

JERSEY / JUDGMENT

In the matter of RR (the Child) (Care Proceedings) [2022] JRC 162 (09 August 2022)

[2022] JRC 162

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judgment

COMMISSIONER: 1. On 18 th May 2022, the Court granted the Minister a final care order in respect of the Fourth Respondent ("RR") who is aged 16, to which all of the parties consented. 2. RR [redacted], changing name by deed poll. He has been known to the Children's Service for a number of years with concerns regarding his behaviour being initially raised in 2014. He has been diagnosed with [Redacted] and had previously been supported by CAMHS in this regard. 3. RR lived with his maternal grandparents, the second and third Respondents, until a move to his current placement in England in early November 2021. The grandparents had a residence order for RR, but that order was extinguished as a matter of law, on the making of the interim care order in June 2021. RR's mother, the first Respondent, is understood to have had difficulties with alcohol misuse and her own mental health making it difficult for her to care for RR, although this was not accepted by the mother and did not form part of the Minister's threshold, which was based on RR being beyond parental control. 4. RR has been subject to a child protection plan since 25 th October 2018 under the category of neglect. His welfare had not improved since being on this plan. The Children's Service and other agencies had been unable to get access to RR in order to assess his needs, due to his refusal to engage. That refusal has included education and in 2021, RR's education attendance was virtually nil. He has also refused to engage with CAMHS, resulting in no substantive support being provided. 5. The Minister commenced care proceedings on 28 th May 2021, not seeking an interim care order, but orders for assessments of RR to be undertaken. At a hearing on 14 th June 2021, the Court granted an interim care order notwithstanding that such an order was not sought by the Minister. Quoting from the Court's unpublished judgment dated 14 th June 2021 at paragraphs 3 and 4. "3. The maternal grandparents have said, as long as two years ago, that they are unable to control RR and therefore are unable to exercise parental responsibility over him. RR is managed by the Children's Service calling off any child protection visits because of the disturbance they give rise to and the maternal grandparents have understandably backed away from exercising any kind of control to avoid the risk of violence. In effect, it seems to us, that RR has been managed by non attention for many years which is manifestly not in his best interests. 4. Without any disrespect at all to the

maternal grandparents, with whose predicament we very much sympathise, this is, as the Guardian says, a case of chronic neglect which has gone on for years. There have been incidences of violence this year with the police being called in by the neighbour. The maternal grandparents very much rely on a neighbour to notify the police when there are issues, a situation which Advocate Orchard (for the maternal grandparents) has rightly described as completely untenable. The need to find an alternative placement for RR was recognised by the Children's Service over two years ago, but nothing has come to fruition." 6. The Court also directed that psychological, health and educational assessments of RR be undertaken which was accepted needed to take place over an extended period, so as not to overburden RR. 7. Dr James Murray, a clinical psychologist, was instructed to provide the psychological assessment and filed his report on 19 th July 2021. RR refused to meet with Dr Murray, but the assessment was made on the papers and interviews with others. Dr Murray found examples of behaviours consistent with [redacted] and made recommendations for RR's future care with a preference for a specialist off-island placement. At paragraph 84 he opined: "It is likely that anyone wanting to work with [RR] therapeutically will need to be present and around him for a considerable period of time before he will be willing to engage: he does not deal with sudden changes or with new people. This means that person being resident in the same placement as [RR] (rather than coming by for a pre-arranged appointment when [RR] may be resistant or non-compliant)." 8. On 30 th July 2021, the Minister filed an updated Care Plan for RR to be placed at a therapeutic placement in England. Two staff members from the placement provider came over to Jersey and made attempts to engage with RR without success, but RR did visit the placement in August and underwent an initial assessment. At that initial assessment, Dr Giulia Pagnotta, a clinical psychologist, opined that: "It appears that [RR] meets all the criteria for [Redacted] and it's vital to support this initial idea with psychometric assessment. He has stereotyped way to answer the question and to move the arms. Looks unable to understand what is happening around him and take any decision for his own wellbeing. He became overreacting when his specific routines or rituals are disturbed at the slightest change". 9. Dr Pagnotta also noted that: "[RR] was presented with [Redacted] and in the [redacted]. In his presentation I was told this was the main focus and worry for [RR]. However for all the length of the assessment [RR] never mentioned anything about his sexuality or his desire to complete [redacted]. Even the psychometric tools didn't show any evidence in this direction. However recent researches have made some headway in understanding [redacted] and disclose the connection between two diagnoses." 10. The placement agreed that RR was an appropriate match, and on the understanding that RR was not opposed to a move there, full-time, a commencement date of 18 th September 2021 was arranged. Accordingly, the Minister made an application for Court approval to make the necessary arrangements to be heard on 14 th September 2021. By the time of that hearing, it transpired that RR was not agreeing to move to the placement. In addition, RR refused to engage with a Court directed assessment of capacity to consent to living off-island. The 16 th September 2021 was made available for RR to undertake a second short visit, but he declined this. 11. At the 14 th September 2022 hearing, the Minister applied to adjourn the application in respect of the off-island placement. The Court heard evidence from the recently appointed replacement Social Worker and, inter alia, expressed its concern that efforts had not been progressed to move RR to alternative on-island

accommodation, as the grandparents had previously given notice that they would no longer accommodate him. Various directions were made, including the filing of an updated care plan, the holding of an advocates' meeting, and an updating hearing before the full Court on 19th October 2021. 12. The Minister filed an updated care plan on 1st October 2021, maintaining the preference for the off-island placement, but with efforts being made to establish an on-island alternative, staffed by and with support of the identified off-island provider. An advocates' meeting took place on the same day. 13. On 4th October 2021 a virtual meeting took place with Dr Murray to seek his advice on methods to engage RR, as well as his opinion on the merits of the potential placement options. Dr Murray's view was that an on-Island bespoke facility would not provide the level of therapy and care that could be provided by the proposed placement in England. 14. The Guardian visited the English placement at the end of the week commencing 11th October 2021, returning with the firm position that RR should be placed there. 15. On 19th October, the matter was returned to Court to provide an update on the efforts to accommodate RR, including on-island. The updating statement of the Social Worker provided the hierarchy of placement options available, ranging from the English placement to the placement of RR at a residential facility in an emergency situation. 16. A professionals' meeting was held on 22nd October 2021 with Dr Murray, representatives from the placement in England and Social Workers from the Children's Service. The Complex Needs Team was also in attendance. The attendees discussed the placement in England, the logistics for taking RR to the placement in England and how best to engage with RR about the Minister's plan to travel to the placement. 17. On 27th October 2021, the Minister filed an updated Care Plan for RR to be placed at the placement in England. The Court considered the Minister's adjourned application to make the necessary arrangements for RR to be placed off-island and the updated Care Plan, at a hearing on 3rd November 2021 and granted the Minister's application. RR was placed at the placement in England on 5th November 2021. 18. Following that hearing, Advocate Robinson for RR filed an application for the Court's approval of RR's off-island placement to be set aside, raising an issue of interpretation of Paragraph 4(2)(c)(ii) of Schedule 2 of the Children (Jersey) Law 2002 ("the Children Law"). Specifically, the application related to the interpretation of the term "other suitable person" and whether the Court had jurisdiction to consent to RR's placement in England. 19. The Court considered this at a hearing on 17th November 2021 and found that it did have jurisdiction for the reasons set out in its unpublished judgment of 1st December 2021. RR's Advocate, on instruction from the Guardian, then lodged a Notice of Appeal against that decision. The final hearing was due to commence on 10th January 2022 for three days and on 10th January 2023, the Court agreed an application on behalf of RR to adjourn that hearing, pending the outcome of the appeal. 20. Proposition 9/2022 "Draft Children (Arrangement to Assist Children to Live Outside Jersey) (Amendment) (Jersey) Law 202-" was lodged au Greffe on 10th January 2022 by the Minister. That proposition sought to amend the Children Law to enable the Court to approve arrangements for a child that is cared for, or looked after by the Minister, to live outside Jersey whether with people with parental responsibility for that child, other suitable individuals, or in any suitable type of residential accommodation, in cases where the Court is satisfied that the child does not have sufficient understanding to give or withhold consent. 21. The parties acknowledged that the amendment, if adopted, would render the appeal otiose. The Children

Law was duly amended and following the ordinary formalities, came into force on 23 rd April 2022. The appeal has been withdrawn. 22. Since being placed in England RR has made significant progress as evidenced by the monthly reports and he continues to enjoy regular contact with his family who visit him in placement and then spend time in the community, unsupervised. RR continues to present with challenging behaviour but only four of these have taken place in his time there and the records demonstrate that they are well managed and resolved, with encouragement to RR to reflect and adjust his behaviour as needed. 23. By letter of instruction dated 11 th February 2022, Dr Murray was asked to conduct a further assessment of RR and provide an addendum report to consider whether he had anything to alter or add to his initial report, and whether the current planning for and assessment of RR's potential [redacted], to include [redacted] assessment, is sufficient at this time or if further planning needs to be done around these

issues.

24. Dr Murray filed his addendum on 24 th April 2022, having visited RR in placement and on this occasion, RR met with him and engaged. Dr Murray was reassured to find that the records and reports were entirely consistent with RR's current presentation and that the assessment with RR, interviews with other professionals, and review of the records did not alter any substantial conclusions of his previous report. He was satisfied that the planning and processes around assessing RR's needs are sufficient at present. He noted that RR's ability to regulate his emotions has significantly improved, and he believes this is largely due to the skilled and persistent work by staff within his placement (alongside the benefits of the placement environment, compared to his previous lifestyle where he was spending too much time alone in his room at his grandparents' house). He also noted that the staff at his placement have learned much about how he functions and can identify triggers for anxiety or anger and early signs of these emotions in RR. They had helpful strategies to de-escalate situations and help him self-regulate, which he added was very positive, since these form the foundations for successful behaviour management within a placement. 25. Dr Murray observed that RR's presentation is, in his view, reasonably typical of [redacted]. RR is able to engage socially particularly in activities and topics he enjoys, but he finds more complex social interactions stressful and anxiety-provoking. Dr Murray is aware that RR wishes to attend mainstream school, but fears RR would find the social milieu there very difficult to cope with and would be likely to drop back into non-attendance. He notes that RR struggles with emotional regulation and often this spills over into anger, aggression or abusive language. 26. Dr Murray noted that the mix of behavioural characteristics exhibited by RR, which is typical in adolescents with [redacted], makes the assessment of [redacted] difficult and makes offering treatment in a collaborative manner even more difficult: " RR has had the process of assessment and principles and model of treatment explained to him on multiple occasions, but still sticks to his own view about what he wants and what he is prepared to do, which unfortunately does not fit with what the system is able to accommodate". 27. Dr Murray observes that the relationship between [redacted] and

[redacted] is complex and there is relatively little good research to inform best practice. A major concern of professionals, which Dr Murray shares, is that sometimes the [redacted] can flow from the other difficulties which come with [redacted] and reflect a poor sense of self-identity and struggles to accept the changes that come with puberty. These may resolve in time without medical intervention for some individuals, he says, hence the usual approach in assessments around [redacted] being very gradual. 28. The assessment of RR by Dr Pagnotta had been extended and gradual which did not surprise Dr Murray and he noted the significant advantage that the placement has someone of Dr Pagnotta's skills and experience available. He was cognisant of the complexities of a [redacted] referral in RR's circumstances and suggests a place-saving referral to be made to the Establishment A, located in London, to allow RR to be considered by this service once he reaches 18 years of age. 29. It was the Minister's view that the improvements in RR's presentation and welfare are wholly attributable to his placement and the skilled staff around him. The Minister's further view was that there was no provision in Jersey that comes close to being able to achieve the specialist support that RR currently requires. The parties and the Guardian were agreed that RR should remain in the care of the Minister in the current placement. 30. The Court was satisfied that at the relevant date, namely 28 th May 2021, when the Minister first applied for a care order, the threshold criteria as set out in Article 24(2) of the Children Law was made out on the basis that RR was beyond parental control for the following reasons: (i) He was not accessing education and had not done so for some two years. (ii) He refused to leave his room and would not allow anyone in his room becoming aggressive if anyone tried to do so. He was spending an excessive amount of time online and gaming and was at risk of exploitation. (iii) The grandparents were not able to actively exercise parental responsibility due to fear of how RR would react. RR would not engage with professionals when they attended. (iv) RR was not taking the medication prescribed for the [redacted] which was having a significant impact upon his achieving everyday life and having difficulty regulating his emotions and exhibiting challenging behaviours. 31. As to the welfare test, the Court applied the principles as summarised in paragraph 8 of the Court of Appeal judgment in Re F and G (No 2)

[2010] JCA 051 . 32. RR has regular telephone and message contact with his grandmother and often tells her he is unhappy and doing nothing but staying in his room, with no friends and wanting to come home. He has given a very different impression to the Guardian when she visits and the blogs/views of the unit show a positive picture of his daily life. This is confusing and anxiety provoking for the grandmother and the Guardian recommended a more formal pattern of contact which would assist in stopping RR being able to present mixed messages and enable her to support the work being undertaken at the placement. 33. The Guardian advised that if given the choice, RR would wish to return to the grandparents' home, but he has been informed that this is not an option, as they cannot manage his behaviour and needs. He has indicated that if that was not possible, the placement in England was an acceptable option and means that he can have the referral to the [redacted] clinic he wishes to take place. This accords with what he has told his

mother. 34. In his assessment with Dr Murray, RR indicated that he wanted to stay at the placement in England until things had improved and then return to college in Jersey. There was some doubt as to whether he could easily assimilate to mainstream schooling, but in any event, he would be supported on his return when that takes place. 35. The Guardian said RR had a mix of complex behaviours and after ten days at the placement in England, he was coming out of his room and eating with others. This was a significant change and an upward trajectory. There were no simple answers for RR. It has taken and will take much work. He is now attending education (not mainstream) but there was still some way to go. Considering where he was before he left for the placement in England, she felt reassured. The Guardian said we can be as certain as we can that this was a good positive placement for RR. 36. The care plan is for RR to stay at this placement until he is 18, but he can stay there until he is 25. Much of the hearing was concerned with discussions about his transition to adulthood. From the age of 18, it is the policy to promote independence which ordinarily would involve a reduction in support. It is too early for the Minister to say what that support would be, but it would be consistent with his needs and as guided by the professionals. 37. As part of the process of transition to adulthood, he was referred to adult social services at the age of 14 and has now been allocated an adult social worker. The adult services will carry out their own "Preparing for Adulthood Assessment" at around the age of 17½. An [redacted] assessment and a sensory profile would be carried out within the next few months. The Minister confirmed that he would support and lead the referral for RR to a national specialist service for expert assessment for [redacted] and he had already been placed on the waiting list to avoid delay. The Minister also confirmed that the Children's Service will process RR's request to be given [redacted] subject always to appropriate medical advice. RR will be assessed educationally in June of this year. 38. The contact arrangements between the family and RR were the subject of discussion with the Minister apologising for recent issues that had created some inconvenience. Receipts for costs incurred by the grandparents on visits to RR totalling £720 had been sent into the Children's Service on 10th February 2022 but they lost them and at the date of the hearing, the grandparents had not yet been reimbursed. Going forward three months' notice in advance of flights to England would be given to the family and arrangements made for receipts to be sent electronically. The Minister confirmed that they would be reimbursed without delay. Overall, the grandparents and the mother were reassured by the evidence given on behalf of the Minister on the structure going forward, despite their disappointment with the Children's Service, who they felt had placed RR in the too difficult box. 39. The report of the Social Worker, set out the options available for the Court in terms of the orders it could make. This is a case in which RR's welfare dictated that a care order should be made and that is the order the Court made, having approved the care plan and contact arrangements. Authorities Children (Jersey) Law 2002. In the matter of RR (Interim Care Order) (unpublished dated 14 th June 2021). In the matter of RR (Interim Care Order) (unpublished dated 1 st December 2021). Re F and G (No 2)

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