

JERSEY / JUDGMENT

In the matter of Simon (Care order)

Source: jerseylaw.je · Research copy typeset by Esheria. Not court-issued or certified.

Care order – application by the Minister for a final care order. [2015]JRC188 Royal Court (Family) 11 September 2015 Before : J. A. Clyde-Smith, Esq, Commissioner, and Jurats Nicolle and Milner Between The Minister for Health and Social Services Applicant And A (the mother) First Respondent And B (the father) Second Respondent And Simon (the child) Third Respondent And C Fourth Respondent IN THE MATTER OF SIMON (CARE ORDER) AND IN THE MATTER OF THE CHILDREN (JERSEY) LAW 2002 Advocate H. J. Heath for the Minister. Advocate S. M. Le Cocq for the First Respondent. Advocate M. J. Haines for the Second Respondent. Advocate D. A. Corbel for the Third Respondent. Advocate B. Corbett for the Fourth Respondent.

judgment

the commissioner: 1. On 17th July, 2015, the Court granted the Minister a final care order in respect of Simon (“the child”), (this is not his real name), and approved the Minister’s care plan for adoption. The orders made were with the consent of the mother and the guardian and without the opposition of the father. However, the path to the making of an order had not been straightforward. 2. The mother has learning difficulties and was assisted throughout by Mrs Clare Le Gallais, of the Self Advocacy Project, who had provided a report for the assistance of the Court in the spirit of “the advocacy toolkit”. She filed her evidence by way of a statement and the other parties had constructively agreed not to cross examine her. 3. The mother and father married on 28th July, 2012, when the mother was pregnant with the child, but they had been living together for some years before that. They have an older child who was born on 26th February, 1998, and who went to live with the fourth respondent, her maternal grandmother (“the maternal grandmother”) following concerns about her suffering physical harm in the hands of the mother. The maternal grandmother was granted a residence order in respect of the older child in December 2004. 4. The child was placed on the Child Protection Register under the category of “neglect” prior to his birth but he was removed from the register on 31st October, 2012, as the parents were considered by the Children’s Service to be engaging well and the case was closed on 17th May, 2013. Advocate Le Cocq, for the mother, was very critical of this decision because she argued that the continued involvement of the Children’s Service at that stage might well have led to a different outcome. 5. The Children’s Service became involved again on 15th April, 2014, when a referral was received from the health visitor, Mrs Jenny Querns, who had the following concerns:- (i) The child spent long periods of the day and evening in a play pen in the living room. He was being kept in the play pen to prevent him from touching his father’s Xbox and DVDs. He ate in the play pen and fell asleep in it before being put through to his bedroom. (ii) The mother reported to Mrs Querns that the child was “allowed” out of his play pen at times

however Mrs Mary Jones, an adult support worker present during Mrs Querns' home visit, stated that this was the first time she had seen him out of it. (iii) The child didn't ask to be "allowed" out of the play pen, suggesting that he was "used to staying" in the play pen. (iv) The child was at risk of neglect and was under stimulated in the way he was being cared for. He was at risk of developmental delay and his needs for play and exploration were not being met. The mother reported to Mrs Querns that the father shouted at and smacked the child. The mother appeared agitated when encouraged to take the child out of his play pen.

- (v) The Bridge closed the case in March as the mother did not engage with the service. The mother was invited to "Pop in and Play" but she did not attend this group with the child. (vi) The previous health visitor provided safety equipment to the family in August 2014 but this had not yet been installed in the home. (vii) Mrs Querns had asked that the family make some changes to the environment to make it safe for the child. Two weeks later the parents had been unable/unwilling to bring these changes forward. (viii) The mother was supported by adult support workers who had been concerned for the child's welfare. (ix) The previous health visitor had been trying to effect change without success. 6. The parents attended a core group meeting with the child on 3rd June, 2014, and his behaviour (and the parents' reaction to it) was of concern to the Children's Service. On 19th June, 2014, he was seen by Dr Mark Jones, a consultant paediatrician, who assessed him as having mild generalised developmental delay, most likely the result of under stimulation. On 2nd July, 2014, he was assessed by a speech and language therapist, who found that his language skills were significantly delayed for a child of his age. Following attendances at a communications group, the speech therapist reported on 14th October, 2014, that the cause of his speech and language difficulties appeared to be as a result of lack of stimulation/interaction rather than having an organic origin. 7. Further concerns were reported, including the apparent inability of the mother to administer the child with a course of antibiotics prescribed for him. The catalyst for intervention by the Children's Service was the mother giving the child an adult dose of Paracetamol on 21st January, 2015. He was taken into hospital and did not appear to have suffered any lasting damage, but on discharge he was taken into foster care on a voluntary basis where he has remained ever since. Dr Bryn Williams, the child psychologist, reported that since coming into care, the child's "motor and language skills had developed exponentially, he presented with no neuro-developmental disorder and that environmental factors were the most likely cause of his problems." 8. An interim care order was granted on 2nd February, 2015, and the child was made a party to the proceedings on 8th June, 2015. 9. Although the mother loves the child, she does not have the capacity to parent him adequately. Dr Williams put it this way:- "I trust the Court will forgive me when I use the word 'tragedy' to describe how I recognise that because of her learning difficulties and her own self-concept [the mother] does not have the capacity to provide a child with an adequate parenting experience. However, this should in no way diminish our appreciation for the fact that she loves her son and, as evidenced in our assessment is able to be playful and warm with him. In an ideal world she would have a family member who would support her to have this relationship with her son. In reality, it has not been my experience that we

find adoptive families who are able to countenance holding the relationship between [the child] and his birth mother whilst they fulfil the role as parent.”

10. The father does have the capacity to parent the child, but has not been motivated to do so. Dr Biza Kroese, a consultant psychologist, described him in this way:- “[The father] appears to lead the life of a much younger, independent man, with no family responsibilities, spending most of his time asleep or playing computer games and very little time interacting with his wife and son, expecting his wife to perform all the household duties.”
11. Dr Williams described the father as being “very ambivalent about providing [the child] with an adequate parenting experience and was reluctant to being [the child’s] full-time carer”. He concluded that the father did not have the motivation to prioritise the child’s needs over his own.
12. Thus, between the two parents and perhaps with support from the wider family, the child could have remained with them, but the lack of motivation on the part of the father precluded that. Furthermore, the parents have now decided to separate.
13. The mother, who conducted herself with great dignity in Court, whilst being critical of what she felt was a lack of the right kind of support from the Children’s Service, had considered the reports of the experts and seeing how the child had developed with the foster carers, where he seemed happier than when he had been living with his parents, agreed that the threshold had been met and supported the Minister’s care plan for adoption, save in respect to post adoption contact. She put it this way in her statement of evidence:- “Conclusion 33 I want the court to know that I love my son very very much. I understand that no-one has said that I don’t love him. It is just practical things are too much of a struggle for me especially now I will not be living with [the father]. This makes me very very sad but I want what is best for [the child] and that is for him to be adopted by a nice family who will help him grow up to be a smart and happy little boy. When [the child] grows up I hope he will understand that I would have been very happy for him to grow up with me but it was best for him to grow up with another family. I will never stop loving him and remembering him.”
14. The father also agreed that the threshold had been met. He felt unable to agree to the child being adopted and therefore rested on the wisdom of the Court as to what was in the best interests of the child. Although we have been critical about the father’s motivation as a parent, we should record that he attended all of the hearings on this matter, for which he is to be commended. The maternal grandmother’s application
15. The final hearing had been set down for four days commencing 22nd June 2015 and it had been anticipated by the parties that it would not be a contested hearing. According to the guardian’s report, the mother had informed the Children’s Service in May 2015 that she wanted the maternal grandmother to be considered as a carer for the child and the maternal grandmother, who lives permanently abroad, was then formally advised of the proceedings.

16. It appeared to the guardian that there had been some procedural errors in regard to this on the part of the Minister as she was uncertain as to how and when formal notice was given to the parents to ask them to provide names of connected people for assessment and why the maternal grandmother had not been actively approached until nearly the end of the proceedings. The guardian said the maternal grandmother should have been properly considered before this, even if, arguably she might have been more proactive in her own approach.
17. The maternal grandmother filed an application to be made a party on 22nd June, 2015, the first day of the final hearing. Advocate Corbett, on her behalf, said she had only been informed of the care plan for adoption by a letter dated 29th May, 2015, which she had received in early June. She had come over to Jersey in March 2015, when she met with the mother and Dr Williams (who she thought was a social worker). At that stage, she understood that her son, who lives in Jersey, would be assisting in the care of the child. She had not been allowed to see the child by the Children's Service. She had met with the Children's Service on 19th June, 2015, and simply been told that she would not be assessed.
18. Advocate Heath, for the Minister, opposed the maternal grandmother's application to be joined to the proceedings. In the Minister's view, the maternal grandmother had known for some time of the plan for adoption and should have been more proactive, making her application some time ago. In any event, Advocate Heath informed us that the maternal grandmother had been assessed in the last week of January 2015 and ruled out as a potential carer. There was no reference to this assessment in any of the social workers' reports and the Court was told that there was no written record of such an assessment. However, the maternal grandmother had clearly been ruled out as there is no reference to her as a potential carer in the final social worker's report. This was clearly unsatisfactory, as that assessment appeared to be carried out without the knowledge of or input from the maternal grandmother.
19. The mother did not oppose the maternal grandmother's application to be joined and rested on the wisdom of the Court as to whether the child could be placed abroad with her. The father opposed the application on the grounds that the maternal grandmother was not suitable to care for the child.
20. We agreed with the advice of the guardian that before any plan to sever the child's ties with his family could be approved, every viable option of his being cared for within the family had to be explored. The maternal grandmother, who had cared for the older child for some considerable time, was clearly a viable candidate. An assessment of the maternal grandmother could not be undertaken without her input and her being given an opportunity to respond to the various reasons put forward by Advocate Heath as to why she would not be suitable.

21. Accordingly, we granted the maternal grandmother's application to be joined as a party on the 22nd June, 2015, and as it transpired, this did not delay the proceedings. This was because the Minister was not able to proceed with an application for a freeing order under Article 12 of the Adoption (Jersey) Law 1961, because the matter had yet to come before the Adoption Panel and further advice had been commissioned from Dr Williams on the issue of post adoption contact. The freeing for adoption application had therefore been set down to be heard on 3rd September, 2015.
22. The Court went on to hear evidence from two social workers and the guardian on both the threshold and welfare stages, making a finding on the 24th June 2015 that the threshold (under Article 24(2) of the Children (Jersey) Law 2002 ("the Children Law") had been met and adjourning the Minister's application for a final care order to 17th July, 2015, by which time a report from an independent social worker on the maternal grandmother's application would be prepared.
23. The report of the independent social worker, which the Court has not seen, was not favourable and accordingly, on 17th July, 2015, the maternal grandmother withdrew her application and was removed as a party to the proceedings. In her application to withdraw, she said this:- "It is with deep regret that I make this application. However, having read the statement of the Independent Social Worker, Alison Paddle, I understand that my chances of being successful in my application for a Residence Order in respect of my grandson [the child] are very unlikely. I do not make this application lightly, I would do anything for my grandchildren, like I have done for my granddaughter [the older child]. I hope that the Court will appreciate that I have done everything in my power to keep [the child] within our family as I feel that I could meet his needs and would love him as I love [the older child]. Although I feel that [the child] would have a lovely life with me, I accept that if he is adopted he could also have a lovely life with someone else and ultimately I want what is best for [the child] heartbreaking though it is for me."
24. In Court, Advocate Corbett addressed the Court at some length because the maternal grandmother felt she had been treated unfairly and prejudicially by the Children's Service. She was particularly critical of the lack of any family group conference to see how they could assist with the care of the child. Advocate Corbett had not been in a position to put these criticisms to the social workers who gave evidence at the earlier hearing and it would be wrong therefore for the Court to comment, let alone make any findings in this respect, save to say that what the guardian clearly perceived as "procedural errors" should be looked into by the Children's Service to see what, if any, lessons can be learned.
25. Having agreed to the withdrawal of the maternal grandmother's application and her removal as a party, the Court went on to deal with the welfare stage of the Minister's application. It applied the principles set out in *Re F and G (No 2)* [2010] JCA 051 at paragraph 8 and the welfare checklist and Article 2(3) of the Children Law. The key issue was the capacity of the parents and any other person of meeting the child's needs and it was clear that neither the parents nor anyone else within the family had that capacity. Every viable option had now

been explored and consistent with the written advice of Dr Williams, the advice of the guardian and the social workers and with the consent of the mother and without the opposition of the father, there was no alternative but to plan for adoption – in other words, nothing else would do. In terms of the orders available to the Court, only a final care order would be consistent with the achievement of that plan.

26. The contact arrangements had been amended since the care plan was written and were set out in Advocate Heath's email of 1st July, 2015, (with an additional contact by the parents and the older child on 26th August, 2015,) to which no objection had been taken by the other parties and the issue of post adoption contact, which would in any event be for another day, would be the subject of review following the receipt of further advice from Dr Williams.
27. Accordingly, the Court granted the Minister a final care order in relation to the child, approving the care plan and contact arrangements. Authorities Adoption (Jersey) Law 1961. Children (Jersey) Law 2002. Re F and G (No 2) [2010] JCA 051.

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.jerseylaw.je/judgments/unreported/Pages/%5B2015%5DJRC188.aspx>

CASE PAGE <https://chat.esheria.ai/case-law/jersey/in-the-matter-of-simon-care-order-2015>

Prepared on 28 October 2026 · Esheria