

JERSEY / JUDGMENT

F v G (Family) [2022] JRC 206 (03 October 2022)

[2022] JRC 206

Source: bailii.org · Research copy typeset by Esheria. Not court-issued or certified.

judgment

the bailiff: 1. This is an appeal by F ("the Appellant") against a decision of 16 th August 2022 of the Registrar of the Family Division ("the Registrar") to return the Child to the care of her mother, G ("the Respondent"). 2. We take the background of this matter from the judgment of the Registrar which is contained in a document entitled ' Ex Tempore Reasons' (the Reasons). It is to be noted, however, that those reasons were not handed down to the parties at the time that the decision was made but were forthcoming some short time thereafter.

Background

3. The Appellant and the Respondent and the Child usually live in Country A. The Appellant and Respondent were married in 2010 before the Child was born and they separated in 2011 and were divorced in June 2012. 4. At the time of the application to the Registrar, the Child was living in Jersey with the Appellant and his family, some of whom are Jersey resident. 5. The Respondent obtained a resettlement visa for herself and the child in June 2022 which enabled them both to leave Country A and go to live in Country B. The Child was unable to travel to Country B with the Respondent because, on 25 th June 2022, without the Respondent's agreement, the Child was removed from Country A by the Appellant's mother. The Respondent was, at the time, the legal custodian of the Child. 6. The Respondent had sought to establish where the Child was and also travelled to Country B to complete the resettlement process which could not be finalised because the Child was not physically in Country B. The Respondent established that the Child was located in Jersey with the Appellant and his family. 7. On 10 th August 2022, the Bailiff made a Prohibited Steps Order on an ex p arte basis to the effect that the Child could not be removed from Jersey except by the Respondent and the Bailiff then transferred the matter to the Registrar for an urgent determination as to whether the Child should be returned to the Respondent. It is from that determination that this appeal lies. 8. The Registrar had before her a number of documents setting out complaints by the Appellant about the alleged behaviour of the Respondent and complaints by the Respondent about the alleged behaviour of the Appellant. The Registrar heard evidence from neither the Appellant nor the Respondent, and the matter was disposed of at speed during the course of half a day. We are advised that the Registrar

indicated that she was leaving on holiday thereafter. 9. The only evidence before the Court that the Registrar heard was that given by the guardian appointed for the purposes of the proceedings, Mrs Elsa Fernandes, who had had a short opportunity to meet with the child. The Reasons 10. We do not propose to set out the Reasons in full but we have, of course, considered the entirety of them. 11. We do, however, note that in the Reasons the following is contained: (i) At paragraph 10, the Registrar noted that the Child's current visa enabled her to remain in the British Isles until 9 September 2022, after which she would lose her right to remain. 12. The Appellant argues that this is not entirely correct as it ignores the evidence provided as to the ability to extend the visa and the likelihood, on the basis of information provided by the Immigration Service, that a solution could be found. (ii) At paragraph 13 the Registrar states: "I have heard little argument from either counsel about habitual residence but it is only right that the Court recognises that [the Child] has never set foot in Country B and is only in Jersey because she was abducted here". 13. We pause to say that there was some issue about whether there was in fact any abduction. It is the Appellant's case, and was indeed his case before the Registrar, that the Child herself had initiated contact with the Appellant's mother and asked her to come and get her and take her away because of poor quality of Respondent's care of her. The Respondent argues that this was an abduction. As to whether this was an abduction in the strict sense, therefore, is not clear, but clearly the Child was removed, whether at her express wish or not, from her lawful custodian. (iii) In paragraph 17 the Registrar reflected that she was 'primarily concerned with the welfare of this Child - it is my paramount consideration and I have regard to [the Child's] welfare, the no delay and no order principles'. She went on to conclude that an urgent order was warranted. 14. The Appellant argues that such urgency was not apparent given the possibility of extending the visa application process but, that in any event, urgency could not prevail over the necessity of acting on complete information in the best interests of the child. (iv) At paragraph 18, the Registrar says 'I take into account [the Child's] wishes and feelings, so far as I am unable to rely on the contents of a brief meeting which the JFCAS officer had with [the Child] today at my request. I should add that [the Child] was brought to Court to my surprise by her parental family which enabled a short meeting to take place with both parents' consent'. (v) At paragraph 21, the Registrar again refers to the time and urgency and that she had been prevented from hearing evidence from either party as a result. 15. The consequence of this, so the Appellant points out, is that the Registrar had before her untested evidence which was hotly disputed by each party. That evidence was relevant in ascertaining the welfare of the Child. (vi) At paragraph 22, the Registrar points out that the Appellant accepts that his own mother took the Child from Country A to Country B. 16. The Appellant observes that the Registrar did not appear to acknowledge the fact that this removal was, so it is alleged, done at the Child's own request. (vii) At paragraphs 23 and 24, the Registrar reflects that the Appellant had made material allegations relating to the Respondent's behaviour, seeing misuse of drugs, schizophrenia, attendance at clinics for her addictions and material concerns for the Child's safety which led to her removal from Country A. He, the Appellant, described the Child as being fearful of the Respondent and there were some 206 absences from school. He claimed that the Child

had been neglected both physically and emotionally by the Respondent. (viii) At paragraphs 27 to 31 et seq, the Registrar refers to the evidence that she heard from Mrs Fernandes who had had, at the Registrar's request and with the agreement of the parties, the opportunity for a brief meeting with the Child. Mrs Fernandes informed the Registrar that she had had the opportunity of considering some of the written statements but had not had the chance to consider fully the Appellant's statement. Mrs Fernandes had spoken to the Child who, she said, 'wanted to remain with her father'. The child described drug use by her mother, her mother being angry with her and shouting at her and, the child, asking the parental grandmother to come to collect her. She said her mother drinks beer. 17. Mrs Fernandes, quite reasonably, told the Registrar that she simply could not say on such a short meeting whether the Child's wishes and feelings as expressed to her were part of her lived experience or a rehearsal of what she had been told to say. 18. It is however to be observed that, what the Child did tell Mrs Fernandes appears to be consistent with the Appellant's case not only about the care the Child was receiving, but also the fact that the Child had asked the Appellant's mother to come and collect her. 19. The Appellant understandably makes these observations but also points out that, because Mrs Fernandes had not been able to reflect on the Appellant's statement, she had simply not had the chance to consider its contents which included references to the Children's Service in Country A or the concerns raised as to the Child's parenting and health. There are items of Mrs Fernandes' evidence missing from the Reasons, so the Appellant submits, specifically that the child described seeing the Respondent smoking, taking drugs and drinking during the day, and also taking a spoon to take drugs following which her behaviour towards the Child would change. (ix) At paragraph 33 to 35, reference is made to the immigration position and at paragraph 35 in particular the Registrar says 'I am in no doubt that the child can travel to and remain in Country B and I am less clear about her position in Jersey although I accept that Jersey would likely find a way to ensure that the child could remain here. Where would this leave the mother? I have heard no evidence that she could or would be housed in Jersey to enable the Court to delay determination of the application. I have in mind the no delay principle.' (x) At paragraph 36, the Registrar said this: 'Advocate Hollywood is pressing me to take the time to undertake a full welfare based assessment of the child's best interests by praying in aid a plethora of worrying and concerning allegations. No one should be in any doubt that these concerns are deeply troubling and I am satisfied that they require proper investigation but the question arises as to who should undertake the investigation and analysis and / or whether I can or should properly make orders which impact residence on an urgent basis when residence appears to be the subject of a determination by Court of Country A in 2012 that this Child resides with her mother. The Court respects the principle of judicial comity'. (xi) At paragraph 40, the Registrar makes the observation that no action had been taken by the Country A authorities to interfere with the Child's residence. 20. The Appellant submits that [redacted] the day after the reference had been made. (xii) At paragraph 48, the Registrar says 'I am not persuaded that I have heard the Child's voice, or her genuine wishes or feelings. She has been in the care of her parental family since the 25 June 2022, in a [redacted] in Country C, through Country D and on here to Jersey. No doubt

Jersey must now seem a very safe environment to this Child. I cannot be satisfied that it is her voice which I am hearing through JFCAS given the length of time during which she has been living without apparent incident with her mother.' (xiii) At paragraph 49, the Registrar says 'I am troubled greatly by the father's evidence about the way in which the Child was living in Country A. Against this I weigh up the fact that what he describes is long-standing concerns did not result in action being taken by him years ago'. 21. The Appellant points out that these observations were made without having heard evidence about these matters from the Appellant, nor indeed from the Respondent. (xiv) At paragraph 53, the Registrar says that she is making an order to return the Child to her mother because 'Courts do not lightly interfere with the status quo'. 22. The Appellant argues that the status quo was given far too much weight by the Registrar. (xv) At paragraph 58, the Registrar, having previously indicating that she was granting the application and ordering that the Appellant shall return the Child to the care of the Respondent, said this: 'Do I do so without doubt or fear? I do not....'. The Appellant's case 23. The Appellant's grounds of appeal are stated in summary form in the skeleton argument and are referred to in part in the comments above on the Reasons. 24. In brief, the Appellant argues that the Registrar should have inquired further and did not act in the best interests of the Child by proceeding without evidence and in the light of such serious allegations. She had proceeded on the basis of urgency and on upholding the status quo and allowed those considerations to overshadow a proper consideration of the Child's best interests and welfare. 25. In the light of the decision of the Registrar, the Appellant, through counsel, made an immediate application for a stay pending appeal. We are advised that this stay was refused by the Registrar and she did not provide any reasons to counsel for her refusal to do so. We are informed that the Registrar stated 'I see no grounds to order a stay'. 26. It is to be observed that the Appellant then sought to renew his application for a stay by an urgent application to this Court which was listed by agreement by counsel and the Court for 8.30am the following morning. The Appellant worked on an appeal case for that purpose and the following morning the Court heard argument relating to this application for a stay. When the Appellant, through counsel, had finished submissions the Respondent's counsel informed the Court that the Child had already been removed from the jurisdiction of the Court and was now with the Respondent in Country B. The Respondent's Case 27. The Respondent asserts that the Registrar was reasonable in dealing with the matter by abridging time and not hearing evidence. The Respondent argues that the matter was one of great urgency and asserts that it was always intended that the hearing would be substantive. The Respondent emphasises that there was sufficient evidence that the Child had been taken from the Respondent's care and further asserts that welfare concerns are not relevant in such circumstances. It was always intended that the final hearing and indeed the Act of Court makes clear that the application 'shall be heard' at 9.30am on Tuesday 16 th August 2022. 28. The Respondent further argues that the Registrar did treat the Child's welfare as paramount and acknowledged that welfare had been raised by both parties, but that the welfare considerations should be dealt with at another time. This clearly was, so the Respondent contends, an abduction case. Many of the welfare issues raised by the father in his case had no supporting independent evidence and

there were further allegations that in some way the father's mother had sought to bribe social workers to make adverse reports against the Respondent. The Respondent denied allegations that she had ever taken drugs or similar. 29. The Registrar had given due weight to the child's expression of wishes but was not convinced that the child's true voice had been heard and accordingly, on the basis that the child may have been primed to say the things that she did, was entitled to disregard her evidence. The child had not resisted physically going with her mother. 30. The Registrar had, so it was argued, given appropriate weight to the status quo. The Test on Appeal 31. The test on appeal from a decision of the Registrar is well settled and set out in the case of *Downes v Marshall*

[2010] JLR 265 in which, at paragraph 12 of the judgment, the Court said: "..... An appeal from the Family Registrar should only be allowed if there has been a procedural irregularity or if, in exercising his discretion, he has taken into account irrelevant matters, or ignored relevant matters, or otherwise arrived at a conclusion which the Court believes to be wrong. This test is not precisely the test applied on appeal from this Court to the Court of Appeal. It reserves a wider discretion for this Court to intervene, but it places nonetheless greater weight on the Registrar's exercise of discretion. This test will, we think, establish the right balance. Sufficient weight is to be attributed to the Registrar's findings of fact and exercise of discretion to discourage litigants from seeking a fresh bite of the cherry. On the other hand, this Court will have the power to intervene if that the Registrar has gone wrong to the extent that intervention is required in the interests of justice and fairness." The Law 32. A number of authorities and legal provisions have been put before us in connection with this appeal. 33. Rule 4 of the Children's Rules 2005, dealing with the overriding objective, was put before us. We do not need to set this out in detail other than the fact that it clearly requires the Court in proceedings to deal with cases justly and ensuring, as far as practicable, that the parties are on an equal footing, that the case is dealt with expeditiously, fairly, and with a minimum of delay, and the welfare of the children involved is safeguarded; an appropriate amount of the Court's resources should be allotted and the case should be dealt with in ways that are proportionate to the gravity and complexity of the issues and to the nature and extent of any intervention proposed in the private and family life of the children and adults involved. 34. In *Re NL (A Child)*

[2014] EWHC 270 (Fam), the Court, in commenting on a case then before it on appeal, said at paragraph 40 this: "An enduring anxiety in relation to this case is that in the frenzy of activity which preceded the first hearing in the Family Proceedings Court, there was too much local authority emphasis upon securing an expert opinion to support removal from the mother and too little focus upon ensuring a just and fair assessment of the process. Justice must never be sacrificed upon the altar of speed." 35. In the case of *Y v Z*

[2014] JRC 055A, the Court observed: "I am told by counsel that from time to time at case review hearings the registrar or acting registrar will make final orders but these are orders made by consent and to the extent they are consent orders that appears to me to be unobjectionable.... However in this case certainly no one was expecting the order to be

made under Article 66 of the Children's Law and the order was not made by consent. It seemed to me to be clear that at the directions hearing that there would be a problem in dealing with the appeal because there was nothing in evidence in a transcript where one could assess the reasons for the acting registrar's decision...." 36. In *Re S-W (Children)*

[2015] EWCA Civ 27, the Court at paragraph 29 said: "Every care judge will be conscious that, whilst it is in a child's best interests for their future to be determined without delay, it is equally in their best interest that the management of the case which determines their future should be fair and Article 6 compliant. The danger lies when, as unfortunately happened here, vigorous and robust case management tips over into the unfair summary disposal of a case." And, at paragraph 43, the Court said: "It has long been a fundamental principle of English law that justice must not only be done, but it must be seen to be done. If a judge has apparently made up his mind before hearing argument or evidence that principle has undoubtedly been breached. A closed mind is incompatible with the administration of justice. But in such cases it is always possible that justice itself has not been done either... Any experienced judge worthy of his office will have had the experience of coming into Court with a view, sometimes a strongly held view, as to the likely outcome of the hearing, only to find himself with a very different one once he has heard oral argument." And at the same case at paragraph 45: "Moreover where parties arrive at Court expecting to participate in a hearing that is to do only with procedural aspects of progressing a case towards a final hearing, it is quite wrong for the Court, on its own initiative and without prior notice to the parties - let alone any invitation for any of them - to treat the procedural hearing as if it were the final hearing and to make such a drastic order as the judge made in the present case. Had the party invited the judge to make the order that he in fact made without notice to the other parties one would have described it as 'an ambush'. The fact that it came from the Court makes it worse, not better." 37. In the case of *Re F (A Child)*

[2009] EWCA Civ 313, the Court, at paragraph 9, said this: "The mother's case was strongly advanced on an argument that the status quo was with her and that, accordingly, the children should not be moved without good reason. There is obviously the case for an argument about preserving the status quo, but I would venture to suggest that since the Children Act of 1989 it would be better to address the welfare factors than rely on any presumption of fact which may arise from an argument of that kind. The status quo argument means no more than that, if the children are settled in one place, then the Court ought to have regard to section 1(3)(b) of the Act and consider the likely effect on them and any change in the circumstances." 38. In *Re J (A Minor)*

[1989] 2 FLR 304 the Court said: "In my judgment, there are factors in this case that take it out of the ordinary 'snatch' principles that counsel has urged upon us. There is no question that the Courts disapprove of parents who snatch children from the custodial parent or the de facto custodial parent, and that is a powerful factor in the consideration of what should happen to a child in the future. But it cannot be the only matter which is in the mind of the

Court; the principal matter is the welfare of the child and this recorder had the impression that he should take some care before precipitately returning the child to the mother. In my judgment, there is no principle which says that because a child has, in circumstances such as these, been retained by the father beyond the agreed period, automatically the child must be returned pending the decision of the Court as to with which parent that child should live in the future. It is, as I have already said, a very important factor in the case. This recorder took that factor into account with great care; he thought about the welfare of the child and he decided that the child should, for a very limited period, remain with the father pending a further hearing....." Discussion and decision 39. The conclusions that we draw from the cases cited above, which we have referred to but briefly, is that the status quo, whilst a not insignificant factor, is not determinative and should not be given undue weight. Even were the case a "snatch" or abduction case the welfare of the Child had still to be considered. 40. The overriding objective and indeed the principles set out above, require a case to be given sufficient time and the issues to be explored sufficiently to reach a just decision putting first and foremost the welfare and interests of the Child. 41. This case was dealt with at extremely short notice and was disposed of within a half day. No evidence was heard and there were material and serious allegations made by both the Appellant and the Respondent against the other. 42. The Registrar was urged to adjourn the matter for proper enquiry and an appropriate hearing. Had that happened, there is no doubt in our mind that Mrs Fernandes would have been able to spend more time with the Child, gain a better understanding of the case as a whole, and advance more clearly held and reasoned conclusions. We make absolutely no criticism of her for the position that she took in the light of the very short opportunity that she had to consider the papers and indeed to speak to the Child. 43. In the Reasons given by the Registrar, at paragraph 44 the Registrar says this: "Unfortunately, the urgent nature of the application prevented a detailed analysis of whether her wish to stay in Jersey is genuine or whether she has been persuaded to say by her paternal family. On one analysis, the fact that the child was produced by the paternal family in Court might suggest that she was prepared for the conversation with JFCAS. A more charitable interpretation is then she was produced in order then the paternal family could comply immediately with any order adverse to the father's wishes. On balance, I fear the production of [the child] in Court today was intended to serve the paternal family's interests." 44. This was urged on us by the Appellant as being little more than speculation with no evidence in support. We repeat that no evidence was taken from the Appellant or the Respondent, or indeed from anyone else to test whether the child in some manner had been primed to give specific answers. 45. We have already set out, when referring to the Reasons given by the Registrar, the Appellant's contentions with regard to them. We agree with a number of those contentions. 46. This was an application made under the Children's Jersey Law and the welfare of the child is the paramount consideration. It is incumbent upon the Court to the extent that it is reasonably possible to do so to permit evidence to be heard on welfare issues unless it is abundantly clear that that evidence can make no difference to any welfare determination. It is difficult to see how having characterised these concerns in the way that the Registrar

did, the Registrar could be satisfied that she had sufficient information before her to make a welfare determination. 47. It appears to us that insufficient time was given for a proper consideration of this matter, it was treated as a matter of abduction (which it may or may not have been) and undue emphasis in the circumstances of the allegations made in this case was placed upon the status quo. Insufficient weight was given to what the express view of the Child was through Mrs Fernandes and the suggestion that the Child might have been primed to give answers was untested. We do not make any statement as to whether or not the Child had been primed but in our view the statements made by the Child, the allegations made by the Appellant and indeed the counter allegations made by the Respondent, were highly material things to be taken into account when determining where the welfare of this Child lay. 48. It appears to us on balance that the desire to dispose of this matter 'urgently' without a sufficient exploration as to what the urgency was in this case has in effect prevailed over the necessity of seeking further information, evidence and the testing of that evidence so that the decision of the Registrar as to the welfare of the Child could be made on a fuller basis. 49. The Registrar herself, quite correctly, mentioned the worrying circumstances but then nonetheless made an order immediately delivering up the Child to the Respondent against whom serious allegations had been made. 50. In our view, the Registrar should not have treated a matter such as this as suitable for disposal without an appreciation of the evidentiary picture. In our judgment, the Registrar should have acceded to the request for an adjournment so that further evidence could be provided, interpreters secured and further investigations carried out, both of the position with regard to the Children's Service in Country A, the immigration position and the true voice of the Child. 51. Furthermore, the Registrar was, in our view, albeit briefly, under an obligation to give some reasons as to why she did not order a stay. 52. Accordingly, we allow the appeal. *Authorities Downes v Marshall*

[2010] JLR 265 . Children's Rules 2005. Re NL (A Child)

[2014] EWHC 270 (Fam) . Y v Z

[2014] JRC 055A . Re S-W (Children)

[2015] EWCA Civ 27 . Re F (A Child)

[2009] EWCA Civ 313 . Re J (A Minor) [1989] 2 FLR 304 Page Last Updated: 03 Nov 2022 Back to top
About JLIB Accessibility Contacts Disclaimer Feedback Privacy policy Site map © Jersey
Legal Information Board 2001- This website is not compatible with your web browser. You
should install a newer browser . If you live in Jersey and need help upgrading call the
States of Jersey web team on 440099. BAILII: Copyright Policy | Disclaimers | Privacy
Policy | Feedback | Donate to BAILII

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.bailii.org/je/cases/UR/2022/>

CASE PAGE <https://chat.esheria.ai/case-law/jersey/f-v-g-family-2022-jrc-206-03-october-2022>

Prepared on 22 October 2026 · Esheria