed as including a reference to that enactment as amended, repealed and replaced, extended or applied by or under any other enactment.

2. (1) An appeal under the provisions of subsection (1) or subsection (3) of section twenty-two of the Law to the Court shall be brought by notice of appeal in the form set out in the Schedule to these Rules or in a form to the like effect with such variation as the circumstances may require.

(2) Notice of appeal may be given either in respect of the whole or in respect of any specified part of the decision of the Ordinary Court; and every such notice shall specify the grounds of the appeal and the precise form of the order which the appellant proposes to ask the Court to make.

(3) Except with the leave of the Court, the appellant shall not be entitled on the hearing of an appeal to rely upon any grounds of appeal not specified in the notice of appeal.

(4) A notice of appeal shall be served upon the respondent.

Time for appealing.

3. Every notice of appeal shall be served under paragraph (4) of the last preceding Rule prior to the expiration of the period of two weeks next following the date on which the decision of the Ordinary Court was pronounced.

Setting down.

4. (1) The appellant shall, prior to the expiration of the period of two days next following the date of the service of the notice of appeal, apply in accordance with this Rule to set down the appeal.

(2) An application to set down an appeal shall be made by leaving with the Registrar a copy of the notice of appeal.

(3) Upon application being made as aforesaid, the Registrar shall file the copy of the notice of appeal and shall cause the appeal to be set down in a list of appeals kept for the purpose; and the appeal shall come on to be heard according to its order on that list unless the Court or a judge thereof otherwise orders.

(4) The Registrar shall cause a copy of the list of appeals to be posted up in the vestibule of the Royal Court.

(5) Prior to the expiration of the period of two days next following the date on which an appeal is set down the appellant shall serve a notice to that effect on the respondent.

Respondent's notice.

5. (1) A respondent who, not having appealed from the decision of the Ordinary Court, desires to contend on the appeal that the decision of the Ordinary Court should be varied, either in any event or in the event of the appeal being allowed in whole or in part, shall give notice to that effect, specifying the grounds of that contention and the precise form of the order which he proposes to ask the Court to make, or to make in that event, as the case may be.

(2) A respondent who desires to contend on the appeal that the decision of the Ordinary Court should be affirmed on grounds other than those relied upon by the Ordinary Court shall give notice to that effect specifying the grounds of that contention.

(3) Except with the leave of the Court, a respondent shall not be entitled on the hearing of the appeal to contend that the decision of the Ordinary Court should be varied upon grounds not specified in a notice given under this Rule, or to support the decision of the Ordinary Court upon any grounds not relied upon by the Ordinary Court or specified in such a notice.

(4) Any notice given by a respondent under this Rule (in these Rules referred to as a "respondent's notice") shall be served on the appellant prior to the expiration of the period of fourteen days next following the date of the service of the notice of appeal on the respondent.

(5) A party by whom a respondent's notice is served shall, prior to the expiration of the period of two days next following the date of the service of the notice, furnish a copy of the notice to the Registrar.

6. (1) A notice of appeal or respondent's notice may be amended—

- (a) by or with the leave of the Court, at any time;
- (b) without such leave, by supplementary notice served, prior to the commencement of the period of seven days immediately preceding the day appointed for the hearing of the appeal under Rule 10 of these Rules, upon each of the parties upon whom the notice to be amended was served.

Amend-
ment of
notice of
appeal and
respondent's
notice.

(2) A party by whom a supplementary notice is served under this Rule shall, prior to the expiration

of the period of two days next following the date of the service of the notice, furnish a copy of the notice to the Registrar.

Transcript
of proceed-
ings in
Ordinary
Court.

7. The person responsible for transcribing the record of any proceedings in the Ordinary Court shall certify the transcript to be a complete and correct transcript of such record.

Documents
for use of
the Court
and
exchange of
cases.

8. (1) The appellant shall, prior to the expiration of the period of twenty-one days next following the day on which the appeal was set down under Rule 4 of these Rules, lodge with the Registrar four copies of—

- (a) the notice of appeal;
- (b) the decision under appeal;
- (c) the pleadings, if any, in the proceedings in the Ordinary Court;
- (d) the transcript, if any, of the record of the proceedings in the Ordinary Court to which the appeal relates;
- (e) such affidavits or depositions, if any, as are relevant to the matters in controversy on the appeal;
- (f) such exhibits or parts of exhibits (including correspondence) as are relevant to the matters in controversy on the appeal;
- (g) in cases where a record of the proceedings in the Ordinary Court has not been made, the note, if any, of the presiding judge of the Ordinary Court;
- (h) a statement setting out the contentions to be urged and the authorities to be cited by the appellant in support of his appeal (hereafter in this Rule referred to as "the appellant's case").

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(2) The appellant shall, prior to the expiration of the period of two days next following compliance with the provisions of paragraph (1) of this Rule, serve on the respondent a copy of the appellant's case.

(3) A respondent shall, prior to the expiration of the period of twenty-one days next following the date of the service on him of the appellant's case, lodge with the Registrar four copies of a statement setting out the contentions to be urged and the authorities to be cited by him at the hearing of the appeal (hereafter in these Rules referred to as "the respondent's case").

(4) A respondent shall, prior to the expiration of the period of two days next following compliance with the provisions of the last preceding paragraph, serve on the appellant a copy of the respondent's case.

9. If the appellant has not lodged with the Registrar all such documents and exhibits as he is required to lodge with the Registrar under paragraph (1) of the last preceding Rule—

Abandonment of appeal by non-prosecution.

(a) within the time limited for so doing under that paragraph; or

(b) where the time so limited has been extended or abridged by an order made under Rule 16 of these Rules, within the time limited for so doing under that order;

he shall be deemed to have abandoned his appeal.

10. (1) A judge of the Court shall, as soon as may be after the expiration of the time limited for the lodging of the respondent's case under Rule 8 of these Rules, appoint a day for the hearing of the appeal.

Fixing of date of hearing.

(2) Except with the consent of all the parties to an appeal, the day appointed for the hearing of the appeal shall not be earlier than the expiration of the period of twenty-one days next following the day on which the day for the hearing of the appeal was appointed.

(3) The Registrar shall, at the earliest possible date, serve on the appellant a notice of the day appointed under paragraph (1) of this Rule for the hearing of the appeal.

(4) The appellant shall, prior to the commencement of the period of ten days immediately preceding the day appointed for the hearing of the appeal, serve a notice of the day so appointed on the respondent.

Directions
of the Court
as to service
of notice of
appeal.

11. (1) The Court may in any case direct that the notice of appeal be served upon any party to the proceedings in the Ordinary Court on whom it has not been served, or upon any person not a party to those proceedings.

(2) In any case in which the Court directs the notice of appeal to be served on any party or person, the Court may also direct that any respondent's notice by which that party or person is directly affected shall be served upon him.

(3) The Court may in any case where it gives a direction under this Rule—

(a) postpone or adjourn the hearing of the appeal for such period and upon such terms as may be just; and

(b) give such judgment and make such order on the appeal as might have been given or made if the persons served in pursuance of the direction had originally been parties.

12. (1) The Court may at any time, either of its own motion or on the application of any party to an appeal, order any document to be amended on such terms as to costs or otherwise as may be just and in such manner (if any) as it may direct.

General powers of the Court.

(2) The Court shall have full discretionary power to receive further evidence upon questions of fact, either by oral examination in Court, by affidavit, or by deposition taken before a Jurat of the Royal Court of Guernsey, the Chairman of the Court of Alderney or the Seneschal of Sark:

Provided that in the case of an appeal from a decision after trial or hearing of any cause or matter upon the merits, no such further evidence (other than evidence as to matters which have occurred after the date of the trial or hearing) shall be admitted except on special grounds.

(3) The Court shall have power to draw inferences of fact and to give judgment and make any order which ought to have been given or made, and to make such further or other order as the case may require.

(4) The powers of the Court under the foregoing provisions of this Rule may be exercised notwithstanding that no notice of appeal or respondent's notice has been given in respect of any particular part of the decision of the Ordinary Court, or by any particular party to the proceedings in the Ordinary Court, or that any grounds for allowing the appeal or for affirming or varying the decision of the Ordinary Court is not so specified in such a notice; and the Court may make any order, on such terms as the Court thinks just, to ensure the determination on the merits of the real question in controversy between the parties.

(5) The Court may, in special circumstances, order that such security shall be given for the costs of an appeal as may be just.

Evidence on appeal.

13. Where any question of fact is involved in an appeal, the evidence taken in the Ordinary Court bearing on the question shall, subject to any direction of the Court, be brought before the Court as follows, that is to say—

- (a) in the case of evidence taken by affidavit or by deposition, by the production of copies of the affidavit or deposition;
- (b) in the case of evidence given orally, by a copy of the transcript of the record of such evidence or by such other means as the Court may direct.

Stay of execution.

14. Except so far as the Ordinary Court or the Court may otherwise direct an appeal shall not operate as a stay of execution or of proceedings under the decision of the Ordinary Court.

Applications to the Court, to a single judge of the Court and to the presiding judge of the Ordinary Court.

15. (1) Every application to the Court, to a judge thereof or to the presiding judge of the Ordinary Court shall be made in writing and shall state in general terms the grounds of the application.

(2) Subject to the provisions of the next succeeding paragraph and of paragraph (5) of this Rule, any person intending to make an application to the Court, to a judge thereof or to the presiding judge or the Ordinary Court shall serve a notice thereof upon the party or parties affected prior to the commencement of the period of three days immediately preceding the day on which he intends to make the application; and such notice shall state the day, time and place on and at which the applica-

tion is to be made and shall be accompanied by a copy of the application.

(3) The Court, a judge thereof or the presiding judge of the Ordinary Court, as the case may be, if satisfied that the delay caused by complying with the provisions of the last preceding paragraph would or might entail irreparable or serious mischief, may upon application made in that behalf, make any order ex parte upon such terms as to costs or otherwise and subject to such undertaking, if any, as the Court or judge may think just; and any party affected by such order may apply to the Court or the judge, as the case may be, to set it aside.

(4) If on the hearing of an application the Court, a judge thereof or the presiding judge of the Ordinary Court, as the case may be, shall be of opinion that any person on whom notice of the application has not been served in accordance with the provisions of paragraph (2) of this Rule ought to have or to have had such notice, the Court or judge may either dismiss the application or adjourn the hearing thereof, in order that such notice may be served on that person, upon such terms, if any, as the Court or judge may think fit to impose.

(5) Any application to the Court for leave to appeal (other than an application made after the expiration of the time for appealing) shall be made ex parte in the first instance; but unless the application is then dismissed or it appears to the Court that undue hardship would be caused by an adjournment, the Court shall adjourn the application and give directions for the service of notice thereof upon the party or parties affected.

(6) Where an application has been refused by the presiding judge of the Ordinary Court, an application for a similar purpose may be made to the Court or to a judge thereof.

Extension of time. 16. (1) The Court or a judge thereof may, on such terms as the Court or judge thinks just, by order extend or abridge the period within which a person is required or authorised by these Rules or by any order or direction, to do any act and may extend any such period although the application for extension is not made until after the expiration of that period.

(2) The period within which a person is required by these Rules, or by any order or direction, to do any act may be extended by consent in writing without an order of the Court or of a judge thereof being made for that purpose.

(3) Without prejudice to the power conferred on the Court or a judge thereof by paragraph (1) of this Rule, the period for serving notice of appeal under Rule 3 of these Rules may be extended by the presiding judge of the Ordinary Court upon application being made before the expiration of that period.

Service of notices, etc.

17. Every notice or other document which is required to be served on any person may be served by delivering it to him, or by sending it by registered post or by recorded delivery service addressed to him at his usual or last known place of abode.

Affidavits.

18. An affidavit, for the purposes of these Rules shall—

- (a) if made in the Island of Guernsey, be made before the Bailiff, or Lieutenant-Bailiff, or any Jurat of the Royal Court or before a notary public;
- (b) if made in the Island of Alderney, be made before any Jurat of the Court of Alderney or before a Notary Public.

- (c) if made in the Island of Sark, be made before the Seneschal;
- (d) if made elsewhere, be made before a British consular officer or any person for the time being authorised by law in the place where the affidavit is made to administer an oath for any judicial or other legal purpose;
- (e) if the deponent is serving in any of the regular armed forces of the Crown, be made before an officer holding a commission in any of those forces.

19. The provisions of the Court of Appeal (Civil Division) (Costs and fees) (Guernsey) Rules, 1964, shall apply, where appropriate, in respect of any proceeding or matter relating to any appeal to the Court under subsection (1) or subsection (3) of section twenty-two of the Law as they apply in respect of any proceeding or matter relating to any appeal under the Court of Appeal (Guernsey) Law, 1961. Costs and Fees.

20. (1) These Rules may be cited as the Court of Appeal (Guardianship Proceedings) (Appeals) Rules, 1979. Citation and commencement.

(2) These Rules shall come into force on the twenty-fourth day of January nineteen hundred and seventy-nine.

SCHEDULE

Rule 2

Form of notice of appeal

In the Court of Appeal (Civil Division), Guernsey.

On appeal from the Royal Court sitting as an Ordinary Court.

Between A B
and

C D

TO: (1)

TAKE NOTICE that the above-named A

B (C

D) intends to appeal from the whole of the decision of the Ordinary Court under Part II of the Law Reform (Age of Majority and Guardianship of Minors) (Guernsey) Law, 1978, given on the

day of 19, that

((2) intends to appeal from so much of the decision given by the Royal Court sitting as an Ordinary Court at the hearing of these proceedings on the

..... day of, 19

that) and proposes to ask

the Court of Appeal for an order (3)

.....

(1) State the name of A..... B..... or C..... D..... as the case may be.

(2) To be used if only part of the decision is appealed from.

(3) State the precise form of the order applied for,

AND FURTHER TAKE NOTICE that the grounds of this appeal are as follows:—

(4)
.....
.....
.....
.....
.....

Dated the day of 19

(Signed) (5)

A.....B..... or C.....D.....

W. J. GAUDION,
Her Majesty's Deputy Greffier

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- (4) Specify the grounds of the appeal shortly and simply and without detailed reasons.
 - (5) The notice of appeal may be signed by the Advocate acting on behalf of his client.