

JERSEY / JUDGMENT

In the matter of Ben (Secure accommodation order) [2017]

JRC 217 (21 December 2017)

[2017] JRC 217

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judgment

the commissioner: 1. This is an application today by the Minister for a secure accommodation order under Article 22 of the Children (Jersey) Law 2002 . That Article provides as follows at paragraph 1:- "(1) Subject to the following provisions of this Article, a child who is being looked after by the Minister may not be placed, and, if placed, may not be kept, in accommodation provided for the purpose of restricting liberty ("secure accommodation") unless it appears - (a) that - (i) the child has a history of absconding and is likely to abscond from any other description of accommodation, and (ii) if the child absconds, he or she is likely to suffer significant harm; or (b) that if the child is kept in any other description of accommodation he or she is likely to injure himself or herself or other persons." 2. The background is that until 2015 Ben (this is not his real name), who is now 15, lived with his mother and father and with his younger brother Charlie (this is not his real name) but then the mother and father separated and Ben went to live with his father, with Charlie remaining with the mother. Unfortunately things did not work out with his father and it is clear that he became beyond parental control. So in December 2016 he moved into Accommodation 2 on a voluntary basis and has been there since. Ben told us that there was a short period before then when he was at Accommodation 1. 3. Care proceedings were instituted in May 2017 and various directions were given but no interim order has been made. The final hearing of those proceedings is at present fixed for 8 th January 2018. 4. We have had much evidence produced before us in terms of reports and other documents showing the difficulties have arisen in relation to Ben's placement at Accommodation 2. He has absconded on a very regular basis with 102 missing person reports having been presented by Accommodation 2; conversely there are 146 child protection notifications from the police; in other words on that number of occasions the police have been sufficiently concerned to notify the Minister about events of which they have become aware. Some of those have related to events at Accommodation 2 itself but others have related to occasions when he has been out and about in public or at school and the police have become involved. There is clear evidence that, certainly at times when absconding, Ben has become involved in the consumption of alcohol and the taking of drugs. 5. During this time when he has been at Accommodation 2, he has become involved

with the Criminal Justice system unfortunately. We have his list of convictions. He appeared in the Magistrate's Court on 28 th February, 2017, when for offences of common assault, using threatening behaviour and malicious damage, he was put on probation. He appeared again on 14 th March, 2017, when for one offence of common assault and a breach of the Probation Order, a continued Probation Order was made. On 26 th September, 2017, he appeared again before the Youth Court for using threatening abusive words or behaviour or engaging in disorderly behaviour on 27 th June; for possession of cannabis and obstructing the police on 14 th July; for common assault on 22 nd August; for common assault on 21 st August; and for common assault on 29 th April, in other words three occasions of assault. Some of these convictions related to events at Accommodation 2 and related to staff, others involved either the school or were in public. 6. The final care proceedings have been fixed for 8 th January. The Minister presented his final care plan in early November. At that stage his intention was that Ben should remain in Accommodation 2 but with enhanced measures to try and address the many issues which were manifesting themselves through the difficulties in the placement. We have not heard full evidence on this and therefore we reach no final conclusion and it may well be that Ben was somewhat resistant, but we have to say we are not at all clear why these measures have not been put into place. We are not convinced that the Minister has driven this whole matter forward with the requisite energy and drive. Be that as it may, that was the Minister's plan and on 12 th December at a professionals' meeting that was still the plan and people were talking of slightly more encouraging developments in the placement at Accommodation 2. 7. However, unknown to that meeting, late the night before there had been an alleged incident at Accommodation 2. It is alleged that Ben, who is a large young lad, assaulted a female member of staff by putting her in a headlock and grabbing her breast. She has made a statement about that and there is another witness who is a member of staff. It is said in the records that this was immediately preceded by some strange behaviour on Ben's part which involved him repeatedly taking his trousers down and inviting them to inspect his buttocks. 8. He was charged in relation to that incident and appeared before the Youth Court. He was remanded to Accommodation 3 but when he reappeared before the Youth Court he was bailed to accommodation as directed by the Minister. The Minister did not feel able at that stage to send him back to Accommodation 2 and so exercised powers to detain him at Accommodation 3 for 72 hours, which is where he has been, and it is against that background that the Minister now brings his application. 9. We have already referred to Article 22(1). The Minister has made it clear that he is only relying on Article 22(1)(b), presumably because the absconding has taken place on many occasions over a lengthy period and nothing much has changed, although he might have chosen to rely on matters when he absconded. But, be that as it may, he is only relying on (b), in other words that Ben, if kept at Accommodation 2, is likely to injure himself or other persons. So we have to consider whether those statutory conditions are made out because if they are not, that is the end of the matter. We have no jurisdiction to make a secure accommodation order. 10. We have considered the material put before us and, having regard to the fact that he has a number of convictions for assault and that the allegation of 11 th December, if true, is serious, and that there is evidence from two people as to that incident, we are satisfied that Article 22(1)(b) is met. We therefore have jurisdiction to make a secure accommodation order. The question is whether in our discretion we

should do so. Would it be proportionate? Is it in Ben's best interests because it is a strong thing to send a child to secure accommodation and the Court must think long and hard before doing so.

11. Now the Minister says that it is necessary to do it for the protection of staff at Accommodation 2 which is the only alternative accommodation that there is at the moment; and we agree with that, there seems to be no alternative at present although requests have been made to the Minister for a bespoke accommodation arrangement in the past but little progress seems to have been made on that. So the Minister says it is necessary. When asked how the time will be used, we were told that the time will be taken to identify a person who can carry out a further report particularly having regard to the development of a sexual aspect in Ben's conduct according to the alleged incident. We were told that they will also begin some therapeutic treatment if possible, perhaps through Doctor Posner 12. Advocate Davies says it would be wrong to make such an order. She is the advocate for Ben. She says that the evidence does not make it imperative that this is what should happen. Furthermore, she points to three very positive things which have been happening recently. First of all work experience that Ben has been undertaking at a retail outlet, secondly a course on lifeguarding that he has been undertaking which involves both theory and attending at the swimming pool in order to put it into practice, and thirdly, helping at the youth club; and certainly when we met Ben in chambers he said how much satisfaction he had found in undertaking these various activities and we can well understand that. 13. We have to say we were disappointed with the initial response of Miss Strettle who said that, if there were a secure accommodation order, she did not think these three things would be possible. We disagree. We can see absolutely no reason why they should not be done from Accommodation 3 provided, and this is an important proviso, Ben behaves himself and comes back when he is told, performs the various tasks that he is given properly and generally does not get into trouble. The advantage of secure accommodation in that connection is that if he does not behave himself he can be detained in safety. 14. The parents and the Guardian have agreed that, in view of the breakdown in the relationship at Accommodation 2, with reluctance they think that the secure accommodation order is the right course if it is short and if it is used constructively. 15. Having considered the matter carefully, including what Ben has said to us, we have come to the conclusion that we agree with them. We think that a secure accommodation order is the right course but it should be as short as possible and it must be used constructively. So we wish to say this. The matter is due to come back before us on 8th January because that will be the expiry date of the order. We expect real progress to have been made by the Minister in identifying an expert with the requisite skills to prepare a report and that he/she should have agreed to prepare a report thereafter within a short timescale; and also we expect to see progress on what possible therapeutic measures there are, in other words we expect the Minister to be proactive. 16. We also wish to strongly encourage the Minister through the Accommodation 3 team to, if possible, allow Ben to continue with the three activities that we have mentioned. It is clear that this is a very positive development and if this were to be stopped now we think it would be negative. Therefore we very much hope that that will be encouraged. If on the 8th January we were to find that in effect not much had happened and all that had happened was that Ben had been locked up for that period, we would be likely to revoke the order on 8th January. 17. On the other hand, Ben's future lies in his own hands. If he behaves himself, if he comes back when he promises to

come back, if he behaves well when he is given any freedom, then all well and good. But, if he does not, then he can expect that these privileges of attending these various activities may be withdrawn and it will have an impact on whether we renew the order on 8 th January. 18. So, we think that this is the course which is in Ben's best interests in company with the Minister, the parents and the Guardian. We make the order until 8 th January. Authorities Children (Jersey) Law 2002. Page Last Updated: 18 Jan 2018 BAILII: Copyright Policy | Disclaimers | Privacy Policy | Feedback | Donate to BAILII

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