

JERSEY / JUDGMENT

Between v Q [2021] JRC 331 (09 November 2021)

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[2021] JRC 331 [New search] [Help] Family - issues relating to contact [2021]JRC331 Royal Court
(Family) 9 November 2021 Before : Elizabeth Daultrey, Registrar, Family Division Between
P Applicant And Q Respondent Advocate J. F. Orchard for the Applicant. Advocate C. G.
Hillier for the Respondent.

reasons

the registrar:

Introduction

1. The Court is asked to determine issues relating to contact of 2 children, Child 1 born in 2014, aged 6 at the date of the hearing, and Child 2 born in 2017, aged 4 at the date of the hearing. Child 1 is the biological child of both parties, Child 2 is the child of the respondent and stepdaughter of the applicant

Background

2. The parties have had an on/off relationship for a number of years. Child 1 is the biological child of the parties. The applicant left Jersey when Child 1 was approximately 3 months old. Child 2 is not the biological child of the applicant. The parties reconciled after Child 2 was born, the applicant returned to live in Jersey in March 2018. The parties married in March 2019, separated in October 2020, reconciled in early 2021, and finally separated in April 2021.
3. There was an incident at the end of May 2020 when the applicant attempted suicide. No welfare concerns have been raised as a result of this incident by the respondent or the JFCAS officer.
4. In January 2021, shortly following issue of the present proceedings, the parties reached agreement as to interim contact arrangements. An interim order was made by this Court, by consent on 21 st February 2021, the arrangements provided for the

applicant to see both children twice per week, with additional contact during school holidays and on special occasions. Staying contact was agreed subject to the applicant having suitable accommodation. The parties also agreed that the applicant would share parental responsibility for Child 1 and entered into a formal agreement giving effect to this. No welfare issues were raised by either party and the case was closed to JFCAS. The application was adjourned to give the parties time to settle all remaining issues. 5. On 21st June 2021, the applicant sought to return the matter to the court claiming that the respondent had refused contact. As a result of this application, JFCAS again became involved and undertook a contact intervention. An order for interim contact was made on 28th June 2021 that the applicant have contact as follows: (i) Each Sunday from 10am till 5 pm with both children; (ii) Each Tuesday during school term time, with Child 2 from 10am until 4.30pm and on the same day with Child 1 from after school, collecting Child 1 from school until 4.30 pm. During school holidays the contact shall be with both children from 10am; (iii) At such time that the applicant has his own accommodation that affords the facility to cook for the children, the applicant shall return the children each Tuesday at 5pm having first given the children tea. 6. During the course of the contact intervention, Ms Cardinal of JFCAS recommended that a full welfare report was required to which the parties agreed. 7. During the summer 2021, the parties agreed between themselves to initiate overnight stays between the applicant and the children as he had secured suitable accommodation, the parties agreed contact one weekend per fortnight from Friday after school to Monday morning. The parties were unable to agree arrangements for any additional midweek or holiday contact, and the matter listed for final hearing to resolve these issues. 8. At an interim hearing on 4th October 2021, a further interim order was made to reflect the ongoing arrangement for staying contact, namely that the applicant have contact with both children each alternate weekend from after school on Friday until Monday morning. 9. On 28th October 2021, the respondent made an application seeking a reduction in contact between the applicant and Child 2 as she is not his biological child, and to afford an opportunity for Child 2 to form a relationship with her biological father R. Child 2 has not had a relationship with her biological father and he has not been identified by either party during these proceedings. Request by respondent to adjourn final hearing 10. Advocate Hillier on behalf of the respondent raised a preliminary issue as to whether the court had sufficient information to finalise matters. This was based on 2 new pieces of information, firstly, that the applicant was due to attend that evening at the parish hall to answer a complaint by the respondent relating to a naked photograph of the respondent, and also relating to damage he is said to have caused to her phone during an argument. 11. Secondly, the respondent intends to introduce Child 2 to her biological father this weekend, and, as there is the possibility that he may wish to develop a relationship with Child 2, her contact with the applicant should be limited. 12. Ms Cardinal of JFCAS confirmed that she had known about the potential criminal proceedings at the time her report was prepared but was not detailed in her report as the details of the allegation could not be shared with the applicant until the police decided how to proceed, this knowledge had underpinned some of her reasons for requiring a full welfare report, but ultimately she did not raise any welfare

issues relating to this. Ms Cardinal confirmed that she was aware of the identity of Child 2's biological father R, but she had not interviewed him as his involvement has been minimal, he has no relationship with Child 2, and Ms Cardinal was left "confused" by the respondent's wishes regarding R. Ms Cardinal recommended proceeding with the final hearing. 13. The court decided that the hearing will proceed following the advice of Ms Cardinal, and taking into account that the matters raised today by the respondent were within the knowledge of Ms Cardinal when she prepared her report, and also bearing in mind that the proceedings have been ongoing for 11 months. 14. The Court has regard to the overriding objective set out in the Children Rules 2005 . Rule 4(2)(a)(ii) requires that the case is dealt with expeditiously, fairly and with the minimum of delay, the present proceedings have been ongoing for nearly which is almost a quarter of Child 2's life. Rule 4(2)(a)(iii) requires that the welfare of the children involved is safeguarded, Ms Cardinal is satisfied that she is aware of and has had an opportunity to consider all relevant welfare issues which might affect the outcome of these proceedings. Evidence of Respondent 15. The respondent filed an unsigned statement in anticipation of the final hearing and gave sworn evidence at the hearing. 16. Regarding the photograph, the respondent gave evidence that the parties finally split in April/ May 2021, and it was around that time she found a picture of herself on the applicant's computer in which she was both naked and asleep, she had not consented to the photograph being taken, she made a complaint to the police in June 2021. 17. The respondent gave evidence that the applicant left her and Child 1 when he was 3 months old and did not have contact with Child 1 for 3 years. She had always intended to tell Child 2 who her real father was and had discussed this with the applicant, however she recently decided to accelerate this introduction without involving the applicant. Child 2 has some contact with R's aunt and Grand-Mother but has not seen them for a few months, R pays maintenance for Child 2. Contact with R is planned for the coming weekend, but she has not yet told the children. 18. The respondent was open to staying contact continuing for Child 1 but does not agree to midweek contact as this would disrupt his routine and potentially interfere with his after school activities. She agrees additional contact during school holidays but would wish to have sufficient notice and for such contact to not be for periods of whole weeks, nor did she agree to the applicant taking either child off island for a holiday. She does not agree that contact continue for Child 2 and wonders whether Child 1 will wish to attend for contact without his sibling. 19. The respondent confirms that Child 1 is currently happy and settled as a result of having " clear structure and routine ", the school have noted a " massive difference " in Child 1. 20. Regarding Child 2, the respondent does not have a plan as to how a relationship between Child 2 and R could be developed, she hoped for help and support in carrying out life story work from the women's centre, she had not discussed her recent intentions with Ms Cardinal but could not explain why not. The respondent has not been in contact with R since they attended mediation 18 months ago, at that time R agreed not to see Child 2, as the parties were together and considering a move to England. 21. In response to questions by Advocate Orchard on behalf of the applicant, the respondent confirmed that she had always encouraged contact between the applicant and Child 2, and that she did not have concerns about the applicant's ability to care for Child 2.

The respondent accepted that as recently as 8 th October 2021 she had agreed weekend and midweek staying contact for both children with the applicant. She denied that she had changed her mind because the applicant moved maintenance payments from weekly to monthly, she also denied that she had issued her application to reduce Child 2's contact with the applicant on 28 th October 2021 in retaliation for the applicant missing contact the previous weekend, she did not accept that he had been too ill that weekend to see the children. 22. The respondent requested at the hearing that the Court consider making a residence order in her favour for Child 1, on the basis that she was concerned that the applicant would take him to England without her consent. Evidence of applicant 23. The applicant filed a sworn affidavit in anticipation of this hearing, he also gave sworn evidence at the hearing. A detailed chronology of events was filed on his behalf. 24. The applicant seeks contact with both children to continue as present for a full weekend each alternate weekend, and in addition one midweek overnight contact fortnightly with both children to break up the 10 day period between weekend contact. The applicant also seeks additional contact during school holidays, at Christmas, Father's Day and on his and the children's birthdays. He also asks that the respondent facilitate sharing with him information from Child 2's school regarding her progress and current work. 25. The applicant does not significantly dispute the respondent's account of the periods when the parties were apart and accepts that theirs has been an on/ off relationship, but says that he had facetime contact with Child 1 from early 2016, and the respondent sent him photographs of Child 1. He moved back to Jersey in March 2018 and he and the respondent resumed their relationship. He had brought up Child 2 as his own since that reconciliation. 26. Regarding Child 2, the applicant accepts that he and the respondent had discussed that she would need to be told at some stage that the applicant is not her father, they were going to tell Child 2 together but " never got round to it ". He is shocked that the respondent has chosen to bring forward introducing Child 2 to her biological father. He has no real difficulty with this but sees no reason why he should be " cut out " of Child 2's life. He however accepts that if Child 2 develops a relationship with R that potentially he may have to have less contact with her himself. 27. The applicant denies that he has ever threatened to withdraw from Child 2's life because he could not share parental responsibility, he accepts that he raised this as a question with Ms Cardinal as he wasn't sure where he stood. 28. The applicant accuses the respondent of unfairly reducing his contact over the summer of 2021 by booking Child 1 into a surf academy on Sundays, but accepts that Child 1 loves surf academy. This is a curious complaint bearing in mind that during broadly the same period, the respondent agreed to increase his contact to include a 3 night weekend fortnightly. 29. The applicant denies that he has any intention to take either child to England, he may wish to do so in the future so that they can meet his family, but he understands that such a trip would have to be arranged with the agreement of the respondent. JFCAS 30. JFCAS filed a safeguarding letter dated 7 th January 2021, which identified that communication had broken down between the parties in the aftermath of the breakdown in their relationship. They were however by that time communicating well and the safeguarding letter hoped that they would be able to resolve matters amicably and that there were no welfare concerns. At the first hearing on 1 st

February 2021, the Court identified that there was no ongoing role for JFCAS. 31. JFCAS became again involved after the matter was returned to Court by the applicant in June 2021, after the parties had reconciled and again separated in circumstances which led to a breakdown in communication. The case was allocated to Ms Laura Cardinal. Ms Cardinal initially recommended that she undertake a contact intervention with the family. During the course of this intervention, she recommended that the scope of her involvement be extended to carry out a full welfare report. The resulting report is dated 24 th September 2021. Ms Cardinal also gave evidence at the final hearing. 32. Ms Cardinal reports that the parties had met in late August 2021 and agreed to staying contact in light of a number of changes, including Child 2 commencing nursery and both children requesting overnight contact. The parties had also agreed in principle that the applicant would have contact with both children midweek to avoid a long gap between weekend stays. 33. Ms Cardinal reflects in her report that whilst the parties were broadly in agreement at the time of her report, there are issues and a dynamic within their relationship that " have the potential to destabilise their progress and the agreed contact arrangements ". These include mistrust on the part of the respondent as a result of the applicant not being a part of Child 1's early life. It is also an issue for the applicant that he does not have parental responsibility for Child 2, and that her name could therefore change, it being noted that hitherto, the respondent has used the applicant's surname for Child 2. The report also notes: "Both have expressed a lack of trust as to the other's intentions and share what can be described as a similar view that certain decisions are being taken to maintain control or emotional leverage over the other and that they cannot rely on each other to be consistent going forward." 34. Ms Cardinal details a " significant incident " in April 2021 which triggered the eventual ending of the parties' relationship, which involved " a physical escalation " and alcohol use, the report reflects that this incident related to the breakdown of their relationship rather than reflecting chronic difficulties during the relationship. 35. The report also sets out that the parties have reflected upon the need to tell Child 2 that the applicant is not her biological father, but there is no suggestion that the biological father R would play an active role in Child 2's life, nor that he wished to do so, nor that either party would seek his involvement. 36. Ms Cardinal details that the respondent has experienced some difficulties managing Child 1's behaviour. Child 1's school report that he " can find it tricky to self regulate ", and also, " Child 1's behaviour showed a significant change during periods when dad has left ". The report confirms recent improvements in Child 1's behaviour. 37. Ms Cardinal in her report recommends continuation of contact for both children with the applicant during alternate weekends, she does not include specified additional contact within her recommendations, but her report clearly reflects her view that the period of 10 days between the weekend contacts is a long time for children of this age, and that some midweek contact may therefore be needed. 38. At the hearing, having heard the evidence of both parties, Ms Cardinal confirmed that her recommendations remained unchanged. Regarding midweek contact, she recommended that this be an overnight stay. 39. Ms Cardinal advised that consistency was important for Child 1 for his emotional stability, that he had benefited from knowing when and how he would see his father. It caused her

concern that the respondent sought to pull back on agreements made in good faith. She does not regard the reasons stated by the respondent for the recent change in her position to be child focused. 40. Regarding Child 2, Ms Cardinal accepts that she needs to know that she has a different father, but at present, Child 2 identifies the applicant as her father and he has a "regular, meaningful and functional role in her life". She recommends against withdrawing Child 2 from contact. Whilst it makes sense to introduce Child 2 to her biological father, it would be premature to create space for a relationship that does not yet exist, there is ample space for that new relationship to progress slowly, there does not need to be a clash with the applicant's role. 41. Regarding mid-week contact, Ms Cardinal reflected that this could be for Child 1 only, that it could be a way to diverge the arrangements for the children if Child 2 is to have a relationship with R. Her preference would be for there to be weekly contact for both children, with the option for the midweek contact for Child 2 to fall away in the future should she develop a relationship with R, but in her view there is little to indicate at present that this will happen. 42. Ms Cardinal did not consider a residence order to be necessary, she does not perceive a risk that the applicant would take Child 1 off island without consent. The Law 43. The applications before the Court are for orders pursuant to Article 10 of the Children (Jersey) Law 2002 ("the law"). Accordingly the court must have regard to Article 2 of the law which determines the relevant and essential welfare principles for these applications:- "Welfare of the child (1) When the court determines any question with respect to - (a) the upbringing of a child; or (b) the administration of a child's property or the application of any income arising from it, the child's welfare shall be the court's paramount consideration. (2) In any proceedings in which any question with respect to the upbringing of a child arises, the court shall have regard to the general principle that any delay in determining the question is likely to prejudice the welfare of the child. (3) In the circumstances mentioned in paragraph (4), the court shall have regard in particular to - (a) the ascertainable wishes and feelings of the child concerned (considered in the light of the child's age and understanding); (b) the child's physical, emotional and educational needs; (c) the likely effect on the child of any change in his or her circumstances; (d) the child's age, sex, background and any characteristics of the child which the court considers relevant; (e) any harm which the child has suffered or is at risk of suffering; (f) how capable each of the child's parents, and any other person in relation to whom the court considers the question to be relevant, is of meeting the child's needs; and (g) the range of powers available to the court under this Law in the proceedings in question. (4) The circumstances are that - (a) the court is considering whether to make, vary or discharge an Article 10 order, and the making, variation or discharge of the order is opposed by any party to the proceedings; or (b) the court is considering whether to make, vary or discharge an order under Part 4. (5) Where the court is considering whether or not to make one or more orders under this Law with respect to a child, it shall not make the order or any of the orders unless it considers that doing so would be better for the child than making no order at all." Discussion 44. The parties have come through a reconciliation and the final severance of their relationship during the course of these proceedings. Nevertheless, they have been able to agree the development of interim contact to include staying contact. The children have likewise

experienced the breakdown of their family life with both parties, the evidence indicates that the children, Child 1 in particular, has been affected by the breakdown but has benefited from a consistent pattern of significant contact with the applicant. 45. The respondent has changed her position entirely over the course of several weeks prior to the hearing. This change relates primarily to Child 2, whom she feels should have little or no contact with the applicant, but she also noted in her evidence that if Child 2 does not attend contact, that Child 1 may not wish to go either. I agree with Ms Cardinal, that the respondent's reasons for this late change are not child focused. It is a matter of concern to the Court, that whilst it may be entirely sensible for the respondent to plan for the potential involvement in Child 2's life of her biological father, her approach is highly questionable. 46. The present proceedings have been ongoing for 11 months, at no time prior to 26 th October 2021 have either party identified or referred to R to the Court. Ms Cardinal refers to the parties planning to tell Child 2 that the applicant is not her biological father, but there is no reference to the biological father potentially being introduced to Child 2. The respondent's current plan of immediate introduction is open to interpretation as being a reason to distance the applicant from Child 2 and potentially from Child 1. 47. This is of concern, but I am not unduly critical of the respondent. Her actions must be set against the background that the applicant was absent during 3 years of Child 1's early life, and that the parties' relationship has always been turbulent. I do not regard it as particularly relevant whether or not the applicant saw Child 1 on facetime during his baby years, any such contact is unlikely to have been of great significance to Child 1. The applicant has been a good and consistent father to both children since spring 2018, Ms Cardinal says that both children adore him, however, the respondent's concern as to whether this will continue consistently in the future now that there is no relationship between the parties, is understandable. 48. I consider the children's needs separately. For Child 1, this is a straight forward matter, he is enjoying contact with his father, and the evidence suggests that this is of benefit to him. Ms Cardinal recommends that this contact continue and that there is additional mid week contact once per fortnight to ensure that he sees his father weekly. There is no reason why there should not be additional contact at school holidays, birthdays and father's day, indeed, this is largely agreed between the parties. I accept the applicant's evidence that he is committed to both children, and that despite there having been a significant gap in Child 1's life before his father fully engaged as a parent, that the applicant will remain a consistent part of Child 1's life in the future. I also accept that despite his concerns that he does not share parental responsibility for Child 2, he intends to remain a consistent part of her life also. 49. Regarding Child 2, the question is more complex as she has a separate biological father with whom she may potentially enjoy a relationship in the future. 50. The position as at the date of this hearing is however, that Child 2 is 4 years of age and has never met her biological father. I agree with Ms Cardinal that at present, there is little to indicate that this will happen. The respondent has intended to tell Child 2 that the applicant is not her biological father but has not planned for a relationship between R and Child 2, indeed it appears to be something that she has in the past discouraged and something that R has chosen not to pursue. The respondent's present plan appears to be reactive and poorly planned. There is

insufficient certainty regarding any future relationship between R and Child 2 for the Court to take this fully into account in deciding orders that affect this child's life now and in the foreseeable future. 51. Child 2 "adores" the applicant and regards him as her father. She will need in due course to be told in a sensitive and child focused manner that there is another dimension to her life. For the time being however, Child 2's wishes, feelings and needs are to continue to enjoy a full relationship with the applicant and to be treated the same as her sibling as far as this is possible. If the court were to order contact for Child 1 only and not for Child 2, this would be a significant change in circumstances for her and would be likely to cause her distress. 52. Advocate Hillier on behalf of the respondent urges the Court to make contact with Child 2 permissive rather than prescriptive. The respondent has made it clear that she does not agree that Child 2 should continue to have staying contact with the applicant, indeed she has no real proposal as to how the relationship between Child 2 and the applicant is to be maintained, therefore an order that was merely permissive would lead to an immediate significant change for Child 2, and also for Child 1. It is the view of the Court that such a change would not be in their best interests at the present time; 53. The Court makes the following orders for contact: "1. [REDACTED]

2. [REDACTED]

3. [REDACTED]

4. [REDACTED] The court made orders for contact between the applicant and both children each alternate weekend, Friday to Monday, each alternate Thursday overnight, additional contact during school holidays and special occasions.

5. The respondent shall provide to the applicant copies of Child 2's school reports." 54. The Act of Court shall also record the following: (i) The parties are expected to make arrangements between themselves to enable the respondent to take the children off island on holiday each year and for the applicant to take the children off island for up to 7 days from 2023 or earlier if the parties agree; (ii) In the event that Child 2 starts to enjoy regular consistent contact with R, the parties are expected to review the contact arrangements with a view to ensuring that they remain in the best interests of Child 2; (iii) The parties agree to use Our Family Wizard to communicate contact arrangements. 55. The Court does not accede to the applicant's request for 14 days additional contact over the school summer holiday, as this could result in the children spending more time with the applicant than with their mother. 56. The court does not make any order regarding residence, as there is no discernible benefit to Child 1 of such an order. The Court accepts the evidence of the applicant that he has no intention of removing Child 1 on holiday unless this is agreed, the Court also takes into account the view of Ms Cardinal that a residence order is not necessary. The Court also takes account of Article 2 (5) of the Law, the so called "no order principle". 57. Ms Cardinal in her evidence acknowledged that communication has been difficult for the parties, and that they have only recently separated, she also however expressed that she believed that the parties could work together in the best interests of the children. This is a welcome message of hope in circumstances where there is scope for considerable future changes for both

children if Child 2 does develop a relationship with R. The applicant has been disappointed that the law does not allow him to share parental responsibility for Child 2, however, there may come a time when he is called upon to exercise the responsibility any parent faces when they must share the time they spend with a loved child with another parent. If that time comes, it is to be hoped that the applicant will act wisely and with responsibility to avoid this family having to return to Court. Authorities Children Rules 2005. Children (Jersey) Law 2002 Page Last Updated: 18 Feb 2022 BAILII: Copyright Policy | Disclaimers | Privacy Policy | Feedback | Donate to BAILII URL: https://www.bailii.org/je/cases/UR/2021/2021_331.html

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