

JERSEY / JUDGMENT

In the matter of SS (Secure Accommodation Order) [2012]

JRC 061 (21 March 2012)

[2012] JRC 061

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judgment

the bailiff: 1. On 5th

- 7th March, the Court sat to hear the application of the Minister for a full care order in respect of SS. The care plan envisaged SS attending a therapeutic centre in Wales known as The Old School House, Woodlands ("Woodlands"), which has agreed to accept him. 2. On 8th March the Court announced its decision granting the care order, making no order for specific contact, giving its approval under paragraph 4(1)(a) of Schedule 2 of the Children(Jersey) Law 2002 ("the 2002 Law") and renewing the existing Secure Accommodation Order until 30th March so as to cover the period until SS travels to Woodlands. We now give our reasons.

Background

3. SS is 14. He is the child of the First Respondent ("the mother") and the Second Respondent ("the father") (together "the parents"). He has one brother C who is 13. There is a long history of concern on the part of the Children's Service about the upbringing of these two children. Eventually, proceedings in respect of C were commenced by the Minister and an interim care order was made on 23rd October, 2009, with a full care order following on 6th December, 2010. C currently resides at a therapeutic unit in Jersey. 4. In connection with those proceedings, a psychological report on C was obtained from Dr Hessel Willemsen on 11th August, 2010. Although mainly concerned with C and the parents, Dr Willemsen met SS and expressed some concern as to his welfare. At paragraph 188 of his report he said this:- "I would like to note that, on the basis of the observations I made during contact and the information available about him,(SS), in my view, is a child with significant needs. He presents with behavioural problems, sexualised behaviour and learning difficulties. He responded badly to interventions made by his parents. I thought that he was a child much in need of an assessment in his own right." At the time of this report, unlike C, SS was still living with his parents. 5. Despite that observation, no active steps seem to have been taken

in relation to SS until an interim care order was granted on the application of the Minister on 8th March, 2011. Following the making of that order, SS moved to reside at La Preference. It has to be said that this was not a success. As a result of SS's absconding and fears for his own well-being and those of others the Court, on the application of the Minister, granted a secure accommodation order on 23rd September, 2011. The Court gave a short judgment In the matter of SS

- [2011] JRC 184B explaining why it was satisfied that a secure accommodation order was appropriate and we think it useful to quote from two paragraphs of that judgment to show the severity of the behavioural problems with which SS presents:- "5. It is not necessary to go into detail on the evidence; suffice it to say that we are quite satisfied from the evidence that SS is completely out of control. As appears from Mr Davies' report he has absconded 53 times in total either from school or from La Preference since the making of the interim care order. Furthermore there is a real likelihood that if he absconds he and others are likely to suffer significant harm. There are numerous examples in the material but we can pick out perhaps just a few which are highlighted in the report. First of all on 16th June, when SS absconded, there is evidence that he was involved in sexual activity with a vulnerable male aged 17. Secondly on 21st June he attended upon a nursery at the Highlands campus and said that he was there to collect a child of a teacher from d' Hautree School. This was not so and when he was questioned by the police he apparently commented that he liked the child and she was cute. On 4th April, when he had absconded from La Preference, he was later arrested for assaulting a police officer, although he was not in fact charged. There have been many incidents of his using aggression towards staff or towards other children at La Preference. Again, just to give three examples; on 9th June he held a staff member by the throat; on 16th June he came out of his room at 10 o' clock in the evening stating he was going to kill another young child in the house; and on the third occasion, 30th June, he told a staff member that if he had a gun he would shoot her children. As we say these are but examples.
6. Similarly there is a risk of self harm. He has attempted suicide on three occasions, the most recent bring the event which gave rise to the 72 hour order. On 19th September he became involved in an argument with another resident. When staff intervened he became abusive and threatened to hit out at staff. He then left the area, became involved in another altercation with another child in the laundry room, and when staff tried to calm him down he replied "I do not care anymore and I want to hang myself". On the 19th he barricaded himself inside his room and tied the cord from his X-box around his neck. Staff managed to gain entry and removed the cord from SS. SS returned back to his room and again barricaded the door with his wardrobe and told staff he was trying to hang himself with the cords from his blinds" 6. The secure accommodation order has since been renewed on 22nd December, 2011, and 19th January, 2012, so that SS has remained at Greenfields since September. 7. On 19th January, the Court considered whether the threshold criteria for making a final care order were satisfied. The threshold criteria are contained in Article 24(2) of the 2002 Law which provides as follows:- "(2) The court may only make a care order... if it

is satisfied:-

- (a) that the child concerned is suffering, or is likely to suffer, significant harm; and
- (b) that the harm, or likelihood of harm, is attributable to:-
 - (i) the care given to the child, or likely to be given to the child if the order were not made, not being what it would be reasonable to expect a parent to give the child, or (ii) the child's being beyond parental control." 8. The Court was presented with a threshold statement, the terms of which were agreed by the parents and by the Guardian. We do not think it necessary to recite the details of that agreed threshold statement but suffice it to say that it was accepted that SS has suffered physical and emotional harm whilst in the care of his parents and he is a young boy who presents with severe behavioural problems as a result. 9. The Court adjourned the question of whether a final care order should be made pending further consideration by the Minister of the appropriate Care Plan. It is that aspect which came before us on 5th - 7th March. 10. The Care Plan envisages that SS will attend at Woodlands and arrangements have been made for him to go there on 13th March should the Court make the appropriate order. Woodlands is a specialist therapeutic unit with capacity for four children. It specialises in children showing signs of sexualised behaviour. It provides education together with concentrated therapeutic care from experts. 11. At the opening of the hearing before us, the position of the various parties was as follows. The father agreed that a full care order should be made and further reluctantly agreed that SS should go to Woodlands in accordance with the Care Plan. Although the father did not wish to see SS go, he accepted that it would be in SS's best interests for him to do so. However, he disagreed with the Minister's plans for contact. 12. The mother also accepted that a full care order should be made but she felt that SS should attend a therapeutic unit which should be specially created for him in Jersey. She too disagreed with the proposals for contact. 13. The Guardian supported the Minister's Care Plan both in respect of SS's attendance at Woodlands and in respect of contact. As a result of this, a division of opinion had opened up between the Guardian and SS and accordingly Advocate Tremoceiro represented the views of SS, with the Guardian putting forward his own views without the benefit of an advocate. It was quite apparent to the Court that the Guardian was well up to this task. 14. SS wanted no order to be made and he wished to return to live with his parents. If that were not possible, he wished to live with his paternal grandparents. If that were not possible, then he agreed that he would prefer to go to a placement in the UK, such as Woodlands, rather than a placement in Jersey. He disagreed with the Minister's proposals for contact and wished there to be more contact with his parents. 15. By the conclusion of the hearing, the mother had changed her views in the light of SS's expressed wishes. It follows that, by the time of the closing submissions, all the parties except SS himself were in favour of the making of a care order and of that part of the Care Plan which involved SS attending at Woodlands. The only aspect on which there remained a difference of view was over the question of contact. The law 16. The applicable principles on the making of a care order were authoritatively stated in this jurisdiction by Beloff JA in the Court of Appeal in *Re F and G (No.2)*

[2010] JCA 051 at para 8 where the Court of Appeal stated that, if the threshold criteria are met, the Court must go on to consider whether a care order should be made. In that respect the applicable principles were stated as follows:- "8. For this purpose it is well established that:-

- (i) The child's welfare is the paramount consideration (Article 2(1) of the 2002 Law). (ii) Any delay in determining a question with regard to the upbringing of a child is likely to prejudice the welfare of the child (Article 2(2))(ditto). (iii) The Court must have regard to the seven matters ("the welfare check list") set out in Article 2(3)(ditto). (iv) The Court must not make an order unless it considers that doing so would be better for the child than making no order (Article 2(5))(ditto).
- (v) Before making a care order the Court must scrutinise the care plan prepared by the Minister for the child. Before making a care order the Court must scrutinise the proposals for contact in the care plan and invite the parties to comment on them (Article 27(11)(ditto)." 17. As already mentioned, the Minister intends, if a care order is made, to arrange for SS to live outside Jersey. There are therefore certain further provisions of the 2002 Law which are relevant and these are to be found in paragraph 4 of Schedule 2 of the Law. The relevant provisions of paragraph 4 are as follows:- "4. Arrangements to assist children to live outside Jersey
 - (1) The Minister may:-
 - (a) with the approval of the court arrange for, or assist in arranging for, any child in the Minister's care to live outside Jersey; and
 - (b) ...
 - (2) The court shall not give its approval under sub-paragraph (1)(a) unless it is satisfied that:-
 - (a) it would be in the child's best interests to live outside Jersey;
 - (b) suitable arrangements have been, or will be, made for the child's reception and welfare in the country in which the child will live;
 - (c) the child has consented to living in that country except where:-
 - (i) the court is satisfied that the child does not have sufficient understanding to give or withhold his or her consent, and (ii) the child is to live in the country concerned with a parent, guardian or other suitable person; and
 - (d) Every person who has parental responsibility for the child has consented to the child living in that country except for a person whom the court is satisfied cannot be found, is incapable of consenting or is withholding his or her consent unreasonably. ..." Discussion
 - (i) Care Order 18. We have had the benefit of a number of reports from the Children's Service filed in connection with the obtaining of the interim care order and the secure accommodation order as well as those prepared by Mr Matthew Davies, the social worker

with responsibility for SS, for this hearing. We have also had the advantage of reading two reports from Dr Hessel Willemsen, clinical psychologist and three reports from the Guardian. We have in addition seen a report from Vicky LARBALSTIER, senior practitioner with the Youth Action Team, a letter of assessment from Dr Laura Posner, consultant clinical psychologist with CAMHS (Child and Adolescent Mental Health Service), and a report from Carol Milnes, chartered educational psychologist. We have in addition heard oral evidence from Mr Davies, Dr Willemsen and the Guardian. 19. We consider first whether a care order should be made in the light of the Care Plan put forward by the Minister. We will turn later to consider the separate issue of contact. As already mentioned, by the conclusion of the hearing, the only person opposing the Care Plan and the making of a care order was SS himself. Nevertheless, he is a 14 year old and we must consider his views carefully as required by paragraph (a) of the welfare checklist set out in Article 2(3) namely:- "the ascertainable wishes and feelings of the child concerned (considered in the light of the child's age and understanding)". 20. The Children's Service, the Guardian and Dr Willemsen all agree that SS is a deeply troubled adolescent who has suffered significant damage as a result of his upbringing. According to Dr Willemsen, he is a potential risk to himself and others. He has learning difficulties, delay in cognitive and emotional development and he struggles with peer relationships. He is an isolated and vulnerable adolescent who may use sex to develop relationships but instead is at risk of being abused by or using others. This is complex behaviour which, on a background of severe learning difficulties and emotional abuse, needs a high level of therapeutic and specialised input. In particular, it is the sexualised behaviour with which SS needs a great deal of help during the remaining years in care. Dr Willemsen summarised the position as follows in his report of 31st August:- "97. [SS] has an insecure attachment which is anxious and disorganised in nature. His behaviour is that of a much younger child compared to a child of similar age. He has significant emotional problems which are reflected in this sexualised, aggressive and intimidating behaviour. He is developmentally delayed, lacks empathy and struggles with the expression of feelings and emotions.

98. The core of his behaviour is affected by a significant level of hatred towards his mother. This anger is hardly directly at her because she is unable to take any of the anger in. He directs the anger at himself, which causes self-hatred and suicidal behaviour... or at others through direct aggression or sexualised behaviour. ..." 21. Dr Willemsen's views are supported by the Guardian. He summarised the position in the following two paragraphs of his report of 9th January:- "7.1 Although [SS] has now been in the care of Children's Services for over nine months, he still remains a very vulnerable and volatile young person. In my view, if he does [not] receive the appropriate care that he needs in the immediate future, he could well end up harming himself and others, as he has already shown signs of doing. 7.2 In particular, his sexualised behaviour and attitude to women and younger children are particularly worrying. It is of utmost importance that [SS] receives the appropriate therapy for these difficulties as soon as possible, otherwise it is likely that he will remain a danger to himself and to others who are equally vulnerable." 22. The Children's Service, the Guardian and Dr

Willemsen are also agreed that SS's best interests would be served by his attending a therapeutic centre off the Island so as to remove him from the day to day influence of his parents. They are agreed that an outcome which resulted in his returning to live with his parents or to live with his maternal grandparents in Jersey would do nothing to address any of the emotional damage which he has suffered and would be likely to result in further damage. 23. We have carefully considered SS's wishes as expressed through his advocate and to us in chambers. As decided at an earlier hearing, SS was present for the opening statements and for the announcement of the Court's decision. He also attended in chambers to express his views directly to the members of the Court. He did not attend the rest of the hearing. 24. We accept that he would prefer to return to live with his parents, failing which to live with his grandparents. However, when considering his views, we have noted Dr Willemsen's opinion that, because of the damage he has suffered, his emotional development is equivalent to that of an 11-12 year old rather than a 14 year old. In our judgment, his expressed wishes cannot outweigh the unanimous advice of all the experts and those responsible for his care to the effect that he needs to attend an off-Island therapeutic centre for there to be any prospect of remedying the damage he has suffered and minimising the risk that he will cause harm to himself or to others in due course. As his age of emotional development, SS cannot be expected to know what is in his best interests when that conflicts with what he would like to happen. 25. We have seen the detailed information concerning Woodlands and a placement there is supported by the Children's Service, the Guardian and Dr Willemsen. We have no hesitation in concluding that SS's best interests will be served by his attending Woodlands. We are satisfied that sub-paragraphs (a),

- (b) and (d) of paragraph 4 of Schedule 2 are complied with. As to sub-paragraph (c), as described in the previous paragraph, we find that, for this purpose, SS is not of sufficient understating to withhold his consent. We are also satisfied that he will be living with some "other suitable person", namely at Woodlands. The requirements of paragraph 4 are accordingly satisfied. We therefore make a final care order and approve SS's placement at Woodlands in accordance with the Care Plan. (ii) Contact 26. That leaves the question of contact. We have reminded ourselves of the terms of Article 27 of the 2002 Law which provides that, subject to the provisions of the Article, the Minister shall allow a child in care reasonable contact with the child's parents and gives the Court jurisdiction to decide matters of the contact. 27. Everyone is agreed that there should be no contact, whether direct or indirect, during the period of assessment at Woodlands, which is said to last some 16 weeks. SS must be given the opportunity to settle in without distraction and without any emotional pull towards his parents or life in Jersey. 28. However, the parties are not agreed on what should happen thereafter. SS, supported by the mother and the father, submits that thereafter he should have direct contact with the parents at least six times a year and there should be indirect contact subject to such monitoring (in terms of approving ingoing and outgoing correspondence) as Woodlands may think appropriate so as to prevent unsuitable contact. The parents and Advocate Tremoceiro argue that the success of the placement at Woodlands depends upon SS having a positive attitude and feeling that his views have been listened to.

A lack of contact would be likely to result in his becoming negative, perhaps seeking to abscond and generally reduce the chances of success. In response to the suggestion from the Children's Service, Dr Willemsen and the Guardian that contact sessions had been damaging because the parents had sought to undermine the placement at La Preference and to an extent at Greenfields, the parents argued that, regardless of what had happened in the past, they had now accepted the need for SS to go to Woodlands and would therefore be supportive rather than undermining. Furthermore, they would be willing to accept advice from the Children's Service as to what should or should not be said or done during any contact sessions or in any indirect contact communications. 29. The Minister, on the other hand, argued that the Court should make no order at this stage and should leave the matter of contact to the discretion of the Children's Service in liaison with those at Woodlands who would be responsible for SS's care and therapy. It was simply not possible to foresee at this stage what would be the best course following the period of assessment. It might be decided at that stage that some direct contact and / or indirect contact would be the best thing. Alternatively, it might be felt at that time that a longer period should expire before any such contact because of the risk that any unsatisfactory or undermining contact might pose to the success of the placement. Mr Davies emphasised that the Children's Service was not saying that it would be against contact at the expiry of the assessment period. It simply wished to keep the options open and to have the benefit of advice from the Woodlands staff at that time. 30. Mr Davies was strongly supported by Dr Willemsen. He had observed some of the contact and had read the contact logs. He felt some of it had been very undermining of the Children's Service and had therefore made things much more difficult for SS. If this were to be repeated during SS's time at Woodlands, it might well adversely affect the chance of success of the placement. It was vital for SS's welfare that the experts and the staff at Woodlands be given the best chance of achieving a successful outcome. Unsatisfactory contact would undoubtedly make this more difficult. He agreed that contact, if positive, would be beneficial and he had originally suggested three times a year in his report. He now rather regretted that and felt that it should not be at a specified level. He agreed that the decision should be left to the Children's Service in liaison with Woodlands to review the position at the end of the assessment period and introduce direct contact and/or indirect contact in such manner and at such time as was thought to be in SS's best interests. 31. The Guardian also strongly supported this approach and his reasoning was very similar to that of Dr Willemsen. 32. We accept the evidence of Dr Willemsen, supported as it is by Mr Davies and the Guardian, that some of the contact, particularly on the part of the mother, which has taken place has been very undermining. The mother felt strongly that the Children's Service were not handling the matter well and she allowed her anger to take over. But this does not alter the fact that contact which has the effect of pulling SS in different directions is very damaging. If the placement at Woodlands is to have any chance of success, SS must have faith and trust in the staff at Woodlands. Given his need, as described by Dr Willemsen, to please his mother, SS will not have that faith and trust if, in the course of any contact, the mother expresses negative views to him about Woodlands or the need for him to be there. 33. We have carefully considered SS's wishes, supported by the parents, that there should be

direct contact at least six times a year together with indirect contact subject only to some form of monitoring of content by Woodlands. However, we are convinced by the evidence of Dr Willemsen, Mr Davies and the Guardian that this would be a mistake and not in SS's best interests. One cannot tell how things will develop once he goes to Woodlands. Contact of the right type could be positive but contact of the wrong type could be very damaging to the placement. We cannot tell at this stage what will be in SS's best interests in terms of contact. Accordingly it would be wrong for the Court to intervene. Questions of contact must be left to the judgement of the Children's Service, in close liaison with the staff at Woodlands, to determine at the expiry of the assessment period. Mr Davies has assured the Court that questions of contact, both direct and indirect, will be reviewed at that time with a decision being taken in SS's best interests. We think that that is the right course. Accordingly, we do not make any order for specified contact at this stage. 34. However, we would wish to emphasise, as did Dr Willemsen, whose evidence we found most impressive, that positive contact, which was supportive rather than undermining of the placement, would be very beneficial for SS, particularly bearing in mind that he may well choose to come back to live with his parents once he is 18 and the care order expires. Thus we urge the parents to keep in touch with the Children's Service and take advantage of any assistance which they can be given to help them in the way that they should approach any contact which is available in due course. We express the hope - but we emphasise that this must be subject to a judgement of what is in SS's best interests at the time - that it will prove possible in due course for SS to have contact with his parents, so as to ensure that he does not think that they have in any way abandoned him. That is most definitely not the case. They undoubtedly love him and wish to support him and they have shown great maturity and responsibility in the approach they have taken to the hearing before us. 35. We should add that the Guardian pointed out the importance of SS not worrying about his family when he is at Woodlands and accordingly he needs to be assured by all concerned that, should anything happen in respect of any member of his family in Jersey, he would be informed. That way, provided he hears no news, he may be comforted that nothing untoward has happened. Mr Davies also accepted the importance of a contact session prior to SS's departure for Woodlands at which the parents could demonstrate their love for SS and their support for the placement thereby sending him on his way with full knowledge of their love and support.

Conclusion

36. For the reasons we have given, we made a care order in respect of SS, we approved the Care Plan and we gave our approval under paragraph 4(1)(a) of Schedule 2 of the 2002 Law. We made no specific order concerning contact but noted that questions of contact would be reviewed at the end of the assessment period of 16 weeks following SS's admission to Woodlands. Authorities In the matter of SS

[2011] JRC 184B . Re F and G (No.2)

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