

JERSEY / JUDGMENT

N -v H 25-Oct-2006 [2006]

JRC 153 (25 October 2006)

[2006] JRC 153

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judgment

The bailiff: 1. This is an application by H ("the father") seeking child maintenance for his son S from his former wife N ("the mother"). There have been difficult arguments in relation to the residence of the child before the Family Registrar, but those arguments culminated in an order of 5 th June 2006 that S should reside with the father and that contact with the mother and the mother's family should continue on an informal basis as arranged by the child and his parents from time to time. S is now aged 11. 2. Following that order the father issued a summons seeking maintenance from the mother for S in the sum of £100 per week to cover food and clothing costs. On 26 th July the Registrar referred the summons to this Court on the grounds that he had been requested to do so by the mother and that he had refused a similar application on 18 th April 2006. Both parties have agreed that this Court is to approach the matter de novo. 3. We have found this to be a sad and difficult case. We have been asked only to resolve the issue of maintenance and we will of course do so. It is however difficult, if not impossible, to ignore the wider considerations of what is in the best interests of S. We deal first with the narrow financial issue. 4. The mother has re-married and has another child, now aged 3, by her new husband. She is employed by a local bank while her husband is employed in a travel agency. They own a house which they bought in 2003 for £210,000 and upon which is secured a hypothec for a loan of £199,500. We think it is unnecessary to specify precisely the income and outgoings of the household. Suffice it to say that in round figures the joint gross income was declared to be £44,930 or £3744 per month. Their monthly outgoings total £3780. The father challenged some of these figures and we will revert to one aspect below. Suffice it to say that we considered the mother's evidence to have been straightforward and truthful. 5. The father has no current partner and lives with S in a flat valued at £240,000 upon which is secured a hypothec for a loan of £204,000. He lets a room to a lodger who pays £606 per month. The father has worked in the financial services industry at a senior level. Currently he is employed on a short-term contract with a trust company earning £2156 per month. His gross monthly earnings are therefore £2762. His declared monthly outgoings totalled £3484. His financial position appears precarious. Apart from the loan secured on the flat, he has debts of over £35,000, including credit card debts upon which the interest is relatively high. His expenditure significantly exceeds his income. On the other hand some aspects of his expenditure could undoubtedly be pruned. S goes to a private school for

which the monthly fees are £307. He subscribes to Sky television and to a broadband internet connection which he states are for the benefit of S. S is permitted to have lunches in the school canteen at a cost of approximately £100 per month instead of taking sandwiches. According to the evidence of the mother he (the father) was not a good manager of family finances during the marriage. 6. From a purely arithmetical point of view the financial position of the mother is better and more secure than that of the father. On the other hand there is clearly little spare money. We understand why the Registrar reached the conclusion that the mother could not afford to pay maintenance for S. 7. Counsel for the mother very properly and correctly drew our attention to improvements to the mother's financial position which were in prospect. At the end of this year her husband's debt to the Guernsey Tax Authority will have been repaid, thereby adding £79 per month to the family income. In October 2007 their daughter will go to a States' primary school and there will be a saving of £558 per month on nursery fees. Furthermore, although the mother told us quite understandably that she did not wish to work on Saturdays, it appears from the most recent pay-slip that overtime earnings have accrued during 2006 and that her gross income is likely to exceed the declared basic salary to some modest extent. 8. Counsel for the mother referred us to the CSA tables but we do not find them helpful or appropriate in this case. We find that the mother and her husband are running a very tight and prudent financial ship but that the mother is able to make some financial contribution to the maintenance of her son S. It is the extent of that contribution which has caused us difficulty, and that takes us into a broader consideration of the best interests of S. 9. It is true that issues of maintenance and issues relating to residence and contact are different, and it is generally not an excuse for a parent not to pay maintenance because the other parent is being difficult about contact. Two wrongs do not make a right. Nonetheless in real life these two aspects of parents' mutual obligations towards their children are linked and the court should not, in our judgment, adopt a blinkered approach. The Registrar thought that the issues surrounding residence and contact were relevant to the issue of maintenance, and we agree. 10. In his reasons for the reference to this court dated 2 nd August 2006 the Registrar stated - "Nothing has ever altered my view that [S's] mother has been entirely capable and willing to provide [S] with a stable home, but that she and S have given in to pressure from the father for S to live with him. I am not implying by this that pressure from the father has been misguided as far as the interests of S are concerned. However the relationship between the child's parents is quite dreadful and, although this is difficult to contemplate, is plummeting to new depths over the maintenance argument. This, in itself, must have an effect on S. Furthermore it is difficult to separate the present argument (about whether there should or should not be a financial contribution from the mother) from the habitual arguments about care of S which cause (as I believe are intended to cause) enormous distress to the mother." 11. We are very conscious that we have not heard any evidence or argument relating to contact, nor have we been asked to adjudicate upon the question, and we will not do so. The Registrar ordered, by consent, on 5 th June that contact by S with his mother should continue on an informal basis "as arranged by the child and his parents from time to time". This was a highly unusual arrangement for a child of 11 and we were informed by Counsel that there has been virtually no contact with the mother since June. 12. The Registrar considered that the mother and S had given in to pressure from the father that S should live with him. Without expressing, as we have said, any

concluded view on the matter, there is evidence in the lengthy and thorough reports of the Court Welfare Officer which would support that view. Furthermore there is evidence that the father is encouraging a negative view of the mother by S by allowing him to be privy to disputatious exchanges between his parents and telling him that his mother was not paying any maintenance for him. The Court Welfare Officer reported that "I am sure that if so inclined [the father] could ensure that [S] has more contact with [his mother and her husband]". There is evidence that when S simply walked out of his mother's house after some minor argument at a time when contact should have been taking place, the father did not encourage him to return but simply accepted S's decision. The father's position on this is that it is up to S whether he visits his mother and he (the father) does not wish to force this upon his son. We do not wish, nor would it be appropriate, for us to go any further down this road. Suffice it to say that it appears to us highly regrettable that the situation has been allowed to deteriorate to such an extent that it has been left to an 11 year old child to decide whether or not he will have contact with a parent. 13. If it be the case that the father's manipulative behaviour has achieved a breakdown in the relationship between S and his mother, the application for maintenance must appear to be the rubbing of salt in the wound. Nonetheless both parents have obligations towards their son, and if the mother is financially able to pay maintenance, she should do so. 14. We propose to make an order for a modest amount of maintenance to be paid which we think will be within the means of the mother. At the same time we wish to emphasise that the father is under a moral, if not at this stage a legal, duty to encourage S and even to direct S to go and see his mother and to re-establish contact. We are not impressed by the argument that it is a matter for S's choice. S's choices at the age of 11 may be influenced by all kinds of irrelevant or inappropriate considerations. He may fear his father's disapproval. He may not like the firmer discipline which appears to rule in his mother's home. He may prefer to pursue his own selfish pleasures or inclinations without regard to anyone else. None of these considerations should be allowed to dictate whether or not he has contact with his mother. If they do, he may grow up to be a young man without respect for or understanding of close human relationships. Respect between parents and children should of course be mutual, but both parents have a clear duty not to divide the loyalty of their child and to encourage and to support a close relationship with the other. That support and encouragement on the part of the father appears to us to have been sadly lacking. It is not in the interests of S that his relationship with his mother should have dwindled to nothing. The father has the ability and the duty to restore contact between S and his mother and we expect him to do so. If the father fails to heed this advice of the court, we would for our part wish to re-visit the order that S reside with his father. It is very much in the interests of S that he should have contact with both his parents, and if that cannot be achieved while he lives with his father it may be appropriate that he should return to live with his mother. In our view too great an emphasis has been placed thus far on the wishes of S. 15. We regard the order which we are about to make as an interim order, and it is that the mother should pay maintenance for S at the rate of £100 per month, the first payment to be made on 1 st November, 2006. We envisage that the financial situation of both parents will have improved by July 2007. The mother's position will have changed for the reasons given above. So far as the father is concerned we should be surprised if he has not been able to obtain employment which is more secure and better remunerated. We should be disappointed if he has

not taken steps to reduce or eliminate the deficit between his income and expenditure. We think that the quantum of maintenance should be reviewed in July 2007 but we will also want to reconsider at that time the issue of contact and, if necessary, residence. We wish to hear that the father has ensured that S is in regular and frequent contact with his mother and that appropriate staying contact during holidays has been arranged. We accordingly direct the parties to arrange a half-day's hearing in July 2007 and a directions' hearing before the Bailiff six or seven weeks before that. No Authorities Page Last Updated: 27 Mar 2017 BAILII: Copyright Policy | Disclaimers | Privacy Policy | Feedback | Donate to BAILII

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