

JERSEY / JUDGMENT

GS v DS [2004] JRC 199 (15 November 2004)

[2004] JRC 199

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judgment

Deputy bailiff: 1. This judgment deals with a short preliminary point as to whether this Court has jurisdiction to order access to a child in favour of a person who is not a blood relative. The factual background 2. The unfortunate background can be shortly stated. The plaintiff and the defendant ("the mother") had a brief relationship in the latter part of 1999. The child, Z, was born to the mother on 9 th July 2000. 3. Z has at all times lived with the mother but, beginning in October 2001, the plaintiff has had access to Z. This was on the basis that he was the father of Z. He has also paid maintenance towards Z's support. Access gradually increased, sometimes by order and sometimes by agreement until he was seeing Z two afternoons a week. In January 2004, the plaintiff sought staying access to Z. The mother then, for the first time, raised the question of paternity. In due course DNA tests were carried out and in September 2004, reports were received which showed conclusively that the plaintiff is not the father of Z. On receipt of this report the mother stopped the plaintiff's access. The summons before the Court is to determine whether the plaintiff should continue to have access to Z or not. 4. As a preliminary point, Mr Harris has raised the question of whether the Court has jurisdiction to award access to Z in favour of the plaintiff, given that the plaintiff has been found not to be any relative of Z, although he was thought to be the father until recently. The Law 5. We were informed by counsel that in England there is jurisdiction to make such orders either under the court's inherent wardship jurisdiction or under statute. If the Children (Jersey) Law 2002 were in force, the plaintiff would be able to apply for access under that statute with the leave of the Court. However, at present, we must turn to the customary law for the answer. 6. Re X

(2002) JLR 509 involved a girl who had become pregnant at the age of 14 by an older man. There had been an abortion. The girl's parents and the police sought consent for the foetal remains to be analysed for the purposes of obtaining evidence against the older man. The girl withheld her consent to such analysis and the Court was asked to override her consent. 7. The Royal Court held that, in exercise of its inherent jurisdiction over minors, it had jurisdiction to override the wishes of the girl but that, on the facts, it would not be in her best interest to do so. On appeal, the Court of Appeal reversed the decision on the grounds that the Royal Court had taken no account of the public interest in prosecuting serious crime, but it accepted the existence of the inherent jurisdiction over minors. 8. In the Royal Court, Bailhache B had stated the position as follows at paragraph 22:- "Neither

counsel suggested, however, that this court did not have power to override X's refusal to grant consent. That power stems from the court's inherent jurisdiction in relation to minors. The jurisdiction was asserted in *Re an Infant*

- (3) when the court authorised the Health & Social Services Committee and its medical staff to discontinue medical treatment to a 5-year old child who was in a vegetative state. It has its counterpart in England in the *parens patriae* jurisdiction asserted by the High Court in relation to children." The Royal Court went on to approve the comments of Lord Donaldson MR in *Re W (a Minor) (Medical Treatment)*
- (1992) 4 All ER 627 at 637 :- "There is ample authority for the proposition that the inherent powers of the court under its *parens patriae* jurisdiction are theoretically limitless and that they certainly extend beyond the powers of a natural parent" 9. The next case we were referred to is *F -v- H*
- (2001) JLR 492 . That was concerned with the making of a 'mirror order' of the English High Court concerning custody and access in relation to a child who was shortly to move to Jersey. The Royal Court had to decide whether it had inherent jurisdiction to make such an order given that there were no matrimonial proceedings in Jersey. At paragraph 12, having summarised a number of reasons for concluding that it could, the Court said this:- "We draw support from the foregoing matters for the principle that this court has an inherent jurisdiction to protect and make orders for the welfare of minor children. Such orders may deal with matters such as care and control, access, education, removal from the Island and medical treatment, but that is not intended to be an exhaustive list....." 10. In *CAH -v- SRM* [2003]JRC084 the Royal Court exercised its inherent jurisdiction to award custody of a child, whose mother had died, to his father (rather than the maternal grandparents) but ordered access in favour of the grandparents. 11. We are quite satisfied from these authorities that the Royal Court has inherent jurisdiction to make orders for the protection and welfare of minor children and that such inherent powers are theoretically limitless and certainly extend beyond the powers of a natural parent. The Court therefore has jurisdiction to make an order for access to a child in favour of any person, whether a relative or not, if satisfied that that is in the best interests of the child. Indeed Mr Harris did not seriously contend otherwise. 12. Accordingly the Court will go on to hear the evidence and decide whether, on the facts of this case, Z's best interests lie in the plaintiff having continued access or not. Authorities. *Re X*
- (2002) JLR 509 . *Re W (a Minor) (Medical Treatment)* (1992) 4 All ER 627 at 637. *F -v- H*
- (2001) JLR 492 . *CAH -v- SRM* [2003]JRC084. Page Last Updated: 24 Mar 2017 BAILII: Copyright Policy | Disclaimers | Privacy Policy | Feedback | Donate to BAILII

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