

JERSEY / JUDGMENT

In the matter of B 5 Feb-2010

[2010] JRC 025 (05 February 2010)

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judgment

the commissioner: 1. This case concerned contact between A ("the father") and his three children, Child 1 and Child 2, and Child 3, and the comparatively narrow but contested issue of whether the contact, which had hitherto been supervised, could now proceed unsupervised. The Court ordered that it could do so (but not by way of staying access) and now sets out its

reasons.

It is necessary first to summarise the background. 2. B ("the mother") and the father separated in June 2005 and were divorced in August 2006. Following the separation the father had regular contact, including staying contact, with the children. The father is aged 55 and the mother 38. 3. In 2008 the father experienced a period of anxiety and depression. Over the Christmas holidays of 2008 and in the half-term holiday in February 2009 concerns were raised by family and friends about an apparent deterioration in the father's mental health, his physical chastisement of the children and activities he undertook with the children. 4. The mother was advised by her previous advisers to suspend all contact, which she did by e-mail dated 12 th March, 2009. The Children's Service commenced an initial assessment on 13 th March, 2009, which was completed on 27 th March, 2009, although not signed until 8 th May, 2009. Child Protection inquiries were undertaken with the children completing a video interview with the public protection unit, who advised that no further involvement on their part was warranted and that there would therefore be no criminal proceedings. 5. Because the mother was taking protective measures by suspending contact, the Children's Service were of the opinion that it had no identifiable role at that time and recommended that the mother and father should continue to liaise directly with their respective legal advisers in relation to arranging appropriate contact between the children and the father and that the concerns that had been identified were fully taken into account within such negotiations. 6. On the 16 th March, 2009, the father applied for a contact order. The application first came before the Deputy Registrar on 23 rd March, 2009, when she ordered a welfare report and a psychiatric assessment of the father to be undertaken by Dr Dale Harrison. 7. Mrs Ferguson (the Court Welfare Officer) referred the matter back to the Children's Service who held a strategy meeting on 28 th April, 2009, attended by a representative of the children's school, a representative from the Mental Health Services, two representatives from the Children's

Service, Mrs Ferguson and a representative of the Public Protection Unit. Again, because the mother was acting protectively by suspending all contact, it was agreed that there was no role for the Children's Service but it was agreed that Mrs Ferguson would inform the Court that all of the agencies involved would have grave concerns should the father be granted any kind of contact, supervised or unsupervised. Mrs Ferguson accordingly wrote to the Registrar in those terms on 14 th May, 2009. 8. The matter came before the Registrar on 19 th May, 2009, where it was referred to the Inferior Number of the Royal Court. On the strength of the advice received from Mrs Ferguson, the Registrar ordered that in the interim and until further order the father should have no contact with the children and should not visit the former matrimonial home or the children's schools. 9. The matter came before Clyde-Smith, Commissioner, for directions on 23 rd June, 2009, when it was directed that a psychiatric assessment be undertaken in respect of both the mother and the father and that the parties, as a matter of urgency, agree, after consultation with Mrs Ferguson and representatives of the Children's Service, a comprehensive set of directions to bring the matter to a conclusion as soon as possible. Those directions were agreed and issued on 23 rd July, 2009. By those directions the parties agreed to instruct Dr Bryn Williams, the Child Psychologist, to assess the children. A further report was also ordered by agreement from Ruth Hodierne, the drama therapist, who was then working with the children. The matter was listed for a further directions hearing on 13 th August, 2009, but the earliest trial dates the parties were able to reserve were the five days commencing 11 th January, 2010. 10. At the directions hearing on 13 th August, 2009, the father applied for an interim contact order which the Court fixed for 7 th October, 2009, by which time all of the reports ordered would have been filed and would therefore be available to assist the Court. The mother was not prepared at that stage to consent to supervised or telephone contact, absent sight of the reports ordered by the Court. 11. Following a further directions hearing on 23 rd September, 2009, the Inferior Number sat on 7 th October, 2009, to hear the father's application for interim contact. It had before it the reports of Dr Williams relating to the children and Dr Oyeboode in relation to the mother and father. Dr Williams and Mrs Ferguson were present to assist the Court. 12. Dr Oyeboode advised that the mother had a difficult upbringing, but was not suffering from any mental illness, although she had been treated for anorexia when aged 17. The father was also not suffering from any mental illness on examination (29 th July, 2009,) but in Dr Oyeboode's view, there was persuasive evidence from the information presented to him that the father had suffered with a bipolar affective disorder. The father, whilst accepting that he had experienced anxiety and depression in 2008, did not accept that diagnosis which he pointed out was based largely on information provided to Dr Oyeboode, emanating from the father's sister and mother, the reliability of which he challenged. He did not adduce expert evidence of his own. 13. Dr Williams, in his most comprehensive report, sympathised with the description of the father as a "charismatic enigma". The father has been described by a member of his family as "unconventional, eccentric, entertaining, charismatic, challenging and often uncompromising". He had been an accomplished athlete. Dr Williams found the father's presence very significant and in latter dealings felt he was being "bombarded" and "overwhelmed" by him. The father told Dr Williams that he did place his children in difficult situations; sometimes in situations that were perceived by others as being dangerous, but which were for him opportunities to overcome fear. 14. This

was best exemplified when on 1 st March, 2009, he took the children to Beauport beach where, at their choice, the children climbed the well known rock in the centre of the beach. To the father the children were smiling and happy and full of achievement. . To a member of the public the situation was alarming, resulting in the States of Jersey Fire Brigade being called. On arrival, Richard Davy of the States of Jersey Fire and Rescue Service, found one child at the base of the rock and another approximately three-quarters of the way up the rock. He made contact with the father who confirmed that everything was "OK" and stood by whilst they made their way down from the rock to the beach. The Rescue team then returned to its station. 15. Quoting from Dr Williams' report :- "A's assertion to me was that it was important to him as a father to prepare his children for adult life, be it on a rock face in Germany or on a Swiss mountain, or in terms of responding to his expectations about their behaviour by placing them outside the back door for a few seconds, a "clip round the ear", he is exposing them to anxiety which he believes his children should learn to tolerate as children, and that by exposing them to activities which he believes his children enjoy, he is acting in their best interests and their overall development." The father refuted any suggestion that he had been physically abusive towards the children at any time. 16. Dr Williams was aware during the course of his assessments that the mother had at times felt overwhelmed by what had happened to her family. Dr Oyeboade had recognised her vulnerability with relationships and she had benefited from recent cognitive analytical therapy with Dr Rudd. Whilst Dr Williams had no great concerns about her capacity to meet the needs of the children, he did have a concern about the mother's capacity to tolerate often "overwhelming" emotions in herself and to recognise the impact this might have on the children. In the words of Dr Rudd, the mother found the father " such a powerful force and it was as though he was in the role of controlling, blocking, powerful " leaving her feeling " controlled, powerless and undermined ". 17. In general terms, Dr Williams found the children to be exceptionally able and articulate and in good health, although he expressed concerns about certain behavioural traits demonstrated by Child 1. In his view, the children's fear of their father had not been conditioned by the mother, and was genuine. The father had not yet taken on board that it was as a direct result of his own behaviour and actions that his children were frightened of him, although Dr Williams did agree with the father that the mother had contributed to maintaining that anxiety. It was his opinion however that the primary responsibility in moving the situation forward rested largely with the need of the father to recognise the impact of his charisma and mental health difficulties on his children. 18. In order to move the issue of contact forward and, subject to the Court being satisfied as to the father's mental health, Dr Williams recommended in broad terms:- (i) That the parents needed to develop a "narrative"; a shared language and a real story that can be shared with the children with an appropriate level of adult/child language to help them understand what had happened to their family; (ii) Once the children began to feel heard and the family negotiated together whatever activities they will do, the father should have contact supervised by a family friend or relative who is willing to give the children "naturalistic time" with their father. The mother and the father should agree on a range of activities including venues and times for contact in order for the children to regain their confidence in their relationship with their father. 19. The hearing on 7 th October, 2009, before the Inferior Number marked a turning point in the case. The mother had made it clear that she was willing to co-operate with whatever course of

action the professionals and the Court deemed necessary on her part to enable the children to have a relationship with the father. Dr Williams met with the father prior to the hearing and constructive progress was achieved. The father accepted that he had a role to play with the children's state of mind and that it was an important prerequisite for the Court to be satisfied as to his mental health being sufficiently robust for him to be safe with the children. The Court was therefore able, essentially by consent, to make an order for contact in the following terms:-

"Upon hearing the advocates for the parties, Dr Bryn Williams and the Court Welfare Officer; And upon reading the reports of Dr. Bryn Williams and his oral opinion that direct contact could potentially be introduced during November subject to the caveats expressed; And upon the father agreeing to meet with his General Practitioner without delay in order to secure a referral to a treating psychiatrist; And upon the parents agreeing to meet with Ruth Hodierne on up to three occasions (or more if considered necessary) at The Bridge (or at any other agreed suitable venue), to discuss and agree a narrative ("the narrative") in order to establish for the children a shared understanding of what has happened in the family, such sessions to be at the sole expense of the father; And upon it being agreed: a) the parents shall each work with Ruth Hodierne, as indicated by Dr Bryn Williams in his addendum report of the 4 th October, 2009, in order to agree a narrative; b) as soon as the narrative is agreed or contemporaneously the parties will agree, with the assistance of Ruth Hodierne, upon the way in which the father will be introduced to the children and have contact with them; c) neither parent will speak of the other in derogatory terms to or in the hearing of the children; d) neither parent will discuss the matters leading to these proceedings with the children, unless specifically so advised by Dr Bryn Williams, Ruth Hodierne or such other expert as may be directed by the Court; e) both parents shall use their best endeavours to ensure that none of their extended family refer to the proceedings or any question of abuse with the children or discuss such matters in the presence of the children, unless specifically so advised by Dr Bryn Williams, Ruth Hodierne or such other expert as may be directed by the Court; the Court ordered that:- 1. the children shall live with the mother and have all forms of contact with the father as may be agreed between the mother and the father, but subject to the condition contained in paragraph 2 below; 2. pursuant to Article 12(7) of the Children (Jersey) Law 2002 the following conditions shall apply to the order in paragraph 1 above namely that before contact shall commence:- (i) the narrative and method of reintroduction must be agreed between the mother and the father; (ii) the Court Welfare Officer shall confirm in writing that having consulted with Dr Williams, the father's treating psychiatrist, the mother's treating psychologist and Ruth Hodierne, that there are no grounds in terms of the father's mental health to justify contact, as agreed, not taking place, it being understood that the Court Welfare Officer shall monitor the progress of the sessions with Ruth Hodierne and the father's treating psychiatrists and the mother's treating psychologist with a view to producing her statement without any delay as soon as the narrative and method of re-establishing contact have been agreed; 3. the father shall have leave to disclose to his treating psychiatrist, Dr Oyebode's report in relation to him and the mother and father will procure that their respective treating psychiatrists and psychologists will liaise with and keep the Court Welfare Officer informed as to their respective treatments; 4. the order contained in paragraph 6 of the Act dated the 19 th May, 2009, is revoked. In this context the Court notes that the father's undertaking given, in the Court's

view, to assist in the building of trust between the parties, to work within the framework advised by Dr Williams and not to seek contact in advance of the stages set out above; 5. there be a further review and directions hearing in November or December with a time estimate of one day, such date to be fixed by the parties attending upon the Bailiff's Judicial Secretary within seven days of the date of this order;" 20. Pursuant to his undertaking, the father consulted Dr Harrison on 2 nd November, 2009, who confirmed by letter that day that there was no evidence of mental illness. No further consultation was arranged. The father had not supplied Dr Harrison with a copy of Dr Oyebode's report, although it was supplied subsequently. In response to further questions put by Mrs Ferguson, Dr Harrison explained that bipolar affective disorder is characterised by repeated (i.e. at least 2) episodes in which the patient's mood and activity levels are significantly disturbed. Characteristically, recovery was usually complete between episodes. As he had only seen the father on two occasions, i.e. on 31 st March, and 2 nd November, 2009, he was not in a position to comment on his prognosis. In his experience, it was only when a patient was displaying symptoms of a relapse in a bipolar affective disorder, i.e. has present symptoms of depression, hypermania or mania, that concerns are raised regarding appropriate child care or contact. At other times, it was usual in his view to encourage parental contact to normalise the children's experience with their parent. He noted that the father appeared to be addressing his concerns regarding re-established contact with his children in an appropriate way. 21. It would be wrong to suggest that the path to the next directions hearing on 3 rd December, 2009, was smooth, but by 3 rd December, 2009, the narrative had been accomplished not without difficulty and the Court was able to make the following order:- "1. the narrative attached as Appendix 4 to the report of Ruth Hodierne dated 19 th November, 2009, shall be used as the agreed narrative in this matter save that the narrative shall detail on behalf of the father, that the father accepts that he will tell the children that his contact with them shall be child focused, will consist of activities that the children tell him they enjoy and he will not undertake activities that frighten the children nor make them feel anxious; 2. the parties shall sign the amended narrative on Friday 4 th December, 2009, in the presence of The Reverend Geoff Houghton or failing that, in the presence of the parties' legal representatives and the signed amended narrative will be read out to the children on Friday 4 th December, 2009, in the presence of both parents and Mrs Jane Ferguson and in the event that Mrs Jane Ferguson cannot attend, the Reverend Geoff Houghton; 3. conditional upon the father telling the children of those matters detailed at paragraph 1 above and the amended narrative being read to the children, the father shall have supervised contact with all children on Sunday 6 th December, 2009, from 12.30 pm to 3.30 pm and on Sunday 13 th December, 2009, (the latter at a time to be arranged between the parties) with such contact being supervised at all times by such person or persons as agreed between the parties. Collection and return of the children shall take place at the mother's home. The father undertakes that he will not enter the mother's home on such occasions; 4. the father shall be at liberty to attend Child 3's School Christmas play on Thursday 10 th December, 2009, this visit being in addition to the weekly contact detailed at paragraph 3 above." 22. Following the order of 3 rd December, the father met with the mother and the children on Friday 4 th December in the presence of the Reverend Geoffrey Houghton. This was the first occasion the children had met their father for eight months and there was not surprisingly an element of reservation on their part, but it is

clear from Reverend Houghton's report that the meeting went well and that both parents worked hard and appropriately to keep the children's attention to the narrative which they read carefully and slowly. 23. At the hearing on 3rd December, it had been proposed that a family friend, C, would supervise the contact on Sunday 6th December, following the reading of the narrative. Mrs Ferguson spoke to him to explain his role. He apparently had no idea that his involvement was part of a Court process and asked to see a copy of the relevant Act of Court. It transpired that in any event, he was unable to supervise access on that Sunday. The father had put forward a D, whom the children had met a year or so before. It was clear that the children did not really remember him, but in order to ensure that contact proceeded on the Sunday, the mother helpfully agreed to accompany the children. 24. Child 3 was performing ballet at the Arts Centre on Saturday 5th December. The father had indicated to the mother following the reading of the narrative that he would be attending to watch the performance. The mother did not give her consent to any contact that evening and none had been ordered by the Court. At the performance the father approached Child 3 to wish her luck. He had texted the mother to let the children know that he would be watching but she had not done so to avoid putting pressure on them. 25. The contact on Sunday 6th December went well. The mother confirmed that the children seemed happy in his presence. After lunch the family went down to the beach for a walk. The contact was due to end at 3.30 but the children did not in fact get back until 4.10 pm. 26. There was further contact as contemplated by the Court order on 10th December, when the father attended Child 3's school Christmas play and on 13th December the mother accompanied the children to meet the father and his fiancée, E, for lunch at Corbière. This was followed by a walk around Corbière. The mother confirmed that the children were happy in his presence and she liked E's approach. Issue before the Court 27. At the hearing before the Inferior Number on 16th and 17th December, the sole issue was whether contact should continue to be supervised. The mother again made it clear that she would accept and follow the advice of the professionals and both Dr Williams and Mrs Ferguson advised that contact should continue to be supervised for at least four to five sessions. Dr Williams was concerned that the fear the children felt for their father remained unheard by the parents and at times the legal process and was disappointed that the father had, by turning up to the ballet on Saturday, breached his undertaking to work within the agreed framework. The purpose of supervision was to enable the mother to gain genuine feedback on how the children were responding to being with the father again and thus to reassure her. This could take place with a reliable family member or friend. To the mother supervision was really important in that it would allow trust and confidence to grow and she wanted to have confidence that contact would be child centred. She was concerned as much as to the children's emotional safety as to their physical safety. Mrs Ferguson had concerns as to the father's ability to adhere to any agreement or undertakings given. 28. In Re B (Care: Expert Witnesses)

[1996] 1 FLR 667 it was held that the judge did not err in law in departing from the opinion of the experts. As per Butler-Sloss P. at page 674:- "The courts pay particular attention to the valuable contribution from paediatricians and child psychiatrists as well as others, but it is important to remember that the decision is that of the judge and not of the professional

expert. Judges are well accustomed to assessing the conflicting evidence of experts. As Ward LJ said, judges are not expected to suspend judicial belief simply because the evidence is given by an expert. An expert is not in any special position and there is no presumption or belief in a doctor however distinguished he or she may be. It is, however, necessary for a judge to give reasons for disagreeing with experts' conclusions or recommendations." 29. In this case we did not disagree with the recommendation of the experts as to further ongoing supervision. The difficulty was in implementing that advice in the context of this family. The mother understandably wanted someone as supervisor whom the children knew and trusted. The father wanted someone whom he knew and who understood his philosophy or style of upbringing. Mrs Ferguson advised that such a person was absolutely not the right person to supervise the father's contact. There was difficulty in finding a friend or relation who both sides would regard as independent and who would be willing to undertake a role that would involve providing feedback ultimately to the Court and potentially giving evidence and being cross-examined before the Court. Dr Williams accepted that not many family members or friends would wish to undertake such a role. It seemed to us likely that this prospect had been one of the factors which had discouraged C. 30. The mother had put forward her brother, but he was unacceptable to the father and was in any event only available over Christmas. She had also suggested F, the ballet teacher, who the father did not know. Mrs Ferguson was not sure that F would have been robust enough. The father had put forward D, who the mother felt the children did not know well enough. Finally, the mother put forward G, who was available for one weekend but was otherwise away for Christmas and the New Year. 31. In the absence of a suitable candidate for supervision, both Dr Williams and Mrs Ferguson recommended Milli's Contact Centre. In Mr Hanson's view, contact at such a centre would be the worst order the Court could make. It would, he said, be felt as a form of punishment and "dreadful for the children". Furthermore Dr Williams had advised in his report that the father should have "naturalistic time" with the children, and Milli's was not a natural environment. Miss Myerson agreed that Milli's was not ideal. Furthermore, it appeared from the extract from the website provided by Mr Hanson that Milli's did not provide verbal or written reports about visits; feedback being the main reason for supervision being recommended. Notwithstanding Mrs Ferguson indicated to us that in her experience oral feedback could be obtained. 32. We were conscious of the importance to the children of having contact with their father. The law in relation to contact was helpfully summarised in G-v-A

[2005] JLR 93 at paragraph 66 as per Deputy Bailiff:- "66 In relation to access, as with other matters concerning children, the best interests of the child are paramount. It is equally clear that it is almost always in the best interests of a child to have access to both parents. In *Re S (Contact: Promoting relationship with absent parent)* (4), the Court of Appeal conducted a wide-ranging review of the importance of access. In the course of her judgment, Butler-Sloss P. quoted with approval (

[2004] 1 FLR 1279 at paras 19-20 the following statements made in other cases:- (a) Re T (Parental responsibility: Contact) (6) ([1993] 2 FLR at 459, per Butler-Sloss, P.): - "It is the general proposition, underpinned undoubtedly by the Children Act 1989 - and indeed the father has correctly reminded us of the importance of continuing relationships between children and their parents - that it is in the interests of a child to retain contact with the parent with whom the child does not reside. The courts generally set their face against depriving a child of such contact and urge reluctant caretaking parents to make contact work, however difficult it may be for that parent who very often does not understand the importance of that continuing contact." (b) Re O (Contact: Imposition of conditions)(2) [1995] 2 FLR at 128, per Bingham, M. R.): - "...[I]t is almost always in the interest of the child that he or she should have contact with the other parent. The reason for this scarcely needs spelling out. It is, of course, that the separation of parents involves a loss to the child, and it is desirable that that loss should so far as possible be made good by contact with the non-custodial parent, that is the parent in whose day-to-day care the child is not." And at paragraph 77:- "Access is not a reward for some mythically perfect parent. It is in a child's interest to have a loving relationship with both parents, however imperfect they may be. It is only in extremely rare cases that a court would be likely to hold that a parent's influence was so undesirable that access should be denied altogether." 33. This last observation was very relevant to this case. The father was (in the words of his counsel) a difficult, if not irritating man. He was highly articulate and intelligent and had certain views on life with which many would take issue. He sought to control and tended to overwhelm. It was clear that both Dr Williams and Mrs Ferguson had found dealing with him exasperating. He was, however, the children's father. 34. In the narrative, the father made the following statement to the children:- "To All of the Children A:- I want you to know that I am delighted to see you and that Mummy and I am sorry you have not seen me for eight months. I love you very much. I am sorry that there might have been times when you were in situations where I did not see or hear that you were really scared and I am sorry that I have made you feel tearful. Mummy and I need you to understand that we feel very differently about how many things like rock climbing you should do with me. I believe that it is important that I do things with you which might at times be scary - I do it because when you are grown up you will often have to face scary situations and if you have done things when you are young which are scary and managed to over come them, when you are grown up you will have all the bravery and good ideas that you need to over come anything that might happen in your life. I do these things to help you to deal with fear when you are grown up. However I will no do any activities with you that frighten you or make you feel anxious. I accept that when I see you, the activities we do shall be child focused and must consist of activities that you tell me you enjoy. We have spent a some time together talking about why you might or might not have been scared with me and we have been able to talk about some of the things you did with me which made you frightened and that you felt that you couldn't tell me because I would be cross. If I come across as being stern it is because I think you are being naughty. But I need you to know that no matter how you behave I love you. I think there might have been times when you

were in positions when I didn't realise that you were scared. I want to ask you to find a way to tell me when you are too scared - like a hand signal or a word

- you decide. I also need you to know that I have agreed with Mummy that in the future I will not smack or clip you around the ear when I think you have been naughty. However, if you are naughty I need to tell you off." On oath before us, the father confirmed that he would abide by the narrative. 35. We were dealing with a mature man in his mid fifties settled in a relationship with a new partner - herself a mature professional woman in her late thirties. Contact had been suspended for some eight months on account of mental health concerns. He had been seen by two psychiatrists in July and November and had not been found to be suffering from any mental health problems on each of those occasions. 36. In our view it was overwhelmingly in the interests of the children that contact, now re-established, should continue on a consistent basis. The father had seen the children on some five occasions, three of them supervised, and it had gone well. Ongoing supervision by a friend or family member was proving very difficult to arrange in practice. Milli's provided a safe physical environment but it was not a natural environment in which the father could rebuild his relationship with the children. 37. To order supervised contact in the absence of an agreed supervisor would potentially interrupt that contact once again, which we concluded should continue uninterrupted and unsupervised but on a graduated basis so that staying access would not take place until a further review fixed for January 2010. In view of the earlier opinions expressed by Dr Harrison and Dr Oyebode and noting that relapses in mood are transient, we agreed with Miss Myerson that it was in the interests of the children for the father's mental health to be monitored on a three monthly basis by Dr Harrison. 38. By way of postscript, the Court wishes to make the following observation. It was not in the interests of the children that the case should have taken as long as it did. The father initiated the proceedings promptly (although according to Mrs Ferguson's letter to the Registrar dated 14 th May, 2009, he then refused to co-operate with the psychiatric assessment by Dr Harrison ordered by the Deputy Registrar on the 23 rd March, 2009,) and the procedural steps thereafter appear to have been taken in good time and for good reason but delays are unavoidable where, as here, the assistance of experts is required. However to order that all contact between the father and the children should cease was, as Mr Hanson described it, "draconian", exposing the children to the sudden and unexplained loss of contact with their father and the difficulties of that relationship having to be re-established after what would be for them a very long period. With the benefit of hindsight we think the Court should have been more resistant to imposing and thereafter maintaining such an order without first probing more thoroughly the advice from the agencies and exploring all other avenues, such as supervised interim contact or the imposition of suitable conditions for interim contact pending a full hearing. *Authorities Children (Jersey) Law 2002. Re B (Care: Expert Witnesses)* [1996] 1 FLR 667. G-v-A

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