

JERSEY / JUDGMENT

G -v- K [2005] JRC 130A

(21 September 2005)

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judgment

Application for Parental Responsibility Order adjourned for hearing by Inferior Number. the REGISTRAR: 1. The parties' 2 daughters, A and B are aged 11 and 9. They live their mother. Their parents were never married. Their father is applying in accordance with Article 3 of the Children (Jersey) Law for Parental Responsibility. 2. As far as I know, this is the first disputed case of its kind in Jersey. The facts are straight forward. 3. The parties commenced a sexual relationship in 1991, when the mother was 16, the father 25. 4. According to the Court Welfare Officer (paragraph 5 of her report dated 6 th March 2005):- "This was a relationship characterised by financial problems, violent episodes and, on M's part, chronic misuse of alcohol. As is expected, both parties had differing perspectives of their relationship and the problems within it." I have no reason to doubt this assessment. 5. The parties and the children left to live in Scotland during 1999. Later that year, the mother and the children spent some time in the UK before returning to Jersey. 6. However, the precise facts of the history of the relationship are disputed. For example, the father maintains that he provided money and assistance for the mother to return to Jersey from the UK. The mother would say that she supported herself and found her own accommodation. In September 2000, I am given to understand that the mother asked the father to leave, although his advocate tells me that the relationship continued until February 2003. 7. I did not hear evidence on these matters. Perhaps I should have. However, it strikes me that there are more important matters on which I must concentrate. 8. The English case law on this subject is extensive but the guiding principle from all the cases is this: "In considering whether to make an order under s 4 of the Act of 1987, the court will have to take into account a number of factors, of which the following will undoubtedly be material (although there may well be others, as the list is not intended to be exhaustive): The degree of commitment which the father has shown towards the child; The degree of attachment which exists between the father and child; The reasons of the father for applying for the order." Per Re H (Illegitimate Children: Father: Parental Rights) (No.2) [1991] IFLR214. The Father's Case 9. In dealing with these factors, Advocate Benest for the father drew my attention to the father's consistent applications to play his part in his children's upbringing. He first commenced legal proceedings in 2004. He has tried to provide gifts on suitable occasions and maintenance, when he could afford it. 10. Evidence of his children's attachment is provided by an affectionate card written by them to their father when he

was in hospital in October 2003. However, despite his persistent attempts to maintain a relationship with his children, this has been denied to him. 11. Among reasons offered for the father's application were: (i) To provide legal protection against a future adoption application by the children's mother and stepfather. (ii) To gain a right to know about their children's welfare at school. School reports although requested, have not been provided. The Mother's Case 12. The principal reason put forward by the mother for not granting the father parental responsibility is the continued anxiety of the children as described in the Welfare report (such that the children would cry themselves to sleep for fear of their father coming to the home, and in the case of A, pulling out her hair). 13. Despite accepting that the threshold for granting parental responsibility is a low one, Advocate Hoy was not satisfied that the father had provided adequate reasons for making the application. 14. He submitted that, if the father were to abuse his parental rights given him as a result of a parental responsibility order and were to try to interfere with the mother's upbringing of the children, it would not be adequate to make prohibited steps orders. It would be much better not to have made the parental responsibility order at all. The Law 15. A number of cases were cited to me. The most helpful was *Re H (Parental Responsibility)* 1998 1 FLR 855. The facts of the case were that a child of unmarried parents was found to have certain injuries after a visit to his father. The head note of the case continues:- "Thereafter, the child had supervised contact with the father. The father denied that he had caused the child's injuries and in February 1997 he applied for a residence order, extended contact and a parental responsibility order. The judge concluded that the father had caused the injuries which he found indicated deliberate cruelty and possibly sadism. He made an order for supervised contact but held that the father, by his abuse of the child and his refusal to admit it, had not shown the capacity to be responsible that was necessary for a parental responsibility order. He refused to make a residence order. The father appealed against the refusal to make a parental responsibility order, contending that once he had demonstrated commitment to the child, shown that the child was attached to him, and had put forward genuine reasons for fostering the relationship between himself and the child, the requirements of the Act were satisfied and he was entitled to an order under s 4 (1) (a) despite other factors to his detriment." 16. In dismissing the appeal, Butler-Sloss LJ reiterated the threefold test set out in paragraph 8 above, but stated (as further reported in the head note):- "However, those three requirements, though a starting point, were not intended to be exhaustive. Notwithstanding that parental responsibility was a question of status and different in concept from orders made under s 8 in Part 2 of the 1989 Act, the court had a duty to take into account all the relevant circumstances, bearing in mind that s 1 applied, under which the welfare of the child was paramount. If the judge considered that there were factors adverse to the father sufficient to tip the balance against the order proposed, as there were in the present case, it would not be right to make the order, even though the three requirements could be shown by the father." My decision 17. This case is different, in that nobody is suggesting that the father has in any way deliberately caused any physical injury to the children. However it is being suggested by Advocate Hoy that serious trauma is being caused to the children, indirectly, by their anxiety for their mother. Furthermore, the children, at the moment, at any rate, if the welfare report is to be believed, have no desire whatsoever to see their father, so it is doubtful whether the 3 requirements have indeed been met. 18. There will shortly be a hearing before the Inferior

Number regarding the father's application for contact. In preparation for that hearing, Dr Glaun, child psychologist, is preparing a report about any misapprehension the children may have about seeing their father. 19. I believe that it would also be pertinent ask the child psychologist to comment on the effect of the father's parental responsibility application on the children, so that the Court has up to date advice on this aspect of the case also. 20. In ordering a delay so that this can happen, I will also refer this application to the Inferior Number so that both matters can be considered simultaneously. 21. It seems to me that the Court must decide at what level to pitch the threshold for the granting of parental responsibility. There is a more recent tendency in the UK to grant Parental Responsibility to any father whose name appears on a child's birth certificate. This would present almost no obstacle at all to any father who wants merely to disturb the arrangements for the upbringing of a child reasonably made by the child's mother. I am not sure that this state of affairs is appropriate for Jersey. In the case of *Re H* , cited above, if it had been heard now, parental responsibility might easily have been granted to the father. There is, of course, always the chance of taking that responsibility away, once given, but why present such difficulties to the reasonable mother, if they can be avoided? 22. In this case, it is most appropriate for the Court to indicate where the threshold should be positioned at the same time as a decision is made on the father's application for contact. Authorities Children (Jersey) Law 2002, Articles 5 and 10. *Re H (Parental Responsibility)* 1998 1 FLR 855 . Per *Re H (Illegitimate Children: Father: Parental Rights)* (No.2) [1991] IFLR214. Page Last Updated: 27 Mar 2017 BAILII: Copyright Policy | Disclaimers | Privacy Policy | Feedback | Donate to BAILII

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