

JERSEY / JUDGMENT

In the matter of EE

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[2011]JRC178 Royal Court (Family) 6 September 2011 Before : W. J. Bailhache, Q.C., Deputy Bailiff, and Jurats Le Breton and Crill Between The Minister for Health and Social Services Applicant And

- (1) The Father First Respondent And
- (2) The Mother Second Respondent And
- (3) Miss Tracey Goode Guardian for the Children Third Respondent IN THE MATTER OF EE AND IN THE MATTER OF THE CHILDREN (JERSEY) LAW 2002 Advocate D. C. Robinson for the Applicant. Advocate S. A. Pearmain for the First Respondent. Advocate M. J. Haines for the Second Respondent. Advocate N. S. H. Benest for the Guardian and the Children.

judgment

the deputy bailiff: 1. This is an application by the Minister for a full care order in respect of A who is now aged four, and B who is now aged two. We shall refer to them together as “the children”. The children were the subject of an interim care order on 10th July, 2009, which order has been regularly renewed for further periods since then. There is before us a schedule of agreed threshold findings. The parents are represented and indeed are participating actively in these proceedings. In the circumstances, we agreed it was unnecessary to make full enquiry into the matters which are the subject of the agreed threshold findings. The findings themselves as set out in paragraphs 1 to 5 of this judgment disclose that the children have suffered physical and emotional harm from their parents’ drug abuse – indeed the physical harm commencing with the use by the mother of heroin dependently during her pregnancy with B, and other substances when pregnant with A. 2. Both parents have criminal records. The mother has previous convictions for violence, and indeed her recent offending resulted in a significant period of incarceration ending in July 2011. The father was imprisoned in 2009 for his offending. 3. The threshold document also reveals that the parents had failed to protect the children in various ways. A suffered a linear burn on the back of her neck in June 2009 from hair straighteners or curling tongs whilst in the care of her parents. On the same day, a home visit disclosed items dangerous to the children which were within their reach, including scissors, an aerosol can and lighter. On the same day, the flat in which the family lived was in a very poor state, and unfit for the children. 4. The threshold document also disclosed that the children have suffered emotional harm from the parenting they have received – the father accepted on 31st March, 2011, that he was not able to provide the children with the love, dedication and stability that they required. He

agreed on the same day that he was not able to provide the children with consistent or appropriate care. In early March 2009, the mother agreed that she was not coping with the children. 5. Furthermore there has been some domestic violence – for example, in June 2009 the mother hit the father over the head with a mug whilst they had an argument and as a result the father attended the hospital Accident and Emergency Department. There is undoubtedly other evidence disclosed in the threshold document which shows that the children have been exposed to conflict between their parents as a result of the conduct of one parent towards the other. 6. For all these reasons, the Court has no doubt that the children have suffered or are likely to suffer significant harm which is attributable to the care given to them, or likely to be given to them if an order were not made, not being what it would be reasonable to expect a parent to give to a child. 7. That then leads onto the disposal part of the application. The Minister asserts it would be right to make a full care order. This is supported by the Guardian and by the father. The mother's starting position was that it would be more appropriate for the Court to make a residence order in favour of the children's paternal grandmother, with a supervision order, initially for one year. Other orders are suggested which are ancillary to those two substantive orders. In the course of the hearing, the mother shifted position to the extent of resting on the wisdom of the Court. 8. The facts are that since June/July of 2009, the children have been in the care of their paternal grandmother and Ms O. The paternal grandmother is currently in her 50s. Ms O, who is a cousin of the father, is in her 30s and lives with the paternal grandmother. The care plan which the Minister has advanced for the children contemplates that they will continue living with the paternal grandmother and that she and Ms O will be the joint carers. Neither the mother nor the father contended that the children should live anywhere else. There was therefore consensus to that extent. 9. We heard evidence from Mrs Irene Hansford, the social worker who has been working with this family for some time, from Mrs Amelia Beaumont, the supervising social worker in the fostering and adoption team in Jersey, from Dr Bryn Williams, a chartered clinical psychologist with a special interest in children, young people and families, from Dr Dale Harrison, a consultant forensic psychiatrist who gave evidence as to his report on the mother, from Sandy Gaskins, a chartered psychologist who had given reports on both the father and the mother; from the mother; and finally from the Guardian.

10. Given that the threshold criteria are met it is clear that the options available to the Court are the following:- (i) The Court may make no order, having regard to the statutory obligation in Article 2(5) of the Children (Jersey) Law 2002 ("the Law") to consider the merits of that course as well as the merits of any of the other orders it might make; (ii) The Court may make a full care order under Article 24 of the Law; (iii) The Court may make a residence order under Article 10 of the Law coupled with such other orders as might be considered to be appropriate; (iv) The Court could continue with the current interim order and await further developments.
11. The Minister's position, supported by the father and the Guardian, was that a full care order was the appropriate course of action. Essentially the reasons for that submission boil down to this. All parties had agreed that the children ought to continue living with the present joint carers for the time being. There was a desperate need for the children to have some

certainty in their lives, and in their current placement with kinship carers, they had made good progress, forming sound attachments to those caring for them. The latter themselves were anxious to have some certainty as to their future role in the lives of these children. Dr Williams' evidence was that the children were reaching a critical phase in their lives. A needed to know that her world was safe; that there was consistency, routine with low levels of conflict. Without that safety, there was a risk of emotional damage. He said the children were at home with their paternal grandmother and their cousin. That relationship was safe and was working. The paternal grandmother, we heard from Mrs Hansford, has changed her lifestyle to care for the children. Ms O's relationship with them, according to Dr Williams, is very positive. By contrast, the father did not want to be the children's father at this point of his life, according to Dr Williams. Certainly before us the father was not asserting that he ought to look after the children himself, and although the mother had at one stage held out that this was a possibility, she was not contending at the moment that it was. Indeed, given the problems which both parents had suffered with alcohol and/or drug dependency, and given the medical evidence adduced in relation to the mother, the timeframe within which the mother might have been considered an alternative carer for the children simply did not fit with the children's needs to have a secure placement and attachment with their carers. The kinship assessment was positive. What was left outstanding was the degree to which the birth parents would participate in the children's lives in the future, and in effect that depended upon a number of factors the most important of which was their ability to stay off heroin and alcohol, and to address the other problems which existed in their lives. All that suggested a cautious approach to questions of contact, which indeed was then reflected in the care plan which the Minister put forward.

12. Shortly before the hearing, the mother agreed that the present joint carers should continue to look after the children. She disagreed with the approach to questions of contact and, bravely, elected to give evidence before us to explain her position. Essentially that position was that, as set out in the skeleton, it was not necessary to place any duties upon the Minister, and whereas the children would be living with the paternal grandmother, it was important to nurture the contacts which the children would have with their mother and the maternal family. The mother clearly has some issues at present with what she perceives to be the lack of impartiality towards her from the Children's Service, which is no doubt a factor in her having taken the line she did. She also considered that the paternal grandmother was hostile to her, and that this was a problem to be tackled. The mother asserted that she had a strong attachment with her children, particularly A, and, following the skeleton, to adopt the private law analogy on divorce, it was not uncommon that whereas the children would reside in one household with one parent, the other parent remained of importance in their lives.
13. The Court has been a little disconcerted to reach the conclusion that although there has been much agreement between the parties as to where the children will live, the mother nonetheless is possibly not taking the same approach to the fundamentals of that agreement as the Minister. The Minister's position, so it seems to us, is exemplified in the evidence of

the child psychologist Dr Bryn Williams who said that the relationship between the birth parents and the children was very important but should be compared with that of a loving, close and supportive uncle and aunt rather than a parent. The two carers with whom the children would be placed were to assume the mantle of parents. On the other hand, we felt that the mother rather thought this was all a little temporary, and that there would come a time some years hence when the children would come back to live with her and she would be their primary carer. Several times in her evidence, she said she should be treated, especially by the Children's Service and the kinship carers as the children's mother. In response to Advocate Robinson, she denied that she was saying that a year down the line she would be coming back to seek a placement of the children with her – but then she added that it depended on the professionals. That seems to us to suggest she does still contemplate in the medium term being the children's carer.

14. In case that is truly reflective of the way the mother thinks, we consider it is important to add our own views on the subject. The children are currently aged four and two. It is essential that they have firm attachments in their early years which provide them with security and safety in their lives, and thereby provide them with a solid base for learning new skills and meeting new challenges as they get older. Clearly no-one has a crystal ball, and circumstances may change. The paternal grandmother is in her 50s and her circumstances may change; equally the co-carer is in her 30s, and she may find that she meets someone with whom she wishes to start a family of her own, thereby impacting upon her ability to make the same contribution which she now does to the lives of the children. Things of course may change in the other direction as well. Although the mother has made very great efforts in the last two years to avoid a relapse into drug taking, that has coincided with a period in prison, and the pressures of living in the community might very unfortunately cause her to relapse and return to her drug taking habit. However, these are just possibilities, on both sides, and the Court can only reach a conclusion today on what is the position today. In that context, we unhesitatingly reach the view that the evidence before us establishes that the paternal grandmother and Ms O are the right people to have care of the children as kinship carers; that the need for certainty in the lives of these children is such that, unless there is a substantial change in circumstances, kinship caring will continue indefinitely; that the birth parents can and we hope will be significant people in the lives of these children (and we adopt Dr Bryn Williams' analogy of a close and supportive uncle/aunt); and that there are a number of other issues which we consider later which lead to the conclusion that the Minister should remain involved with these families, and that a care order is therefore the right solution. We have made these comments because it is in our view important for the emotional wellbeing of the children that the mother accepts the "close and supportive aunt" role. We have indicated above that we are hesitant as to whether she has done so; and it is for this reason we emphasise our view that unless something goes wrong with the placement with the kinship carers, we consider the best interests of the children will lie with them remaining in that placement. It is because we think the Minister should remain involved and that the children should remain with the present carers that the

“no order” option is clearly not the right solution in this case. Indeed no-one has contended for it. A continuation of the interim care order does not provide certainty, and that too is not the right solution.

15. Although the mother has departed from the contention that the right solution would be a residence order coupled with a supervision order, and rested on the wisdom of the Court in that respect, the Court has considered that option. The evidence before us was that the present carers wanted the care order rather than a residence order. To the extent that the carers did not appear before us to give evidence personally, the fact amounts to a reporting of their views which in some respects is to be treated as hearsay. Nonetheless, those views are reported by and have influenced the Guardian who has the responsibility of making a report to the Court as to what is in the best interests of the children, as well as representing the views of the children to the extent that they are old enough to have those views represented. Furthermore, the criticism made by counsel for the mother of the failures of the Children’s Service to tackle the alleged hostility of the paternal grandmother towards the mother would be consistent with the view that the Minister’s ability to act as an arbitrator might be a useful addition, and that of course would be consistent with the present carers preferring to see a care order to a residence order.
16. It was suggested by the mother that the concerns which were expressed about the paternal grandmother’s attitude towards the mother had not been tackled appropriately by the Children’s Service, and that it was possible to deal with that problem by a supervision order for one year coupled with the residence order. Indeed that seemed to be the basis upon which it was suggested that one of the orders that the Court ought to make was that the Children’s Service should, within three months, take necessary steps to resolve all family conflicts involving the mother and the paternal grandmother and Ms O, and similarly any conflicts between the maternal grandparents on the one hand and the paternal grandmother and Ms O, on the other.
17. We say straightaway that we think such an order would be inconsistent with a residence order, which does not involve the Minister. We also think it would be extremely desirable that serious efforts are made to bring the maternal and paternal families together. This is not a matter to be tackled as anything other than a priority, albeit it is a task that needs to be approached with the greatest tact and sensitivity. Of course it is true that future dealings between the two families will be affected by what has taken place in the past, but the emphasis should be on the future.
18. The desirability of this work being done emphasises that the residence order is not the correct way forward. Furthermore, the submission of the mother that the matter could be improved by a supervision order in our view does not address properly the purpose of a supervision order. Essentially it was contended that the Minister would supervise for the purposes of ensuring that work would be done between the two families.

19. This Court has previously accepted the proposition that there is a substantial difference between a supervision order and a care order – see In the matter of R [2010] JRC 118. In that case, extracts from the decision of Judge Coningsby QC in Re S (J) (a minor) Care or Supervision Order [1993] 2FLR 919 were cited with approval. That Judge interestingly mentioned the circumstance that there might be cases where one can actually isolate a particular situation where a parental responsibility may have to be exercised as a moment's notice by the local authority and in those types of case that would obviously call for a care order rather than a supervision order. Indeed that flows from the fact that parental responsibility is not conferred on the Minister by a supervision order, whereas it is so conferred with a care order.
20. But that is not the only difference between the two. It seems to us from the structure of the Law that the supervision order is designed for a different purpose – not for the purpose of transferring parental responsibility but instead, essentially, of advising, assisting and befriending the supervised child. The provisions of Article 28 put the obligation on the supervisor to do just that, and Schedule 3 rather emphasises that the supervision order anticipates a different relationship between the Minister and child and, in an appropriate case the responsible person, than does a care order. Thus the Schedule gives at clause 1 power to the supervisor to give directions to a supervised child, at clauses 3 and 4 makes provision for psychiatric and medical examinations of the child and treatment of the child, and generally anticipates a direct relationship between supervisor and supervised child which is perhaps based upon having a more mature child than would necessarily be anticipated with the care order. It is true that clause 2 of the Schedule, and indeed clause 6(2) envisages that the supervision order may also require things of a responsible person, who would be somebody other than the supervised child, and presumably the person who has parental responsibility in relation to that child – but the thrust of those obligations is to assist the supervisor in ensuring that the directions given by the supervisor to the supervised child are in fact performed and respected. That highlights that the supervision order would not generally be contemplated in relation to children of the age of four and two.
21. For these reasons we do not think that a supervision order is appropriate in this case. Care Plan
22. As we indicated on 29th July when giving our decision, the broad thrust of the care plan proposed by the Minister was considered by the Court to be entirely appropriate. We noted that the care plan had been supplemented by an addendum signed on 21st July and a second addendum which was presented to the Court on 27th July. The second addendum was undoubtedly generated as a consequence of matters which arose during the course of the hearing itself. These relate to the question of contact.
23. Since the interim care order was granted, the children have remained in the care of their paternal grandmother and Ms O and although there have from time to time been difficulties, they currently see their maternal grandparents on alternate Saturdays and Sundays. The father was released from prison in December 2009 and currently sees the children twice a

week. The mother was released from prison in July this year, and while in prison initially had supervised contact twice a week. That was reduced in September 2010 to once a week as being in the best interests of the children who Dr Williams thought might suffer from being taken so regularly to a prison environment. Since her release, the mother has had supervised contact for one hour a week at La Chasse.

24. The most recent care plan envisages that there will be a review of contact on 23rd September, 2011, and a further review on 21st October, 2011. The review meetings will involve consultation with the contact supervisor, the family members, the professionals involved with the children and the parents. It is suggested that contact will continue to take place with the mother at La Chasse, although, depending upon the weather, it may be possible to ensure that the contact takes place at outside venues and in that event, the contact period would be increased to one and a half hours. The review in September will extend to whether contact should then be moved to the address of the maternal grandparents and continue to be supervised by the contact supervisor and increased to a maximum of two hours. The further review in October would be intended to ascertain whether contact thereafter could be at the address of the maternal grandparents but supervised by them rather than the contact supervisor. This would depend upon the assessment of the maternal grandparents by the Children's Service as to their ability to supervise contact, and to their availability to supervise contact collectively.
25. This contact plan was accepted by the father but criticised by the mother. The mother's criticisms really amounted to these. She contended that the plan should be amended:- (i) To accelerate the timetable towards contact at her parents house, supervised by one or other of her parents but not necessarily both. (ii) To remove the references to steps needed to be taken by the mother to address therapeutic and social needs. (iii) To release the current undertaking by the mother not to be at home during the contact between the children and the maternal grandparents after the next 12 weeks. (iv) To provide for further periodic reviews.
26. We do not make any of the orders which the mother has sought although we do touch in this judgment on the substance of some of them. The comments below therefore address the plan as proposed by the Minister. Before considering contact issues in more detail, we describe some of the evidence we have accepted regarding the mother's relationship with the children. She has a lot of strengths, in particular her emotional warmth and her imaginative play with them. These are positive aspects and it would seem to be clearly in the interests of the children if they can hold sway. Unfortunately the experience so far has been that the mother's needs have tended to take over, whether because of drug or alcohol dependence or because of her antisocial personality disorder. The key target for the mother is to overcome these challenges because, if she can, then the strengths of her relationship with the children will enable them to grow up as more rounded adults.

27. It may be appropriate to set out the principles which we have applied in considering questions of contact:- (i) It is essential that the Court's approach is focused on avoiding the children suffering physical or emotional harm. (ii) While we accept the evidence of Dr Bryn Williams that expert psychological opinion regards domestic violence as the most destructive influence to which one can expose a child, worse than drugs, sexual abuse or neglect, a history of domestic violence and other violence is not and should not be a bar to contact. This principle clearly needs to be read in conjunction with the first principle set out above. (iii) There is an assumption that the natural parents will at the very least be significant people in the lives of their children. (iv) The Article 8 Convention rights of the parents do require to be taken into account in the context of contact matters, albeit that these are a subordinate consideration because the Court's primary duty is to have regard to the best interests of the child. What is required is that the Court or the Minister acts proportionately in assessing risk.
- (v) Emotional harm is quite capable of being caused to children by them not seeing their parent, especially if that comes about as a result of some action by an organ of the State, whether the Court or the Minister. Those principles in this case have to be applied against a factual matrix which includes the fact that the children will not be living in the care of either parent, that the mother has an antisocial personality disorder which ideally needs treatment, that both parents have been heroin addicts and need time to prove themselves, that there is an uncertain relationship between the mother and the Children's Service, especially Mrs Hansford, that the children see their maternal grandparents for three hours a week at present, and finally that there is an age gap between the paternal grandmother and the children which is less relevant for as long as the aunt is a co-carer. Contact at La Chasse
28. The Court has no doubt that the facility at La Chasse is one which has been carefully put together by the Minister, having regard to the need to provide a place of safety where appropriate child focused contact can take place. There are however some problems with such contact which, with the best will in the world, the Minister cannot be expected to overcome. It is not possible to dictate that there will be good contact sessions at some future date, fixed inevitably rather arbitrarily, having regard to the requirements of the parent having contact, and also the resources and indeed the obligations of the Minister to other children who are in her care. Furthermore, contact which is supervised is likely to result in tension and pressure for both the parent exercising contact and the children as well. In addition, the environment at La Chasse, however friendly the Minister has tried to make it, remains an artificial environment in which contact is to take place. The reality is that quality contact is most likely to be achieved by parents and children having contact in as natural an environment as possible and under the least possible pressure.
29. The mother sought an order that contact should move away from La Chasse as soon as possible, and within two weeks, and should move to the maternal grandparents' house within six to eight weeks. By contrast the Minister's proposal was that "contact will take place at La Chasse, however dependant on the weather, flexibility will be afforded for the

contact to take place at venues such as the park or the zoo. If contact does take place in the community, there will also be flexibility with regard to the time the children and [the mother] enjoy contact”. The Minister’s proposal envisaged that the first review meeting on 23rd September would determine whether or not contact should be moved to the address of the maternal grandparents.

30. The mother’s proposal accelerates contact at the maternal grandparents’ home by two weeks, and as indicated we are not impressed with that. We do think however that real efforts need to be made by the Minister to ensure that if possible alternative contact sessions can be arranged in the community. They do not have to be at venues where an entrance fee is payable – they could include the parks or the beach. The plan indicates that the Minister will afford flexibility as to the place where contact is to occur, and we very much hope that that is achieved in practice. Reviews
31. The next comment we have on the care plan is that the review meetings are expected to lead to changes in arrangements for contact “if no concerns have been highlighted and [the mother] has taken positive steps to address her therapeutic needs, social needs and has remained abstinent from the misuse of drugs and alcohol”.
32. It is first of all necessary to identify what we think that means. The reference to the need on the part of the mother to take positive steps to address her therapeutic needs is a reference to the recommendations of the psychiatrist Dr Harrison that she engage in behaviour treatment therapy so as to address her anti-social personality disorder. In addition to the behaviour treatment therapy, there would be some pharmacology therapy, on which the mother has already embarked. She needs to be assessed for the therapy in question and unfortunately has missed the first meeting at which that assessment might be made. The Minister treats this as indicative that she may not be as committed to taking the therapy as would be recommended.
33. In our view, the desirability of the mother addressing her therapeutic needs with behaviour treatment therapy is well established by the evidence. Taking such therapy is challenging. There may well be occasions when things do not go as well as would otherwise be hoped. Furthermore, the suggestion that the mother must show that she has remained abstinent from the misuse of drugs and alcohol is also one with which the Court has sympathy; but nonetheless the evidence was that it is likely, although not at all certain and the mother contends she will not relapse, that there may be occasional lapses on her part in this respect. The issue will be how she copes with any such lapses.
34. It was said to us that there are many people with anti-social behaviour disorders caring for or having contact with children in our community, without obvious difficulties arising. It is also the case that there are some who have drug or alcohol problems who are working with the Children’s Service and who are not regarded, merely because of those problems, as being unfit to care for their children. Those things being so, how much more must it be the case that some hiccups in the taking of behaviour treatment therapy and/or abstinence from

the misuse of drugs and/or alcohol should not operate as a bar to contact. Ultimately it depends on the level or degree of the lapse. There is however just a resonance of absolutism in the way in which these paragraphs of the care plan have been drafted, which is troubling. We think perhaps that comes about because the addendum has been drafted in some haste during the course of the hearing and we very much hope that that is indeed the explanation. We emphasise that in the case of the mother, we are now looking not at questions of care but at questions of contact. In that connection, it is essential that the approach is focused on avoiding causing physical or emotional harm to the children. There is a rebuttable assumption that the natural parents will at the very least be significant people in the lives of their children, and particularly in kinship cases such as this, that assumption will not easily be rebutted. We also note that emotional harm can be caused by not seeing a parent. Finally in this connection, we note that a history of domestic violence and other violence is not an absolute bar to contact – see the helpful general comments of the English Court of Appeal, which we endorse, in *Re L (a child) (contact: domestic violence)* and other appeals [2004] 4 AER 609 at pages 616 to 618. We make all these comments to emphasise what we think the extract from the case plan in paragraph 30 above means and how we expect the review process to be handled in this respect.

35. Some reference was made before us to the question of the Article 8 rights of the parents. To those should be added the Article 8 rights of the kinship carers. In both cases, the Minister when considering questions of contact must take into account the Article 8 rights in question. This does not require that any of those who have such rights can exercise them to the prejudice of the child. The Article 8 rights are to be taken into account but the child's rights are the paramount consideration and if any balancing of interests becomes necessary, the interests of the child, proportionately, prevail – see *Yousef-v-The Netherlands* [2003] 1 FLR 2010.
36. In her evidence before us the children's social worker said that the concerns would have to be "significant" in order to lead the Minister to consider not extending contact as the care plan suggests, and we certainly endorse that. Supervision by maternal grandparents
37. We also add this about the proposed extension of contact such that the mother's contact be supervised by the maternal grandparents. The evidence before us from the Minister and the Guardian was largely to the effect that both maternal grandparents should be present to supervise contact. Nonetheless neither has so far been assessed on their abilities to carry out such supervision. In our view those assessments should be made, and should be made on the basis of both a joint and several supervision. It may be that the assessment leads to the conclusion that either of the maternal grandparents could supervise contact on his or her own. It may be that the assessment would lead to the conclusion that both should be present for there to be effective supervision. It may be that the assessment will lead to the conclusion that neither can effectively supervise contact. It seems to us that those assessments ought to be made as soon as possible, because it is desirable to move to supervised contact in the presence of one or both of the maternal grandparents if that is safe

and possible. While we have noted the views of the Guardian as to whether the maternal grandmother would struggle to supervise contact on her own, we think one should not make any assumptions about how those assessments will pan out before they are actually made. At present, the mother lives with the maternal grandparents. It is suggested by the Minister that the maternal grandparents should continue to have their regular contact with their grandchildren for three hours every weekend, alternately Saturday and Sunday, and that during this period, the mother should absent herself from the home in which she lives. The purpose is apparently to enable the children to have contact with their maternal grandparents as opposed to contact with their mother. We do not think this is realistic in the longer term, although we have not made an order releasing the mother from the undertaking which she has given. However, we do think firmly that the Minister should reconsider her position on it. First of all, it does not seem to us to be appropriate to require the mother, who needs the support of her parents, to leave the home in which she is living and obtaining that support. There may be occasions when contact is to take place when the mother particularly needs her parents' support. Secondly it does not seem to us to be right in the context of the relationship between the children and their mother that just because the children are visiting their maternal grandparents, the mother is not permitted to be present. They should not know that, but undeniably they will become aware of it. Thirdly, such a rule does not appear to us to be a natural rule and as far as possible one wants contact to take place in natural conditions. There will be times when the mother no doubt will not be present when her parents are seeing the children. In order to ensure a good relationship between the maternal grandparents and the children, it will be desirable from time to time that the grandparents do have contact with their grandchildren on their own and that the mother should be sensitive to that. Nonetheless, it does not seem to us to be appropriate to lay down hard and fast rules unless there is some very telling reason why one should. Nothing we have heard suggests such a reason. All our comments in relation to contact are designed to ensure the most natural environment for contact is possible, having regard to the principles which we have set out at paragraph 27 above. Threats

38. A good deal was put before us by the Minister in the shape of the witnesses from the Children's Service and the experts called on the Minister's behalf on the issue of threats alleged to have been made by the mother. We say immediately that we were lukewarm about this evidence not least because we think the emphasis which was placed upon it was not constructive and indeed at times distinctly unhelpful. We indicate first of all what those threats were.
39. On 22nd June, 2009, Mrs Hansford went to the flat which the mother and the father occupied. The flat was in a poor state, with all the work surfaces and table in the kitchen covered with items, large bags of washing were on the floor, and furniture had been pulled to the middle of the sitting room in order that the mother could paint the walls. Amongst the mess were items that would be dangerous for the children, such as a paint scraper, a pair of nail scissors, an aerosol can and a cigarette lighter. Mrs Hansford decided to call for a photographer to photograph the rooms. The mother became very angry and obstructive. She

was warned about her behaviour and the police advised her that she would be arrested if she did not allow them to do their duty. In front of the police, she told Mrs Hansford she would find her house and blow it up. When asked if that was a threat, she said it was a promise. Later on, in front of the police, she said that if Mrs Hansford set foot in her flat again, she would punch her in the face and break her nose.

40. Mrs Hansford also says that on 21st January, 2011, she received information from the Deputy Governor at the Prison that a report had been received of a third party prisoner informing another person in a telephone call that the mother had stated that she would burn Mrs Hansford's house down if she did not get her children back. The mother says in her statement that these were loose flippant words used in a private telephone call in conversation with another person. We do not think that anything can be read into the report which Mrs Hansford provides in her evidence in this respect – the information is fourth hand, being information from the Deputy Governor of a report received from a third party prisoner about a telephone call that she had heard. Context is everything, and a hearsay report of this kind is not helpful.
41. The care plan goes on to indicate that Mrs Hansford was advised by a probation officer that the mother had stated in a meeting that “she would take chunks out of me”. Again, it has to be said that this is a hearsay report. We do not find it helpful. The mother says that the words appear to have been repeated out of context.
42. The relevance of context becomes apparent when one looks at the last complaint in the care plan as to the mother's alleged threats when it is said that the mother said Mrs Hansford ought to look at herself and be worried as to how she was. She did not elucidate upon that, but Mrs Hansford took the statement to amount to a veiled threat. The mother's response to this is that she considers that the child welfare officer dislikes her and that she should stand down.
43. We have no doubt that there is a great advantage in Mrs Hansford continuing to have the lead role in relations between the Children's Service and this family in the sense that she has a good deal of historic knowledge of the problems which have beset the family, as well as a good relationship with the paternal grandmother, Ms O and importantly with the children, who know her. These are major advantages. However, there is always a risk that, in relationships which are as established as these, it may be as difficult for the child welfare officer as well as for the parents to put past matters behind them. The mother clearly has a perception that Mrs Hansford dislikes her and is unfair to her. We have no doubt that in giving her evidence Mrs Hansford was making every effort to be fair to the mother, but equally we have no doubt that Mrs Hansford was affected by the issue of the alleged threats some of which were made directly in her presence but others of which were reported to her by third parties. The prominence which this question had in the five days of the hearing was out of all proportion in our view to their significance. Obviously, we condemn any threats which are made against child welfare officers who are only doing the best they can to achieve a good result for the children who are the subject of their care. Equally obviously,

the child welfare officers are entitled to look to the Court for support in this respect. We give that support wholeheartedly. To the extent that the mother made the threats which have been reported to us, she was entirely wrong to do so. If she were to get even close to carrying them out, that would be a criminal offence in respect of which she could expect a very severe sanction. Our view, however, is that the threats, which ought not to have been made, were made generally at times when the mother was under severe emotional pressure and or at times when she was suffering from the consequences of her drug or alcohol dependency. We do not condone the making of the threats, but they should be seen in their proper context. The prominence given to the issue by the Minister has been positively unhelpful because it makes the re-building of a proper relationship between the mother and the Children's Service more difficult. Indeed it may be that the managers in the Children's Service should give consideration at some point as to whether it has been so counterproductive that a different child welfare officer should be appointed to the family.

Hearsay

44. Two matters involving hearsay evidence came up for adjudication, the first before me as a single judge on 21st July, and the second dealt with me again as a single judge but during the main hearing. The first issue concerned the report of Dr Franklin. This was a medical report on the health of the paternal grandmother. The Minister wished to rely upon it for the purposes of supporting some of the matters contained in the kinship assessment. The report did not follow a joint instruction from the parties. Dr Franklin was not available to give evidence and no notice had been served under the Civil Evidence (Jersey) Law 2003. I was asked to give leave to permit that report to be adduced in evidence, and counsel for the father supported the application. All this took place at a time when it was unclear whether the mother would be challenging the placement of the children with the paternal grandmother. In the course of his submissions, counsel for the Minister said that hearsay was admissible in care proceedings. He produced no statutory authority for that submission, but said that this was a matter of practice. The sole purpose of the letter from Dr Franklin was to update the Court. Given that objection was taken to the proposal, I had to rule upon it, and I indicated that Dr Franklin's report would not be before the Court if he was not available for cross examination, and that I would give reasons later. The second issue which arose related to parts of the kinship assessments which the Minister wanted to put before the Court. Counsel for the mother applied to exclude those parts which were hearsay. By this stage of the proceedings, the placement of the children was not an issue, but what was before the Court was the question of contact which we have dealt with at length above. In his response, Advocate Robinson said that the kinship assessments had been before the Court for sometime, and objection was taken very late to the inclusion within these assessments of some evidence which was said to be hearsay. He submitted that these statements were necessary not to prove the truth of the statements made but to support the opinion evidence which the maker of the kinship assessments was putting before the Court. I allowed the kinship assessments to stand in their entirety as evidence in Court and indicated that reasons would be given in the judgment in due course.

45. Dealing first with the submission that different rules of evidence applied in care proceedings, in my view that is not established. I have seen no authority pointing to that conclusion, and I see no reason as a matter of principle why it should be so. It is certainly true that care plans and expert reports put before the Court frequently contain references to what others have said, but it is important to be clear as to why this is permissible, and how any such statements should be treated. The principles seem to me to be these:- (i) Clearly in care proceedings as in other proceedings before the Court, the facts can be agreed between the parties. (ii) Material facts which are not agreed need to be proved. This is particularly so in relation to issues which go to whether the threshold has been passed so as to establish the Court's jurisdiction to make orders under the Law. (iii) Very often, the Court has before it expert opinion. It is not only unsurprising, but it is right that the expert gives his or her reasons for holding the views which have been expressed. If the reasons are not disclosed, there is no sound basis upon which one can evaluate the experts' opinion. Of course, the expert can be cross examined on the view of the facts which have been expressed and indeed, given the same set of facts, different experts may form different views. The expert can also be cross examined as to whether the opinion would have been different if the facts had been different. The expert cannot be cross examined on the facts themselves, except to the extent that they are facts which are within the expert's knowledge. (iv) If the Court has to form a view based upon, inter alia, expert opinion, it may be necessary for a party to adduce evidence on the facts to show that the expert opinion cannot be relied upon – not because his opinion is not worth having generally, but because in this particular case, it has no or reduced intrinsic value because the facts are not as he has assumed them to be for the purposes of expressing an opinion.
- (v) The Court and the parties must therefore be astute to recognise that the expert's opinion, based on facts which are disputed, is not generally evidence of the truth of those facts, and that it may or may not, in whole or in part, be valuable depending on whether the facts are established and upon how material those facts might be in influencing the expert's view on other facts which are not disputed. (vi) One does not therefore exclude an expert's evidence because it contains hearsay material, because that material is supportive of the views which the expert expresses. In the evaluation of the expert's views, the Court and the parties need to form a view on whether the facts upon which the expert has relied are established facts.
46. Applying those principles, in my judgment, the Minister was seeking to adduce Dr Franklin's evidence as proof of matters relating to the health of the paternal grandmother. At that time, those matters might have been material to the placement of the children, because it was not agreed, and therefore it was relevant that Dr Franklin as the expert be available for cross examination on his opinion. He was not available, and no Civil Evidence notice had been served. In those circumstances I did not consider it was fair to the mother to allow the Minister to pursue that course.

47. The kinship assessment was prepared by members of the Fostering and Adoption Service in the Children's Service. They are to be treated as experts for the purposes of making that assessment. The value of their assessment depends of course on the accuracy of the facts upon which it is based. That expert evidence falls in the same category as any of the other expert evidence which is before the Court, and is to be treated according to the principles I have set out.
48. For completeness, I add that the evidence given by the social worker is in some respects to be treated as an expert witness – he or she will have various diplomas and qualifications in nursing, counselling or social work, and typically has experience of dealing with families. The Court's assessment of the evidence of the social worker will be made having regard to the nature of the qualifications and naturally on the content of the evidence and the way in which it is given to the Court. The statement of the social worker is frequently taken as the evidence in chief. It often contains a mix of hearsay material and facts known to the social worker or to be found from the business records of the department. The introduction of hearsay facts in such a statement is unobjectionable in that these form part of the reasons for the expression by the social worker of the expert opinion which the statement usually contains. However it is then subject to assessment by the Court applying the same principles as are set out above. It would certainly be desirable if the social worker ensured that the witness statement made plain which facts are within his or her own knowledge and which facts are reported hearsay from others. Relationship with the paternal grandmother
49. A good deal of evidence was given before us on the attitude of the paternal grandmother to the mother. At the pre-trial hearing on 21st July, there was an application by the mother for the paternal grandmother to be called by the Minister and tendered for cross examination. It was said that her evidence should not be presented to the Court as hearsay within the experts' reports and/or the statement of the social worker, and should be available directly. At that time, the Minister indicated that the paternal grandmother was not a party and the Minister did not wish to call her to give evidence. I refused to make the order that she should be tendered for cross examination and the reasons for that now follow.
50. As has already been indicated, there are no special rules of evidence which apply in care proceedings and do not apply in other proceedings before the Court. It follows that there is no property in a witness. If the Minister wished to call the paternal grandmother to give evidence, it was open to her to do so, and the mother's position is no different. She could have called the paternal grandmother, albeit that it would have been necessary to avoid leading the witness, and there would not have been the opportunity for cross examination. As a result, the Court has received only limited evidence as to the paternal grandmother's position. Some of that evidence is clearly hearsay and appears in the experts' reports. It may be said that these are the assessments of the experts as to the grandmother's position rather than direct evidence of the grandmother's position. We heard from the mother who said that she wanted to work with the paternal grandmother and with Ms O.

51. The experts' view was that the paternal grandmother was negative about the mother and that there was no love lost between them. She is said also to have some difficulties with the maternal grandparents. Mrs Hansford described her as being very emotional about the children and at times she does say inappropriate things in the children's presence. She is said to be angry with both the mother and the father for their behaviour in relation to the children. We have received all that evidence but we do not think it is fair to reach any firm conclusions on the paternal grandmother's attitude without having heard from her. However it may be not inappropriate to say this. It would be completely unsurprising that any grandmother would be cross with the parents of children who neglect them or otherwise cause them significant emotional harm. It would also be wholly unsurprising if when her son's marriage breaks down, a mother tends to support her son over her daughter in law. There are no longstanding bonds between the mother and her mother in law upon which the two of them can fall back when their relationship comes under pressure. When one introduces into that mix the fact that the grandmother is the carer for the children instead of the mother, it is clear that there is every scope for personal difficulties to arise. We think the mother should accept that and indeed it is very much in her interests not only to do so, but to work at establishing a new and better relationship with her mother in law in order to make contact with her children easier. It is very much in the children's interests that she should do so. We add also that, bearing in mind that we approached this primarily as to what is in the best interests of the children, it is very important for the grandmother to try to put behind her what has taken place so far in her relationship with her daughter in law. It is clearly inappropriate that either grandmother or mother should run down the other in the presence of the children. Both grandmother and mother should pay special attention to keeping the information flows open between them in relation to their dealings with the children. Over time we hope the relationship will improve. We have noted that the Children's Service are committed to working with both grandmother and mother in this respect and we think it is important that they do so. It is important for the Children's Service too to approach that work with an eye on the future and not on the past.
52. Many of the same comments apply equally to the relationships between the paternal grandmother and the maternal grandparents. Again, it is in the interests of the children that these relationships should work well. Experts Meetings
53. In this case there was a meeting of experts chaired by the Advocate for the children. Objection was taken at a pre-trial hearing to whether the minutes of that meeting, which were said to be incorrect, should be amongst the Court papers, and as to whether the guardian should refer to those minutes in her own report.
54. It will not be in every case that it is appropriate to have a meeting of experts, whether face to face or by telephone conference. Obviously the experts are entirely free to talk to each other before writing their reports. If they do, they should record those discussions. As was said by Wall J in *Re C B and J B (Care Proceedings: Guidelines)* [1998] 2FLR 211, at page 224, what is undesirable is "an informal discussion between experts which is either influential in or

determinative of their views, and to which the parties to the proceedings (including perhaps other experts) do not have access”.

55. Nonetheless, a meeting of experts should only be ordered by the Court if there is obviously something for the experts to discuss. Increasingly, the Court is faced with applications by the parties to order an experts’ meeting with the questions to be settled by agreement between the parties. Such a meeting may well be helpful, but at the time of making the application to the Court, it appears to us that the parties ought to know what are the areas which it is expected the experts will discuss. If they do not know the answer to that question, then there is a risk that the experts’ meeting becomes a practice rather than a necessity. The comments of Wall J in *Re C B and J B* (supra) at pages 225 to 229 inclusive are all helpful in respect of the conduct of experts’ meetings, and we endorse them.
56. In the present case, the argument as to whether reference should be made to the minutes of the meeting in the Guardian’s report overlook the fact that the Guardian, herself an expert, gives her opinion to the Court as to what is in the best interests of the children. In reaching her conclusions and thereby representing the children’s views as to what is best for them, she has regard to the experts’ reports and naturally to the discussions which take place at an experts’ meeting. There is nothing objectionable in referring to the minutes in a report of this kind. The minutes may be indicative of the reason why the guardian has formed the view that he or she has. As with any expert’s report, it is important to recognise that the minutes themselves are not evidence of the truth of what is said. In themselves, they have no evidential value and if necessary, a formal direction to the Jurats to that effect should be given.
57. It is important to recognise that the minutes themselves should be treated with caution. A discussion between experts is frequently perambulatory. Experts speak with a freedom which they might well eschew in the case of a formal written report. If an issue arising out of their opinion needs to be ventilated before the Court, the right way to do so is by examination and cross examination before the Court. The experts’ meeting may enable that examination and cross examination to be more focussed because counsel will have a better idea of the experts’ views, but the critical evidence is that which is given to the Court and it is on the basis of that evidence that the Court will make its assessment of the issues before it. In this case, the Court had before it 105 pages of transcript of the experts’ meeting. We also received the evidence of Dr Bryn Williams, Miss Gaskins and Dr Harrison, as well as the evidence of the Guardian in person. We are doubtful as to whether the experts’ meeting in this case reflected a productive use of time in the sense that it appears to us to have been less about clarification of what the experts had said in their reports and more about a trial run of the examination and cross examination that would take place before the Court. Experts’ meetings of that kind are not appropriate because there is too much of a risk that the evidence, even of experts, will be schooled and thus more difficult for the Court to assess and also because they are expensive and unproductive.

58. The Court has for all these reasons made the decisions in relation to the admissibility of the disputed evidence, and made the full care order as requested by the Minister, having considered the care plan proposed. Authorities Children (Jersey) Law 2002. In the matter of R [2010] JRC 118. Re S (J) (a minor) Care or Supervision Order [1993] 2FLR 919. Re L (a child) (contact: domestic violence) and other appeals [2004] 4 AER 609. Yousef-v-The Netherlands [2003] 1 FLR 2010. Civil Evidence (Jersey) Law 2003. Re C B and J B (Care Proceedings: Guidelines) [1998] 2FLR 211.

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