

JERSEY / JUDGMENT

F v B [2002] JRC 121 (27 June 2002)

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judgment

the COMMISSIONER: 1. This is an application by F for supervised access to his daughter D who was born in 1996. She is the natural daughter of B and F, who were married in Jersey in 2000. Their relationship broke down, and in January, 2001, F left the matrimonial home. F was previously married for 12 years in M. He has two sons both living in Jersey and now aged 21 and 19. He has another daughter, J, born from a relationship with another lady in Madeira, who has two other children born of another father. 2. B was also formerly married and has a son from that marriage. She had been married twice before she met F. F's former girlfriend is B's second husband's sister. B and F met in M when F was working as a builder, plumber and electrician. F helped B and her then husband to buy land and build their house in Madeira. When B's second husband became violent towards B she and F left M and settled in Jersey. They returned to Madeira, in 1995 but finally returned to Jersey in 1997. 3. During the course of this hearing we heard from Miss Lister, the Court Welfare Officer, from F and from B. We also have a Psychological Report from Mr Ian Berry, who is on holiday at this time. Advocate Bell discussed the matter with me and conceded that he would not need to question Mr Berry and that we could use his report for the purposes of the decision that we have to make. 4. The two detailed reports of Miss Lister are dated 19 th February, 2002, and the 10 th June, 2002. Much of the matter in those reports concerns J, over whom there has been much dispute between the parties. But as F does not now seek access of any kind to J, we can concentrate on the sole question of access to D, who is now 6 years old. 5. There is no question that the relationship between F and B has completely broken down. The relationship is not helped by the fact that F works as a masseur and sometime faith healer on the floor immediately above the premises in Bath Street where B conducts her own business. The close proximity of the businesses is a continuing source of friction between the parties. 6. It must be stated that, although access continued after the breakdown of the relationship in May, 2001, there was an incident that led to an altercation where the police were called and where they took action, which consisted of words of advice. It appears from the report that F asked J for a cuddle; she refused. He told her that he would return her to Madeira. She became upset because she had been mistreated there. Even if the remark was meant to be a joke, it was a crass joke, and was not apparently taken as a joke. The altercation arose from this incident. Neither party sustained injury and no complaints were made to the police, but thereafter J refused to have any access to her father and B refused to allow D to have any contact with him. 7. Later a Court Order was made on the 16 th March, preventing F from

taking D out of the jurisdiction. No formal access between D and F had taken place during this time. Because of the proximity of the two businesses in Bath Street, the children see their father when they go to B's premises after school each day in term time. 8. Advocate Bell, on behalf of his client, has voiced the objection of B to F's having any form of access to D. The objections take the form of fear of physical violence, and the fact that F may try to manipulate D and the psychological effect on D and on the family if access were granted. The most disturbing allegation is of F's physical abuse of J and D. We only had B and F to give evidence in this regard and no corroborative witnesses. F admitted smacking both the children on their legs and their bottoms, but emphatically denied that he had chased J around the room on one occasion, beating her with the leather strap of his belt and trying to strangle her with the belt. 9. In questioning by Advocate Fitz, B said that she did nothing about this incident, neither complaining to the police nor taking J to the doctor because she lived in fear of F. There were other complaints that F often hit J with a belt until she was black, but again we had no corroborative evidence. It is alleged that D witnessed these incidents. More disturbing is an allegation of a specific incident when F hit D across the face, during a family dinner party between Christmas and the New Year, 2000, This was witnessed, B told us, by her parents who live in Jersey. When asked when her parents were available to give evidence we were told that they are on holiday in Alderney. 10. The allegations of brutality may be true, but they have not been proved to our satisfaction. On reading the very careful and detailed reports of Miss Lister and Mr Berry we formed the impression of F as a man who believed in disciplining his children with firm, physical control and that control was over every member of his family and was viewed by him as paramount. We have no doubt that he is right not to have pursued his claim for access to J. 11. There is also an allegation that F practised witchcraft or black magic. In Miss Lister's report F admits he has a gift of healing and that his grandmother in Madeira also had that gift. There is a belief by B that F will attempt to train D in these arts. But apparently, the Portuguese Consul in Jersey has had no informal or formal complaints made to him by any member of the Portuguese community about these alleged practices. This aspect was not pressed by Advocate Bell in cross-examination. 12. We formed the impression that B has an intense dislike of F, and that these feelings are probably mutual. J, from the solicitor's report, wishes to have nothing more to do with her father. From the reports that we have read we consider it was right for F not to press for access to J. But what of D? The law is of great assistance to us. Advocate Fitz referred us to C-v-D (19 th September,

2000) Jersey Unreported; [2000/185], where the head note reads: "The child's interests are paramount, and in general access should be ordered unless there are strong reasons why it should not. Here, were access, whether supervised or unsupervised, presently to be ordered the post-traumatic stress disorder of the mother following on from the assaults would on the evidence upset the stability of the family". 13. That case is clearly distinguishable; not only was there post-traumatic stress disorder the husband had twice been sent to prison, and had had three convictions for violence against the wife but the child was also disabled. In that Judgment the Court referred to Rayden & Jackson: Divorce and Family Matters (17 th Ed'n) s.4:40.42 (pp.1425-30), and the principles set out there must, of course, guide us in this case. They are as follows:- "Principles determining

contact: parental contact. The court is generally slow to deprive a parent of all contact with his or her child. It has been said that access should be regarded as a basic right of the child rather than a basic right of the parent and, save in exceptional circumstances, to deprive a child of contact with a parent is to deprive a child of an important contribution to his emotional and material growing up in the long term. An exposition of the principles governing contact is to be found in *Re O (a minor) (contact: imposition of conditions)*, which can be summarised thus: (1) Overriding all else, the welfare of the child is the paramount consideration; the court is concerned with the interests of the mother and father only so far as they bear on the welfare of the child. (2) It is almost always in the interests of a child whose parents are separated that he or she should have contact with the parent with whom he is not living. ... (4) Cases do, unhappily and infrequently but occasionally, arise in which a court is compelled to conclude that in existing circumstances an order for immediate direct contact should not be ordered, because so to order would injure the welfare of the child." 14. Then in *Re K (Contact: Mother's Anxiety)*

[1999] 2FLR 703 and 707, Wall, J, said this: "The question of injury to the welfare of the child is best summarised by an extract from the judgment of Waite LJ in a case called *Re D (A Minor) (Contact: Mother's Hostility)*

[1993] 2FLR 1, where at 7G the LJ said this: "It is now well settled that the implacable hostility of a mother towards access or contact is a factor which is capable, according to the circumstances of each particular case, of supplying a cogent reason for departing from the general principle that a child should grow up in the knowledge of both his parents. I see no reason to think that the judge fell into any error of principle in deciding, as he clearly did on the plain interpretation of his judgment, that the mother's present attitude towards contact puts D at serious risk of major emotional harm if she were to be compelled to accept a degree of contact to the natural father against her will.'. Citing that passage with approval in *Re O*, Sir Thomas Bingham, MR drew attention to the judge's reference to a 'serious risk of major emotional harm' and went on to say that the court should not at all readily accept that the child's welfare would be injured by direct contact. Judging that question, he said, the court should take a medium-term and long-term view of the child's development and not accord excessive weight to what appears likely to be short-term or transient problems. Neither parent, he said, should be encouraged or permitted to think that the more intransigent, the more unreasonable, the more obdurate and the more uncooperative they are the more likely they are to get their own way." 15. In *F-v-S* (30 th June, 1997), Jersey Unreported, the Court cited this passage from *W-v-H* (23 rd June, 1987) Jersey Unreported: "And we agree certainly that it is a grave step to deprive a child of access to one parent, and we agree also that a decision should not be taken lightly and it should be taken only in the gravest circumstances. It is indeed a grave step and I cite the case which was referred to by the husband, of *M-v-M* in 1973. The Judge said (it was *Wrangham J*) - "The companionship of a parent is in any ordinary circumstances of such immense value to the child that there is a basic right in him to such companionship. I for my part would prefer to call it a basic right in the child rather than a basic right in the

parent. That only means this, that no court should deprive a child of access to either parent unless it is wholly satisfied that it is in the interests of that child that access should cease, and that is a conclusion at which (I think it means to which) a court should be extremely slow to arrive." 16. Advocate Bell has said everything that he could on behalf of B. Clearly B takes the view that F is not fit to have access to D. He argues on B's behalf that D has witnessed violence against J, that D is now settled at school and the status quo is best left as it is. J would be unhappy if D saw her father, and this could affect the whole family unit. He too referred us to C-v-D (above) but to the passage which referred to the case of Re L (Contact: Domestic Violence)

(2000) 2 FLR 334 , and the head note to that case which reads: "A court hearing a contact application in which allegations of domestic violence were raised should consider the conduct of both parties towards each other and towards the children, the effect of the violence on the children and on the residential parent, and the motivation of the parent seeking contact. On an application for interim contact, when the allegations of domestic violence had not yet been adjudicated on, the court should give particular consideration to the likely risk of harm to the child, whether physical or emotional, if contact were granted or refused. The court should ensure, as far as possible, that any risk of harm to the child was minimised and that the safety of the child and the residential parent was secured before, during and after any such contact." And it goes on: "Where allegations of domestic violence were made which might have an effect on the outcome, those allegations must be adjudicated upon, and found proved or not proved. There was not, and should not be, a presumption that, on proof of domestic violence, the offending parent had to surmount a prima facie barrier of no contact, but such violence was a factor in the delicate balancing exercise of discretion carried out by the judge." 17. At one stage, at page 336 Dame Elizabeth Butler-Sloss said this of the professional reports that she had received in that case: "The experts identified a number of risks of direct contact. The overall risk was that of failing to meet and actually undermining the child's development needs or even causing emotional abuses and damage directly through contact or as a consequence of the contact. Specifically that included: escalating the climate of conflict around the child which would undermine the child's general stability and sense of emotional well being". 18. As we have said there has been no proof of physical violence towards D. There may have been an opportunity to test the allegation but it was not taken. Nor is there proof in the allegation that F has practised black magic and may attempt to pass his skills on to D so that she may continue what was called "the family tradition". The reports that we have before us could not be clearer. B has cared for these two girls and cared for them well. They attend different schools but they are progressing relatively well at those schools. She is fearful that F will shower D with gifts to gain her confidence and then manipulate her so that D turns against her mother. We have no doubt, and we share Miss Lister's opinion, that B's fears are genuinely felt. 19. Mr Berry in his report has assessed the feeling of both parents in the context of the inimical hostility of one to the other. He says, however, and I quote: "There is nothing in F's psychological profile which

is dangerous or sinister" . Both Mr Berry and Miss Lister would not be adverse to strictly controlled access. 20. We have a number of concessions from F. He does not wish access to J. He has said that he will only send birthday, Christmas cards and presents as a minimum to D. We feel that he may send letters to D, and because B will have to read them, if they are inappropriately worded, then they can be brought to the Court's attention. We are going to allow limited access for three months, through the good offices of Mrs Barbara Frost, who has been for thirteen years a residential child care officer. F has undertaken to pay for Mrs Frost's services in this regard and payment has to be made in advance of the session. Mrs. Frost has suggested that access should be one afternoon per fortnight for two hours. She will be present throughout the sessions, as an observer, and will report back regularly to the Court through the Probation Service. We will allow such access initially but for three months only. At this time the parties should come back to Court, where the situation can be reviewed and, of course, either party has liberty to apply to Court at any time should any matter of real concern arise. Authorities C-v-D (19 th September,

2000) Jersey Unreported; [2000/185A]. F-v-S (30 th June, 1997) Jersey Unreported. W-v-H (23 rd June 1987) Jersey Unreported. Re K (Contact: Mother's Anxiety) [1999] 2 FLR 703 and 707. Rayden & Jackson: Divorce and Family Matters (17 th Ed'n) s.4:40.42 (pp.1425-30). Re L (Contact: Domestic Violence)

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