

JERSEY / JUDGMENT

# In the matter of D

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[2010]JRC047A royal court (Samedi Division) 4th March 2010 Before : M. C. St. J. Birt, Esq., Bailiff, and Jurats Le Breton and Clapham. IN THE MATTER OF D Advocate C. R. Dutôt for the Minister of Health and Social Services. Advocate I. C. Jones for the Mother. Advocate H. J. Heath for the Guardian ad Litem. The Father did not appear and was not represented.

## judgment

the bailiff: 1. This is an application by the Minister of Health and Social Services for a full care order in respect of D and an order freeing D for adoption. The father has taken no part in the proceedings but has given his consent to D being freed for adoption. By the time of the hearing the mother had also agreed that a care order and a freeing order should be made. Miss Ursula Scott, a member of the Safeguarder Service of the States of Guernsey was appointed as guardian ad litem for D. The guardian also agreed that it was in D's best interests that a care order and a freeing order should be made. 2. Given that all parties were agreed on the proposed course of action, the court did not think it necessary to hear oral evidence. We had been provided with numerous reports which we had read before the hearing and we were content to proceed on the basis of those reports. We agreed to make a care order and an order freeing D for adoption. We now give reasons for those orders but, given that the matter ultimately proceeded by agreement, we propose to be very brief. The Law 3. We begin by reminding ourselves of the applicable law in relation to care orders. This was described at paras 13 – 19 of Re F and G [2009] JRC

236. The court must first consider whether the threshold for making a care order has been achieved. The threshold is contained in Article 24 of the Children (Jersey) Law 2002, the relevant provisions of which provide:- “(2) The court may only make a care order or supervision order if it is satisfied:-

- (a) that the child concerned is suffering or is likely to suffer, significant harm; and
- (b) that the harm, or likelihood of harm is attributable to:-
  - (i) the care given to the child or likely to be given to the child if the order were not made, not being what it would be reasonable to expect a parent to give the child, or (ii) the child's being beyond parental control. If the court is satisfied that the threshold criteria are met, it must go on to consider whether or not to make a care order or a supervision order and if so which order. In deciding this second issue, the court must have regard to the child's welfare as the paramount consideration (Article 2(1) of the 2002 Law). The court must also have regard to the other matters described in paragraph 19 of the judgment in F and G. 4. In relation to a

freeing order, Article 3 of the 1961 Law provides as follows:- “In reaching any decision relating to the adoption of infants the court ... shall have regard to all the circumstances, first consideration being given to the need to safeguard and promote the welfare of the infant throughout the infant’s childhood, and shall, so far as practicable, ascertain the wishes and feelings of the infant regarding the decision and to give due consideration to them, having regard to the infant’s age and understanding.” Factual background 5. The mother was born and brought up in Gambia. She gave birth to a number of children whilst in Gambia, each pregnancy being the result of a different relationship. She does not remember when the children were born or with whom some of her children may be living at present. The father comes from Jersey. He met the mother whilst on holiday in Gambia. They married in December 2001 and the mother came to Jersey in May 2002. 6. D was born in 2003, and is now aged 6. It is clear that the relationship between the father and the mother was quite difficult and referrals to the Children's Service were first made in December 2005. The mother went missing several times, sometimes with D. In December 2005 the mother stayed at the Women’s Refuge with D for some ten days and during this time concern was expressed about the care of D by her mother. In May 2006 the mother met E and two weeks later she moved in with him. D moved with her. 7. It is clear that the relationship between the mother and E was very volatile. In March 2007 the mother first presented herself to the Psychiatric Services. Since then she has been diagnosed as suffering from a major mental illness, namely schizoaffective disorder. This is an enduring mental illness which can cause the mother to suffer psychotic phenomena, delusory beliefs and hallucinatory experiences. The behaviour associated with her illness includes unpredictable behaviour, violence, risk taking behaviour and failing to protect her children. 8. She gave birth to F in 2007 as a result of her relationship with E. The mother has made allegations that E ill treated D. As a result of the mother’s reference to the Psychiatric Services, D was placed in the care of her father and paternal grandmother in March 2007. F was placed into the care of his father, E and his paternal grandmother. The mother was detained under Article 6 of the Mental Health (Jersey) Law 1969 for a while but discharged herself. On 26th April, 2007, the father’s family informed the Children's Service that reluctantly, they did not feel able to continue to care for D. The father and the mother agreed that D should be placed in foster care and on 24th May, 2007, she went to live with her current foster carers, G and H. She has remained there since then. 9. It is accepted by the mother that, whilst D was living with her and E, the basic care provided was not always acceptable and on several occasions the children witnessed volatile domestic situations. The mother and E also took spice (which was legal at the time) and used cannabis. It is clear that the mother’s mental health was a contributing factor to the lack of care for the children and the volatile situation. In 2008 the mother was sentenced for two offences involving violence. It was stated that she was at high risk of re-offending and posed a risk to the public. Whilst in prison she suffered a relapse in her mental health. A risk assessment of the mother carried out by Ruth Emsley, forensic psychologist, concluded that she was at high risk of committing a violent act in the future.

10. D has been living with G and H for some two and a half years since May 2007 and it is clear that she is very happy there. She has described being frightened of E and she very much wishes to be adopted by G and H. Indeed she has repeatedly said to a number of the experts that she wishes the court to reach an early decision allowing her to be adopted by them.  
Decision
11. All parties are agreed that the threshold criteria are met. The court has received a number of reports, all of which are consistent in saying that, owing to her psychiatric condition, the mother is unable to care for D and she would be at risk of harm as a result of the mother's behaviour. The father feels unable to look after D. In the circumstances, in the absence of a care order, D would undoubtedly be at risk of significant harm.
12. The care plan put forward by the Children's Service involves freeing D for adoption with a view to her being adopted as soon as possible by G and H. The guardian agrees that this would be in D's best interests. It is very much in accordance with D's wishes and, as at the date of the hearing, both the mother and the father consented to this course of action. We agree that it is in D's best interests for a full care order to be made and for a freeing order to be made allowing her to be adopted by G and H.
13. It was for these reasons that we granted a care order and also made an order freeing D for adoption under Article 12 of the Adoption (Jersey) Law 1961. None of the parties asked us to make any order in relation to contact and this aspect will therefore proceed in accordance with the care plan put forward by the Minister. *Authorities Re F and G* [2009] JRC 236. Children (Jersey) Law 2002. Mental Health (Jersey) Law 1969. Adoption (Jersey) Law 1961.

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