

JERSEY / JUDGMENT

U v V (Family)

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Family dispute. [2019]JRC110 Royal Court (Family) 11 June 2019 Before : J. A. Clyde-Smith O.B.E., Commissioner, and Jurats Pitman and Christensen. Between U Applicant and Respondent And V First Respondent and Applicant And Child 1 Second Respondent And Child 2 Third Respondent The Applicant appeared in person. Advocate C. G. Hillier for the First Respondent Advocate N. S. H. Benest for the Second and Third Respondents Advocate F. C. Binet appeared as amicus curiae.

judgment

the commissioner: 1. On 30th April, 2019, following a two day hearing, the Court reserved its decision in relation to the following applications:- (i) The application of the Applicant (“the Father”) for a prohibited steps order preventing the First Respondent (“the Mother”) from re-locating to Country 3 with the second respondent (“Child 1”) and the third respondent (“Child 2”) (together “the Children”), and a specific issue order in relation to the education of the Children, pursuant to his form C2 application dated 18th October, 2018. (ii) The application of the Father for a paternity test for Child 1 and for leave for him to disclose reports about these proceedings to Barnardo’s Independent Guardians, Fathers for Justice and Children Need Fathers, pursuant to his Form C2 application dated 14th January, 2019. The Father withdrew his application for disclosure on the second day of the hearing. (iii) The application of the Mother for leave to remove the Children to Country 3, pursuant to her C100 Form dated 24th January, 2019. 2. There are other applications due to be heard, namely the Father’s application for direct contact with the Children and to set aside an earlier maintenance order on the grounds, inter alia, of alleged fraud and perjury on the part of the Mother and an application by the Mother for historic arrears of maintenance. 3. There has been almost continuous litigation between the parents (who never married and who lived together for relatively short periods) over the Children, firstly in England and in Jersey after they moved here in 2012. There are five substantive judgments which set out the background and which we will take as read:- (i) The judgment of 11th June, 2018 (unpublished), in relation to contact. (ii) The judgment of 4th September, 2018, U v V (Family) [2018] JRC160 in relation to maintenance. (iii) Two judgments of 11th December, 2018 (unpublished), in relation to maintenance and a proposed holiday abroad. (iv) The judgment of 13th March, 2019 (unpublished), in relation to maintenance when it was varied downwards. Such were the number of applications before the Court that on 22nd February, 2019, the Court ordered that pursuant to Article 66(8) of the Children (Jersey) Law 2002 (“the Children Law”), no further applications should be made without leave of the Court. Paternity test for Child 1 4. Having applied for a paternity test for Child 1, the Father now wishes to withdraw his application, even though he still harbours doubts as to her paternity. The principal reason is that even if Child 1 is

found not to be his daughter, this will not affect his views or feelings, and his wish to provide her with the best possible education. He is also concerned that such tests will be unlikely to be kept discreet by the Mother, or the maternal grandmother, which will cause unnecessary further emotional distress. 5. The Mother is supportive of a paternity test being carried out. Although this is the first time that the Father has disputed paternity formally, he has raised it on previous occasions. She is 100% confident that he is the father of Child 1 and it will be in Child 1 interests to have this issue resolved once and for all. The Children had indicated to her that they felt the Father and the paternal family treated them differently, in that they appear to favour Child 2, and it was possible whether consciously or unconsciously that these doubts which the Father had shared with the paternal family might underlie this. 6. Mrs Elsa Fernandes, the guardian, was understandably concerned about the impact that such a test and its results could have on Child 1, and also Child 2. However, in her opinion, we could not have a situation where the Father keeps on making such accusations and unless these accusations were to cease, she was minded to suggest that the test be undertaken by both Children, so that neither child feels they are being singled out. Swabs could be taken as part of a health check on the Mother and the two Children without the Children being informed that these tests were being carried out. 7. We accept the advice of the guardian, and comforted by the absolute confidence of the Mother in the potential results of such tests, agree that it is in the interests of Child 1 to have this issue resolved, so that it cannot be raised again and that such tests should be carried out in accordance with the advice of the guardian. We invite Advocate Benest, the legal representative for the Children, to prepare a draft direction to be issued when this judgment is handed down. Re-location to Country 3 and education 8. We take these two issues together as they are interconnected. Although the Court was not concerned directly with contact at this hearing, the Father has not seen the Children now since January 2018 and the Father's sense of grievance over this lies, we feel, at the heart of the disputes between the parents. 9. It is necessary to go back for a moment in order to place in context the current issues in relation to re-location and education. We do this by way of a brief overview which does not cover all of the hearings that have taken place and orders made:- (i) On 10th March, 2015, the parties reached an agreement, reflected in a consent order, dealing with financial provision for the Children and under which the Father agreed to pay global maintenance for the Children in the sum of £5,000 per calendar month to include rental costs and a carer's allowance and to pay the Children's school fees at such schools as they shall attend by agreement between the parents. (ii) On 23rd February, 2016, the Father filed his Form C100 application for the maintenance to be reviewed. (iii) On 21st September, 2017, the parties reached agreement on contact arrangements, again set out in a consent order. The Court commented in its judgment of 11th June, 2018, that this would appear to have been agreed without the involvement at least of Child 1 and took no account of the fundamental need for the parents to change their behaviour in relation to the Children. (iv) No maintenance was paid for much of 2017, the father having no income during that period, to the point that claimed arrears of some £81,000 had accumulated, with the Father acknowledging that he was at least £70,000 in arrears. In its judgment of 11th January, 2018, the Court was informed that the Father had paid a total of £80,000, which in the Court's view substantially discharged his then financial obligations. Soon after receiving these monies, the Mother purchased a second-hand Range Rover for £57,500,

financing the purchase with a three year loan from Acorn Finance of £34,000. It would seem that the car is now worth less than the debt due to Acorn Finance.

- (v) On 4th July, 2018, the court, as advised by the guardian, ordered that there should be no direct contact between the Father and the Children for the time being, with the parties being ordered to use their best endeavours to work towards a plan for the re-introduction of direct contact and to engage in psychologist led mediation, and this for reasons set out in its judgment of 4th September, 2018. (vi) On 6th July, 2018, the Court sat to consider an application by the Father to vary the maintenance payable by him under the consent order of 10th March, 2015, but for reasons set out in a second judgment delivered on 4th September, 2018, it declined to vary the consent order, but ordered that there should be a review of the maintenance in the summer of 2019. (vii) As reflected in paragraph 29 of that second judgment, substantial progress had been made between the parents in resolving the issues between them over the future arrangements for the Children facilitated by Advocate Binet, it being agreed in particular:-
- (a) that the Children would remain living in Jersey until the end of the summer term 2019;
 - (b) that the Mother would re-locate to England with the Children in the summer holidays of 2019;
 - (c) that the Children would continue to attend School A until the end of the summer term 2019.
 - (d) There would be an action plan to restore and rebuild the Children's relationship with the Father as quickly as possible. In the circumstances, the Court ordered that the maintenance should remain unvaried, but with a full review to take place in the summer of 2019. The Court noted at paragraph 37 that the Mother should increase her resources by obtaining employment and that it was the Court's expectation that she would be in gainful employment within a year. (viii) Within days of the judgments of 4th September 2018 being handed down, the Mother changed her position, concluding that it would be best for her and the Children to move permanently to Country 3 to live in the maternal grandmother's house, being educated locally, but attending English boarding school from aged 16 -18. (ix) On 18th October, 2018, the Father filed a C2 Form application, to prevent the Mother from removing the Children from the jurisdiction until the determination of the issue of their education, for direct contact between him and the Children and for a specific issues order in relation to their education. The Court extended the role of Advocate Binet as *amicus curiae* to the Father's applications, and ordered the appointment of a guardian in relation thereto. The Court directed that the parties jointly instruct the psychologist Dr Chimera to produce an assessment on the issue of direct contact and that a hearing to take place in April 2019, when Dr Chimera's assessment should be complete and her report available.
 - (x) The Court sat on 29th November, 2018, in order to review the progress being made and in its judgment of 30th November, 2018, at paragraph 8, the Court noted that matters had not gone well with the Mother changing her position. On the eve of that directions hearing, the Mother changed her position again, saying that the Children should continue at School A

where they were doing well, re-locating to England with the Mother in July 2021. (xi) On 7th December, 2018, the Father filed his Form C2 application alleging fraud and perjury on the part of the Mother in proceedings in 2014. (xii) At an urgent hearing on 11th December, 2018, the Court declined an application by the Father that the Mother should be prohibited from taking the Children on a planned holiday abroad over that Christmas. At the same hearing, the Mother sought orders against the Father that he should continue paying the maintenance of £5,000 per month, the father having given her notice that he intended not to pay half the maintenance from that December onwards for a variety of reasons, but in the view of the Court, because of his frustration over delays he foresaw in his establishing direct contact with the Children. Because of the Mother's changes in the carefully laid plan reached the previous summer, the Court brought forward the review of the maintenance payable by the Father to 22nd February 2019. (xiii) On 14th January, 2019, the Father filed his form C2 application alleging contempt of Court on the part of the Mother, seeking a paternity test in relation to Child 1 and an order allowing him to disclose reports to Barnardo's Independent Guardians, Fathers for Justice and Children Need Fathers. (xiv) At a hearing on 24th January, 2019, the Court learned that Dr Chimera had resigned, for reasons which appeared to be attributable to the conduct of the Father, and the Court appointed the psychologist Melanie Gill to prepare a report on the issue of direct contact in her place, with the Father being responsible for the payment of her fees. The Court also dismissed the Father's application in relation to contempt. (xv) On 24th January, 2019, the Mother filed her application seeking leave to remove the Children to Country 3. (xvi) On 22nd February, 2019, the Court conducted a review of the maintenance payable by the Father, and for the reasons set out in its judgment of 13th March, 2019, reduced that maintenance to £2,500 per month in total with effect from 22nd February, 2019. It also ordered the Father to pay arrears of maintenance for the months of December 2018 and January and February 2019, totalling £7,500. (xvii) Also on 22nd February, 2019, the Court made the Children parties to the proceedings and ordered that an advocate be appointed to represent them. The Court made an order pursuant to Article 66(8) of the Children (Jersey) Law 2002 ("the Children Law"), that no further applications should be made by the parties without leave of the Court save in relation to arrears of maintenance. (xviii) At a directions hearing on 4th April, 2019, the Court fixed 29th and 30th April, 2019, to deal with the applications relating to (i) education, (ii) removal from the jurisdiction, (iii) the paternity test and (iv) disclosure, the 12th July 2019 to deal with historic arrears of maintenance claimed by the Mother and allegations of fraud brought by the Father, and 13th – 16th August, 2019, to deal with matters relating to direct contact. Position of the Mother

10. The Mother's preferred choice is that the Children should remain at School A, living with her in rented accommodation until they have completed their primary school education. However, she said that was not financially viable for a number of reasons:- (i) She has no housing qualifications, and must therefore rent in the more expensive unrestricted housing market. Her current rental is £2,500 per month. (ii) Despite her (claimed) best endeavours, she had not been able to find employment, and even if she did, it would not be sufficient to

house and maintain the Children and pay the school fees at School A. (iii) The maintenance has now been reduced by the Court to £2,500 per month, which the Father had chosen not to pay, as a consequence of which her financial position had become dire. She had credit card debts of £12,000, an overdraft of £5,000, arrears of rental in the sum of £7,500, outstanding bills in the sum of £2,000, a debt due to her Mother of some £30,000, obligations on the car finance and debts to lawyers of some £26,000. (iv) The Father's obligation to pay the school fees at School A ended this current term, and he had refused to pay the fees thereafter.

11. She had no alternative, in her view, therefore, but to re-locate to Country 3 with the Children, where her mother has a substantial property comprising three units with which the Children are very familiar, having spent their summer holidays there for a number of years. It is situated in a small village where they are known and have friends. She proposes to provide for herself and the Children by:- (i) Setting up a brocante bistro, serving lunches from the property, for which she has the necessary permissions. She is registered as a micro-entrepreneur under the Country 3 tax system, which means that she and the Children are already covered by the Country 3 health care system. (ii) Letting out the larger part of the main property for the summer months of June, July, August and September which assuming half occupancy would bring in some £8,500 per annum after tax. She, the Children and the grandmother would live in the other part of the main property, which comprises five bedrooms, three bathrooms, a playroom, two kitchens and a library/office. (iii) Marketing the gate-house for bed and breakfast over the same summer months which again assuming half occupancy should produce some £4,166 per annum after tax. (iv) If necessary, she could obtain employment locally. With her ability to speak another language, there is potential for work within the region in which she resides.
12. In terms of education, she had enrolled the Children in a local private school, which had a total of 37 pupils with class sizes of approximately 5 pupils. The school was some 15 minutes' drive from the grandmother's property. The fees, including additional Country 3 lessons, would amount to £380.36 per month or £4564.32 per annum for both Children.
13. The grandmother would assist her in establishing the business and with the care of the Children. She was confident that the possible income streams that would flow from these ventures would be sufficient to allow her to be self-supporting, and to contribute to the support of the Children. She calculated that her monthly outgoings would come to £2,346.42p per month, which would be shared with the grandmother on a 75:25 basis, the grandmother paying the smaller share. There were two capital projects required, namely the installation of central heating in the main house (estimated at €8,000) and the installation of a wood-burner in the smaller unit (estimated at €3,000) which would be carried out when funds permitted.

14. In terms of contact with the paternal family, the property was a 45 minute drive from Airport A in Country 3, from where there are direct flights to Southampton, Bristol and Stanstead, and she would undertake to continue to help and assist with contact. Other airports were within a reasonable distance from the property, namely Airport B (1 hr 10 minutes), together with C and D. The position of the Father
15. The Father did not oppose the Mother's wish to re-locate to Country 3, but did not agree to the children being educated there. He said it was always their intention that the Children should be privately educated in England, and indeed, from a young age, they had been registered for School B and School C as secondary schools, it being envisaged that they would attend feeder prep schools.
16. The original move to Jersey in 2012 was, he said, to allow him to place ownership of his company into a trust for the benefit of the Children's education with the intention then that the Children would first attend School D and then School B. He and his brother had been educated at School D and then at School E. Indeed, his wider family had a close connection with School D. He wrote at some length and with some passion about the excellence of the education that the Children would receive at School D, although he was candid in accepting that in part, the Children boarding there would help balance what he viewed as the negative influence on them of the Mother and the maternal grandmother.
17. If the Mother had been prepared to move to England, as agreed last year, and to a location near School D, it would not be necessary for the Children to board, as they could attend as day pupils, but if the Mother wished to re-locate to Country 3, then it would be necessary for them to board. He acknowledged that change to a boarding school now would lead to some challenges for the Children, but he argued that moving to a small Country 3 provincial school when they do not speak Country 3 is going to be far more disruptive than going to a school that he described as essentially a larger and better funded version of School A, with better facilities and staff. A large number of his family live close to the school and would be able to provide support for them.
18. The Father's financial position is key to the issue of private education and that is described in some detail in the Court's maintenance review judgment of 13th March, 2019. As the Court commented at paragraphs 24 and 25, he had been discharging his maintenance and educational obligations out of capital, which is nearing exhaustion, and his new business venture has yet to achieve a positive cash flow. He is, in essence, in a period of transition, and whilst he was optimistic about the financial prospects of his new business, he could not currently commit to the payment of fees for private education, and said it would not be appropriate for the Court to order him to do so. He said, not unreasonably, that payment of maintenance and school fees should come from income and not capital. The sums involved were significant in that some £345,000 would be the cost of private school education between now and when the Children attained the age of eighteen – a very significant sum.

19. His father had agreed to fund the school fees for the Children at School D for the first year, but not the school fees at School A. If the Father was unable to afford the fees thereafter, he had other wealthy friends and relations who, he was quite confident, would assist in the payment of school fees. In his view, the Children were being offered the best education possible. The case for the long term benefits in all aspects of the Children's lives with a private boarding education at School D could not, he said, credibly be argued against. The position of the paternal grandparents
20. The paternal grandparents came to Jersey for the hearing and were given leave to express their wishes to the Court, but did not otherwise participate in the hearing. They were understandably concerned about the welfare of the Children, and much of their carefully prepared written submission was concerned with their experience of contact, and what they feel is the Children's constant exposure to animosity towards the Father, which was now being extended to them. They explained the family connection with School D and believed that the Children would benefit immensely from being there during the term time, effectively insulated from the parents' disputes. They would have their own space to simply be themselves, heal their wounds and start achieving something more like normal childhood. School D would provide a comfortable, safe and constant environment during term time until they were thirteen years old.
21. They appreciated that the Children had expressed very real concern about boarding school and wished to live permanently at home with the Mother. However, in their view, going away to a boarding school is not so unusual and could be presented to the Children as a normal part of growing up. The support and encouragement of the Mother and the maternal grandmother would mitigate their concerns. Supported by professional counselling at the school, there could be a natural and gentle progression to them accepting the Father back into their lives, without fear of conflict and achieving a normal life once again. Wishes of the Children
22. The guardian had undertaken two sessions with each of the Children at School A in which they both became very upset. Taking Child 1 first, and quoting from paragraphs 8 – 10 of the guardian's report:- "8..... 'If I have to move and I get to pick then I want to move to Country 3 Why can't I go to Country 3 and go to school there, there are schools that have English teachers.' I explained that her Father wanted them to be educated in the English system and explained an option of them living in Country 3 but attending school in the UK. She said she did not want to go to boarding school. 'I want to live where I go to school but not in England. I don't like England and the country side. I have been there before but I want Country 3 as I have been there before and I like it. I know that's not a very good reason but that's what I want. We have looked at 10 schools in Country 3 and will be going to visit them. I don't know when we are going to visit them but mum says I can see them if I want. If I had to choose between Jersey, Country 3 and England I would say Jersey if I can stay at School A but if I can't then Country 3 with mum. Definitely not England'.

9. 'I like living in current accommodation but if I have to move then I have to move as long as I am with mummy that is all that matters.' Child 1 was crying inconsolably at this point and continued to cry until the end of the session. 10 When asked what her biggest worry is she said, 'My biggest worry is leaving mummy then it's leaving School A.'
11. During our second session I explained that I needed to finish our session from the last time we saw each other. Child 1 went straight into 'If I have to leave School A I want to go to Country 3 and live there with my mummy and go to school there and not go to boarding school.'
12. Whilst talking about contact with her Father she said, 'It makes me feel sad that I have to leave School A. All my friends are already talking about their plans for Year 6 and I will miss out on it. I have been looking forward to it and now I'm not going to do any of it. When I was in Year 3 I remember asking my mum if I was going to School A until I finished Year 6 and she said yes but now that is not the case. It makes me feel so sad. I will miss all my friends and will have to leave my best friend. I don't know what I am going to do without my best friend.'"
23. Turning to Child 2, and quoting from paragraphs 14 – 17 of the guardian's report:- "14..... 'I don't want to go to boarding school. I want to stay living with my mummy' and then began to cry. After she calmed down I asked her what if they were all living in England and she went to day school then she would see her Mother every day. She responded, 'The problem with moving to England is finding a house that will take nine animals. I prefer places that I actually know. I have known the house in Country 3 since I was tiny. I prefer places I know and I trust. I don't like changes.' 15 I asked her if she had a choice what it would be. She responded 'If I have a choice I want to stay at School A. I would rather stay in Jersey. If I can't go to this school I would still prefer to stay in Jersey. I would choose Country 3 over England to live.'
16. I explained that it is the adults who make the decisions about where they live, school and contact and that the Court is trying to help her Mother and Father make these decisions. She said 'if I have to live in England with my mum, sister, nana and nine animals, I would want to go to day school.'
17. During a conversation about contact with her Child 2 said 'if he loved me he would let us stay in Jersey. There are other schools in Jersey that we could go to. Whenever my Father makes a decision it makes me sad...' Position of the guardian
24. The head teacher at School A had told the Guardian that the Children were very well settled and doing academically well. They had good friendship groups and fitted in well. Both had expressed their distress at having to leave the school and the possibility of having to go to boarding school.

25. In the guardian's opinion, the Mother had provided insufficient information in relation to the proposed Country 3 school, which she had not been able to visit, and there were a number of questions which were unanswered. The Mother had not taken into account the difference between the Country 3 and English educational system, and how this may impact upon the Children if they are, as the Mother told her, to re-enter the English education system when they are older. The fact that they do not speak Country 3 was not a reason to preclude them from attending a Country 3 school, but from the guardian's personal and professional experience, whilst children can master a new language more quickly than adults, it can initially hold them back academically.
26. The Father had been clear in his view that he did not rate the education provided at School A as value for money, saying that Jersey government schools offered as good an education as School A. Whilst he had put forward the arguments in favour of the Children boarding at School D and the support that could be given by his family and friends, in the guardian's opinion he did not take into account the fact that the Children currently have very little contact with the Father's family and no contact with the friends he has put forward. He did not appear to have taken on board the Children's wish to remain in their current school in the care of the Mother. He would be relying on others initially to pay the school fees at School D, but had not secured funding so that they could remain at School A, so that they could complete their primary education there. The guardian agreed with the Mother that attending School A had been the only consistent feature of the Children's lives since they had lived in Jersey and the guardian did not regard the Father's actions as being child focused. She shared the Mother's concerns that funding for the school fees at School D would be reliant on others and not the Father. The Mother did not want to be in the same position as she had been with the issue of the funding of school fees at School A. The Father had simply not provided the assurances the guardian would need to be confident that the funding was guaranteed, secure and in place for the Children's education there.
27. The Mother had not given a cogent explanation to the guardian as to why she would not to re-locate to England, as agreed last year, where she had a one bedroomed flat (currently let out), they all speak the language, employment could be secured and the maternal grandmother could spend the same amount of time with them as she does in Jersey. The Children could be educated in the English system as sought by the Father. In the guardian's view, the Mother had not put forward a well argued affidavit setting out the options and explaining why in her view re-locating to Country C was to be preferred.
28. The guardian met with the paternal grandparents who expressed the same concerns to her as they had to the Court, namely that boarding school would shelter the Children during term time and the move would improve contact not just for them, but with the Father and extended paternal family. The guardian was concerned that the paternal grandfather's offer to finance the school fees at School D but not at School A was not child focused. The Children had been very clear in their views that they did not wish to attend boarding school, and their distress about this was clear to see. It was difficult for the guardian to ascertain

how much their upset was about being away from their Mother, but the mere mention of the words boarding school caused them to cry.

29. In her view, the Father had not presented a well argued application as to why the Children should board at School D, and she did not support it. There were too many unanswered questions about the finances and she feared that history would repeat itself where school funding was concerned, with the Children once again being left with uncertainty on whether their education was secure.
30. In the guardian's opinion, the Children should remain at School A until they finish their primary school education and then transfer to a Jersey government school. If the Children were not able to remain at School A, then she recommended they transfer to a Jersey government school for September 2019. This presupposed that the Mother would be able to continue living in Jersey. The Law
31. Pursuant to Article 2 of the Children Law, when the Court determines any questions as to the upbringing of children, their welfare should be its paramount consideration and in considering applications for prohibited or specific issue orders, the Court is required under Article 2(3) to have regard to the welfare checklist.
32. The recent decision in *GT v RJ* [2018] EWFC 26 sets out the current English position on leave to remove applications. At paragraph 2 of the judgment, Mostyn J said:- "The legal test to be applied is now very straight-forward. It is the application of the principle of the paramountcy of the Children's best interests, as taxonomised by the checklist in section 1(3) of the 1989 Act" (the checklist from which our own Article 2(3) checklist is of course drawn).
33. This approach has been followed in the case of *A v B* [2019] JRC 0001A and we endorse what Registrar McFadzean said in paragraph 3:- "The starting point for making this decision is the law as applied to the facts of this case. That may sound like a trite statement to readers of any judicial decision but an application for leave to remove Children from the jurisdiction in which they have lived their entire lives ... requires me to conduct a careful and holistic evaluation of the options and the evidence put before me against a background of the welfare interests of each of the Children. I must start and finish with the law and its imperative of what is known as the paramountcy principle, namely that it is the Children's best interests which must be weighed into the balance when determining this application; the needs and wishes of the parents are a secondary consideration." Discussion
34. The level of animosity between the Mother and Father can be demonstrated by the following extracts from their statements:- From the Mother: "I love the girls but I hate you more. My sole pleasure in life is to make your life as unbearable and unpleasant as I can. I believe that any loving Father would not put his daughters through all this trauma. I believe that his only motive is his hate for me and that he will do anything he can despite what affects it has on the Children to destroy me." From the Father: "V is a poor Mother, the Children come second to her wishes and desires. Second to her holiday and her weekends away. She has zero regard for me or my role in the Children's lives, other than for what money she can get.

She is selfish, self-centred, deceitful, devoid of empathy or consideration of others and motivated by greed and a sense of self entitlement. She will never put the Children's welfare first. Neither their educational needs, nor their emotional wellbeing. For all statements that she has no objections to my contact or my parents' contact or anyone else from my family, she doesn't do anything to assist."

35. For such sentiments to be expressed in formal statements before the Court leaves little hope that these parents will ever be able to put the needs of the Children first. As Advocate Benest put it in a devastatingly critical closing address, the parents are engaged in appalling financial brinkmanship, a terrible game of chicken to see who would blink first. The parties were becoming closer and closer to the point when the threshold for intervention by the State would be crossed. The Mother expected to be able to stay in Jersey where she had no housing qualifications, but had failed to make any contribution to her financial resources by obtaining employment. The guardian pointed out the low rate of unemployment in Jersey and how countless mothers have to find work to help provide for their children; the guardian stressed that this was finding any work.
36. The Father had boasted of the resources available to him within his family and well-off friends, but had made a deliberate decision not to pay the reduced maintenance ordered by the Court, displaying an attitude contemptuous of the Court, and which threatened the ability of the Mother to provide basic care for the Children. The Mother had in turn, in what the guardian described as a knee-jerk reaction, applied for the family to re-locate to Country 3.
37. The Mother's proposals for re-locating to Country 3 had been presented very late in the day and were not fully thought through. There had been no time for the guardian, for example, to visit the very small private school at which the Children had been registered. The prospects for the brocante bistro were speculative at best, and having been taken through her own figures by Advocate Benest, it was clear that there was a substantial monthly deficit with no real idea of how that would be bridged.
38. We take each of the headings of the welfare checklist in turn. The wishes and feelings of the Children
39. Their wishes are clearly set out above. They want to stay at School A, but if that was not possible then they wanted to go with the Mother to Country 3. They did not want to be separated from the Mother and were very distressed at the prospects of boarding school. As the guardian pointed out, they have, of course, only heard the Mother's side of the story and are aware that she is making plans for Country 3, but despite the fact that the information they had would have come from discussions with the Mother and maternal grandmother, the guardian was satisfied that their feelings were genuine.

40. Child 1, had written to the Court, saying that she utterly hated having to leave Jersey and School A, but it is clear from the letter that her overriding concern was not to be separated from the Mother. She expressed very negative sentiments about the Father. The Children's physical, emotional and educational needs
41. The Children need to be protected from the ongoing battles over their upbringing from which they are suffering great distress. In terms of education, the Children are currently well settled and thriving at School A, and ideally, that is where they should stay until completing their primary school education. That pre-supposes that the Mother will continue to live in Jersey, where she has no housing qualifications, and has yet to find employment, and, critically, that the school fees will be paid.
42. If there is no funding for School A, and the Father's current financial resources do militate against him being ordered to provide that funding, then a change in the Children's schooling in the next academic year is inevitable. The choice is between:- (i) A Jersey government school, assuming the Mother stays in Jersey. (ii) The Country 3 private school, if the Mother re-locates to Country 3. (iii) English day school, if the Mother re-locates to England. (iv) English boarding school, wherever the Mother lives.
43. Assuming the Mother does continue to live in Jersey, then we agree with the guardian that the Children should attend a Jersey government school. No inquiries have been made as to which school would be able to accommodate them, and indeed, whether they could be schooled together. Separation would impact yet further upon them.
44. From an educational standpoint, the move to the proposed small Country 3 private school self-evidently involves greater challenges for the Children than their attending a private day school in England, such as School D, particularly when there does appear to be consensus that in due course the Children will complete their education under the English system. However, that requires the Mother to re-locate to England and in particular, to a location reasonably close to School D. She told the Court she did not want to re-locate to England because she regards it as walking into a hostile environment, where she will face ongoing litigation with the Father. She says that getting employment in rural England would be just as difficult as getting employment in Jersey, and she would have no support network other than through the paternal family, all of whom speak ill of her.
45. The Mother has no objection to the Children attending an English boarding school, but when they are ready. We were referred to this helpful extract from the judgment of Sir Philip Bailhache, Bailiff, in *E v F* [2016] JRC 076, a case concerning a dispute over boarding school but in which affordability was not an issue:- "17 There are some other principles which appear to us to be important. It is well known that young Children benefit from having a routine. Of course, all routines must not be completely inflexible, but as a general principle, Children like to know where they are. They feel safe and secure when there is an established pattern to their lives. As far as school is concerned, it is helpful for Children to have certainty as to their schooling. Those of us who have had the experience of boarding school

education, whether directly or through our Children, recognise that there is an advantage in Children knowing from an early age that they will be going to boarding school so that it is not sprung upon them at three months' notice when they are aged 13 or 11 as the case may be. It may be helpful even if not essential, to know the precise school from an early stage, but it is certainly useful to identify the school by the time the child is in sight of the entrance examination. Furthermore, once the decision has been taken, subject to any requirement for flexibility because it has clearly proved to be the wrong decision, in general terms it is better that the child knows that the decision has been taken and that his or her parents will stick with it. There is nothing very remarkable in any of these statements, but they bear repetition."

46. The suggestion that the Children in this case should now board at School D has been sprung upon them, and caused them considerable distress. It is not a decision supported by the Mother or by the guardian or, indeed, by the Court. What is required is an agreed plan for them to attend boarding school in due course, something which both parents have contemplated for the Children at the outset, and a plan which can be funded and which both parents support.
47. In our view, the Father, and to some extent the paternal grandparents, are pushing for boarding school now, in the face of the Children's distress, because it will separate them from the influence of the Mother and facilitate better contact with the paternal family. Whilst perhaps understandable, we agree with the guardian that this is not child focused.
48. If the paternal grandfather is prepared to fund their private education for a year, then why rule out funding the relatively short period of time left for them to complete their primary education at School A, where they are well settled and in the Island which has become their home? The likely effect on the Children of any change in their circumstances
49. If the Children cannot remain at School A, then the effect of the changes to whichever of the options would then apply would be considerable. It is not known which Jersey government school or schools would be able to accommodate them, and as Advocate Benest pointed out, going from a private school to a Government school will have an impact upon them in terms of social standing. Moving to a small Country 3 private school, or to an English day or boarding school would each present its challenges. The Children's age, sex, background and any characteristics of the Children which the Court considers relevant
50. There are no particular characteristics of the Children which require mention under this heading, save that they appear to be delightful Children who are doing well at School A and who have good friendship groups. Any harm which the Children have suffered or are at risk of suffering

51. The distress which these Children are currently suffering is manifest, and has been covered above, and unless the parties can reach agreement as to their upbringing, the risk of that continuing is real. How capable each of the Children's parents are of meeting the Children's needs
52. The Mother is, and always has been, the Children's main carer, and, leaving aside the issue of her relationship with the Father, she is clearly a devoted Mother and has parented them well. The Father does not suggest that he should become their main carer. As between themselves, the hostility is such that it dominates the needs of the Children. Conclusions
53. Having reserved its decision, the Court's initial view was that it should do everything it can to enable the Children to remain at School A for the rest of their primary school education, and it intended adjourning the matter to see whether the paternal family could be persuaded to support their continued education there until a planned move to boarding school, supported by both parents.
54. In evidence, the Father was enthusiastic at the prospects of his new business, which has yet to generate any cash flow, and talked in terms of the possibility, we can put it no higher than that, of it achieving net distributable profits of up to \$500,000 by the end of this year. That is, of course, a matter of pure speculation at this stage, but there is a possibility that in a relatively short period of time, the Father may be in a position to be able to fund the school fees at School A, and, if necessary, for the Court to order him to do so. If the paternal grandfather would cover the school fees until then and the Mother find work, then staying in Jersey and completing their primary school education at School A would be viable and the best outcome for them.
55. The Court was then informed shortly after the hearing, that the parents had engaged in constructive and lengthy discussions, and there was a feeling of optimism that they might well be able to reach agreement on these issues, which, from the point of view of the Children, would be a much preferable outcome to the Court imposing a solution. Work on the draft judgment was therefore postponed.
56. However on 10th May, 2019, when members of the Court were out of the Island, the Father wrote to the Court saying that consensus had not been achieved. Quoting from his e-mail:- "I have informed the other parties that I wish to withdraw all my applications before the Court. I am withdrawing the historical claim for fraud and perjury and the application for contact. There seems no point in pursuing either matter. I took note of your repeated comment that a decision for the girls to board would only work if both parties supported it. The same is more applicable for contact. In the absence V showing any desire to support contact, it is pointless to pursue applications into the tenth year. I am waiting to hear from Advocate Hillier if they can be withdrawn by consent. I have informed all parties that I will support V in her application for leave, and support her decision to educate the Children in Country 3. if that is what she chooses to do. I appreciate the Court may decide she should stay, in which case I have offered to support her in any appeal that she may wish to". He confirmed that the

arrears of maintenance (£5000) had been paid in full, together with additional funds so that the Children could continue their various activities. He said the Mother had received £11,000 in all. He had used the funds which he had set aside to meet the fees of the psychologist Melanie Gill, whose involvement he had now cancelled.

57. Whilst the Court had determined that the best interests of the Children is that they complete their primary school education at School A, that is dependent upon the fees being funded and the Mother being able to continue living in Jersey.
58. Ultimately, the best interests of the Children in terms of their education must defer to the financial realities of their parents. The Court cannot compel the Mother, as the primary carer, to live in a jurisdiction which she cannot afford. The maintenance ordered by the Court, if it continues to be paid, is sufficient to cover the high cost of unqualified accommodation only, but unless the Mother is able to find employment, it is not financially viable for her to stay here. Even if she were to find such employment, her earnings would be insufficient to meet the school fees for School A, so the Children would have to leave that school in any event.
59. If the Mother decides she has no option other than to leave the jurisdiction, then moving back to England as originally agreed, with the Children attending School D, which appears to be an excellent school, as day pupils, or any other day school, would be the least challenging for them, bearing in mind the intention that they should ultimately complete their education under the English system, rather than the somewhat hasty and not entirely convincing plan for the Mother to re-locate to Country 3, although we acknowledge that there is a substantial home there, with which the children are very familiar and a community they know well. However we cannot force the Mother to relocate to England and in any event, the Father no longer objects to the Children being educated in Country 3, and wishes to withdraw his application that they be educated at boarding school in England.
60. There is currently a residence order in favour of the Mother, and, pursuant to Article 14 of the Children Law, she needs the consent of the Father to remove them from Jersey or the leave of the Court. The Father has, by his e-mail, now given that consent, but in any event, in the circumstances, we give leave and accept that the Children will attend day school in Country 3.
61. In summary:- (i) Leave is granted to the Mother to re-locate the Children to Country 3. (ii) We order a paternity test in respect of the Children to be carried out in accordance with the advice of the guardian. (iii) All of the Father's other applications are withdrawn and the dates fixed for their hearing vacated, save to the extent required for the Mother's claim for historic arrears of maintenance, if that is to be pursued. (iv) For the avoidance of any doubt the revised maintenance order made on the 13th March, 2019, remains in force as does the contact order made in favour of the paternal grandparents and the order under Article 66(8) of the Children Law 2002 that no further applications should be made by the parties without leave of the Court save in relation to arrears of maintenance.

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- (v) Counsel are requested to review all of the existing orders to see whether any other consequential changes need to be made. Authorities U v V (Family) [2018] JRC 160 Children (Jersey) Law 2002 GT v RJ [2018] EWFC 26 A v B (Family) [2019] JRC 0001A E v F (Matrimonial) [2016] JRC 076
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