

JERSEY / JUDGMENT

F v S [2000] JRC 211 (27 October 2000)

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[2000] JRC 211 [New search] [Help] 2000/211 7 pages ROYAL COURT (Samedi Division) 27th October 2000 Before: Sir Philip Bailhache, Bailiff, and Jurats Le Brocq and Le Breton. BETWEEN F PLAINTIFF AND S DEFENDANT Application by father, F, for access to child. Advocate R. J. F. Pirie for F Advocate A. K. McCallum for S THE BAILIFF: 1. This is an unhappy case and one of the most difficult with which the members of this Court have had to deal. It concerns an application by the father ("F") for access to his child ("Z") who is now aged six. The mother ("S") opposes the application. These proceedings have been in train for several years and have been the subject of a number of judgments by this Court. We do not propose to repeat the long history. 2. The matter last came before the Court on 21st October 1999 when an order for indirect access was made by consent. Unusually in the context of a consent order, the Court gave reasons for acceding to the agreed arrangements. We expressed ourselves in this way - 3. "In amplification of the order we wish to state only this. It has been stated before but it needs to be stated again. The right of access to a child is, in essence, the right of the child and not of the parent. What is owed by the parent could more properly be described as a duty. The interests of the child are the paramount consideration. This Court's judgment of 30th June, 1997 set out many of the relevant authorities and there is no need for us to repeat them. The current position is that Z is in fear of her father. We must not be taken to be stating that that fear is well founded, but there is no doubt that, for reasons which we need not elaborate, it is there. Direct contact between F and Z would at present be emotionally damaging to the child and could undermine her relationship with S. If a warm and loving relationship is to be created between father and child, and all parties agreed that that was desirable, it can only be done on patiently constructed foundations. The Court hopes, and indeed expects, that in the interests of Z both F and S will do their best to ensure that the arrangements which have been set out in the order will bear fruit. What that means in practical terms is that the Court expects F to communicate regularly and appropriately with Z through the intermediary of the Probation Department. So far as S is concerned, we expect her to introduce these communications appropriately and sympathetically to Z

so that the foundations can begin to be laid for access by the father to his child. It only remains for us to add that we wish to see some progress when we reconsider the matter on 10th April, 2000. It is not in the interests of the child that the current state of uncertainty as to whether or not the right of access is to be developed should persist indefinitely. We express the hope that that progress will be evident when we next convene". 4. It was not in fact possible for the Court to review the matter on 10th April, 2000. Shortly before the hearing S changed her legal representation and F's counsel discovered a conflict which made it impossible for him to act. In the event a directions hearing was convened and the parties were ordered to file their evidence on affidavit with the opportunity being given to file supplementary affidavits to deal with any matters arising. Those affidavits have been filed. Reports were ordered from Mrs. Adelaide Ormesher, the Court Welfare Officer of the Probation Service, from Dr. Carolyn Coverley, Child Psychiatrist, and from Mrs. Janet Clark, a Nurse Therapist employed by the Child and Family Service. Both parties also took the opportunity to call evidence. F submitted reports from Mr. Peter Henderson, Behavioural Psychotherapist, who gave evidence, and Mr. Ian Berry, Consultant Psychologist. S produced an affidavit from Ms. Tina Baker, Clinical Psychologist, who also gave evidence. Finally the Court heard evidence from Mrs. R, a teacher at the primary school attended by Z. 5. We have been greatly assisted by all the reports and evidence presented to us. We also wish to record our gratitude to counsel for their submissions. 6. It is fair to say that the progress which the Court hoped would be evident by this stage has not materialised. Regrettably neither party has been prepared wholeheartedly to work towards the laying of foundations for direct access by F. We recorded in our last judgment that Z has very negative feelings about her father and is in fact in fear of him and that, if direct access were to be achieved, considerable efforts would be required by both parents to pave the way. 7. Since October 1999 F has sent 26 cards or notelets to Z, two of which were returned by the Probation Service as being inappropriate. We understand that F found these communications difficult, particularly as no response was ever forthcoming from Z. It was for that reason that we referred to the need for "patience" and for regular and appropriate communications with the aim of reducing Z's fear and hostility. Cards were sent with reasonable regularity until the end of January 2000. On 26th January the Court Welfare Officer wrote to F about Z's continuing negative feelings and advised - "Given that Z is still not willing to write to you, or draw you a picture, I really think you need to prepare yourself for her not being ready to see you by the time this situation is reviewed by the Court." 8. This advice unleashed a torrent of rage from F who wrote to the Court Welfare Officer in such violent terms that the intervention of her seniors ensued, and she was directed not to travel to England for an interview with F on the ground of concern for her personal safety. There followed a two month period where no communication was sent to Z. When the cards resumed on 20th March, contrary to the order of the Court, F proceeded to write directly to Z. After the directions hearing in April, F reverted to the sending of cards through the Probation Service although his communications with the Court Welfare Officer were from time to time grossly offensive and vituperative. In July however another incident occurred which led to a stern letter of

protest from the Assistant Chief Probation Officer. F arrived at the Probation Office with birthday presents for Z and threw them through the perspex window onto the reception desk while being abusive about the Probation Service generally. This fragile relationship with the Probation Service follows a falling-out not only with the Children's Service but also with the Health Service represented by Dr. Coverley, Child Psychiatrist. In respect of each falling-out we record our finding that the representatives of the different services have at all times acted dispassionately, objectively, and reasonably. 9. F explained all this conduct as being due to his frustration. He needed to get things off his chest. Mr. Henderson expressed the view that in general F could and did control his temper. Mr. Berry, the Consultant Psychologist, expressed the view that - "He is a stable, extroverted person for whom there is no greater probability of losing his temper than any other member of the population. He can become angry and frustrated but there is no evidence to suggest that these feelings will occur with abnormal frequency or intensity". 10. It is a matter of record that F has several convictions for public order offences. In 1997 he was convicted following an incident at the Children's Office in which he drew a Stanley knife and threatened the staff following the production of an unfavourable report. In April 2000 he was convicted of an attempt to pervert the course of justice by seeking to persuade a States Deputy to withdraw an affidavit in relation to these proceedings which was not helpful to his case. If it is correct that F does have the control over his temper of an average person, it follows that he is not averse to unleashing violently abusive tirades and to behaving in a threatening manner deliberately in order to obtain his own ends. 11. There is a further material factor which is F's attitude towards S. The correspondence between F and others since the Court made its order in October 1999 demonstrates a deep and continuing hostility towards S. In one letter he described her as a "sick evil bitch" and referred to her "insane evilness". In evidence F told us that if he were granted access to Z he would not allow these feelings to surface and would never say anything nasty to Z about her mother. 12. These feelings of hostility, and F's history of violent and aggressive behaviour have coloured S's attitude towards F. She told us that she was in fear of him to such an extent that panic alarms have been installed in her house. It is unnecessary for us to decide whether this fear is well founded, but we have no doubt that it is there. 13. However S did accept in October 1999 that working towards a situation where F could have direct access to his daughter was in the ultimate interest of Z. In our last judgment we stated that - "So far as S is concerned, we expect her to introduce these communications [from F] appropriately and sympathetically to Z so that the foundations can begin to be laid for access by the father to his child". 14. The evidence which we have heard suggests to us that S has been, at best, neutral in relation to these communications. They have been read to Z but, certainly so far as the most recent cards are concerned, they have not been accompanied by any encouragement to Z to take a positive interest in her father. It is clear that the fear and/or antipathy of S towards F has been communicated, directly or indirectly, to Z. Indeed Z volunteered some surprisingly adult comments to Mrs. Janet Clark by saying "the Courts don't believe Mummy so will you please tell them that I don't want to see him". Later she said - "you could also ask the Courts to tell naughty Chris to

send us some money as we are running out of money fast ". 15. S has co-operated with the Court's order to the extent of reading out the communications from F and taking Z to see Mrs. Clark, although that has not been without its difficulties. However so far as any encouragement to Z to think in more positive terms about her father is concerned, there has been almost none. S told us in evidence that in the home "we never talk about Chris" . S conceded that she had never directed Z to write a response to F and had simply accepted without demur the child's unwillingness to write, even to thank him for Christmas or birthday presents. This is regrettable. While S's conduct may fall short of being obstructive, it certainly does not amount to the making of any real effort towards laying the foundation for direct access. Indeed it is now clear that S is resolutely opposed to any form of access, whether direct or indirect. 16. Where does this leave Z? She is a small child caught in the hostile cross-fire of warring parents. Her recollections of F are dim and unfavourable but upon those recollections have been overlaid, whether consciously or not, the fears and antipathies of S. As a result she is in fear of her father. According to S, Z is exhibiting disturbing symptoms which reflect her fear. For example, we were told that when S leaves Z in the car for a short period Z locks the door and hides down behind the seats. On the other hand the evidence of the professional witnesses who have had dealings with Z describe a bright, cheerful and confident child for whom discussion about her father gives rise to no obvious anxiety. It is true however that she consistently and vehemently expresses negative feelings about F, and fears about what he might do to her and to S. She does not want to see him. 17. The opinion of Mrs. Ormesher, the Court Welfare Officer, is that direct supervised contact between F and Z would have a potentially traumatic affect upon the child. It would probably involve carrying a screaming child into a meeting room against her will. This view is also held by Dr. Coverley, Consultant Child Psychiatrist. In her report of 18th March 1999 she stated - "If Z was to have contact with her father, she would need the support of her mother. As I have stated, it is likely that Z is aware of her mother's fear of F and even if S was able to give her positive messages about seeing her father, Z would be aware of the ambivalence. It is essential that Z maintains a trust in her mother as a primary care giver and that this relationship should not be jeopardised. S continues to express a great deal of anxiety about the possibility of contact between Z and her father, which is reinforced by the changes in Z's behaviour she has described. It would be difficult to be able to separate out Z's own concerns from her reaction to her mother's concerns, but in either situation it is clear that both Z and her mother feel unsafe and that direct contact is likely to have a very negative emotional effect on Z." 18. Dr Coverley maintains that view and indeed now expresses the opinion that it is not in Z's interest to prolong this unsatisfactory state of affairs. 19. We agree. Indeed we stated in our last judgment - " It is not in the interests of the child that the current state of uncertainty as to whether or not the right of access is to be developed should persist indefinitely". 20. The indirect access, i.e. the writing of cards and notelets screened by the Probation Service, to which both parties consented in September 1999, has not led to any improvement in Z's perception of her father. This is recognised by F. To his credit he accepted through his counsel that he would not want to see Z if it were necessary to force

her into a meeting against her will. We accept that F loves his daughter and wants to develop a relationship with her. Unfortunately he seems unable to channel those desires appropriately and consistently, nor can he divorce them from his feelings of frustration, anger and hatred towards S and the various agencies that have been involved in this case. These feelings have led him to keep records of the supposed injustice that he has suffered and of S's alleged unreasonable behaviour, which he has threatened to reveal to Z when she is old enough to understand them. Unsurprisingly this has made S even more reluctant to contemplate the development of meaningful access. 21. What then is in the interests of Z? The reality is that F is a complete stranger to her. There has been no effective contact since November 1995 when Z was 16 months' old. She is in fear of him and that fear can be overcome only with the co-operation and assistance of S. It now seems unlikely that that co-operation and assistance will be forthcoming, largely as a result of F's own conduct. S feels, with some justification, that F represents a threat to her and to her relationship with Z. With regret we have arrived at the conclusion that it is not at present in the interests of Z actively to promote a rapprochement between father and child. What is more important is that Z's relationship with her mother should not be compromised nor put at risk. S is the primary carer and Z's trust in her should not be undermined. The evidence of Mrs R, the teacher, was that Z was happy and confident at school, and this too should not be jeopardised. 22. We do not however want to close the door completely. We propose therefore to maintain the variation of the injunctions imposed on 5th December 1995 so as to continue the option of indirect access to Z through the intermediary of the Probation Service. Mrs Ormesher indicated that she was prepared to continue to work with F; if he wishes to make progress he must be prepared for his part to work with the Probation Service and the other agencies that are trying to help. Any letters or other communications should be sent by F to the Probation Service, logged by them, and sent on to S. We think that the involvement of Z's schoolteacher in the reading of these communications has served its purpose and should be discontinued. 23. We express the hope that F will use this opportunity to lay the foundations for a relationship with Z. Equally we express the hope that S will make efforts to encourage Z to think more positively about her father provided, of course, that his conduct deserves this encouragement. It is not in S's long-term interest to poison the well. In time it is likely that Z will of her own volition want to find out more about her father and even to make contact with him. We cannot foretell the future. But for the present F's application for direct access must be refused. Both F and S should get on with their respective lives and the warfare over this child should cease. Authorities. F-v-S (21 st October, 1999) Jersey Unreported. Page Last Updated: 24 Apr 2017 BAILII: Copyright Policy | Disclaimers | Privacy Policy | Feedback | Donate to BAILII URL: https://www.bailii.org/je/cases/UR/2000/2000_211.html

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