

JERSEY / JUDGMENT

W -v- X (22 February 2017)

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W -v- X (22 February 2017) [Home] [Databases] [World Law] [Multidatabase Search] [Help] [Feedback] [DONATE] Jersey Unreported Judgments You are here: BAILII >> Databases >> Jersey Unreported Judgments >> W -v- X (22 February 2017) URL: https://www.bailii.org/je/cases/UR/2017/2017_030A.html Cite as: W -v- X [New search] [Help] Family- application by the father for indirect contact. [2017]JRC030A Royal Court (Family) 22 February 2017 Before : Judy Marie O'Sullivan, Registrar, Family Division. Between W (the father) Applicant And X (the mother) Respondent IN THE MATTER OF W-v-X (APPLICATION BY THE FATHER FOR INDIRECT CONTACT) AND IN THE MATTER OF THE CHILDREN (JERSEY) LAW 2002 Mr W appeared on his own behalf. Advocate R. E. Colley for the Respondent.

reasons

the registrar: 1. This is an application by the applicant father Child 1 that he be provided with photographs of her. The application is opposed by the mother. The father appeared in person and the mother was represented by Advocate Colley. The hearing took place on the 22 nd February, 2017. 2. There have been long standing proceedings in the English Courts regarding Child 1. The mother and Child 1 now live in Jersey with the mother's new husband. The father applied in Jersey for contact to be enforced in the same terms as an order made in the English Court in 2015 on the basis the mother was refusing contact. However on the 12 th January, 2017, a period when the father was legally represented, an order was made which referred to the father withdrawing his application for contact and agreeing indirect contact save for the matter of photographs. The Jersey Family Court Advisory Service (JFCAS) was to provide an up-dated report dealing with the issue of the father being provided with photographs. Dr Mair Edwards, clinical psychologist, who had provided a long report on the father, mother and Child 1 was given leave to attend the hearing on the 22 nd February, 2017, in respect of the application for photographs. 3. The father informed the Court shortly before the hearing that he would apply to adjourn the hearing on the basis of what he considered was late receipt of the JFCAS report dated the 27 th January, 2017, which recommended the father was not supplied with photographs. However at Court he said that although he received the report on the 13 th February, 2017, he had no objection to the matter proceeding "at this juncture". When questioned about this, he confirmed that he was prepared for the hearing to proceed. 4. The Court bundle comprised the father's C100 application dated the 15 th January, 2016, the various Acts of Court made in the Jersey proceedings arising from his application, a psychiatric report from a Dr Ratnam on the mother and father dated the 14 th January, 2012, the Pre-Case Review Hearing report from JFCAS dated the 19 th May, 2016, the addendum report of the 27 th January, 2017, regarding photographs, Dr Edwards's report

dated the 2 nd December, 2016, and disclosure from the States of Jersey Police and Children's Service records and recent correspondence. 5. In her report Dr Edwards had opined against re-establishing direct contact by father with Child 1 but had recommended indirect contact by cards and letters even if Child 1 was unwilling to read them, and she recommended that the communications be stored so Child 1 could read them when she wanted to do so. However Dr Edwards's report made no reference to photographs. Prior to attending court Dr Edwards was provided with a copy of the JFCAS report of the 27 th January, 2017, about photographs. 6. Although the hearing was about photographs, the father was allowed some leeway to questioning Dr Edwards. Dr Edwards confirmed that she had no concern about the mother's ability to care for Child 1. On the issue of contact, the father questioned Dr Edwards because he said he had good contact with Child 1 before she came to Jersey. Dr Edwards confirmed what had been in her report that telling Child 1 that she needs to have direct contact with her father will invalidate her feelings and is likely to work against any future relationship between the two. Dr Edwards said that Child 1 is a reflective child. Child 1's sense of relief in not having to have direct contact was tangible. Dr Edwards confirmed that Child 1 was sensitive to her mother's emotions, but this is indicative of a good relationship between mother and child. She stated that Child 1 is aware that if she had agreed to direct contact, her mother and step-father would have supported her decision. 7. The father questioned Dr Edwards about photographs, and in particular about him having photographs once every six months of Child 1 and she receiving photographs in return. Dr Edwards said it is appropriate for Child 1 to receive some photographs so that she knows him and the paternal family but not so many that she is overwhelmed by them. Whilst Dr Edwards said that she fully understood the wish of the father to have photographs of his daughter, Child 1 was very anxious about photographs being shown to her father and paternal family. If Child 1 is allowed the freedom not to be anxious and get on with her life, this will greatly assist her. Dr Edwards confirmed she had not spoken with Child 1's mother about the photographs. With regard to getting gifts from her father, Child 1's choice was not to have anything but she is persuadable about gifts. 8. Dr Edwards confirmed that although indirect contact is not what Child 1 wants, a complete lack of contact can lead to difficulties later on for a child and therefore indirect contact is beneficial for Child 1. I have noted Dr Edwards's response about this at paragraph 5.10 of her report. Dr Edwards considers that the terms set out for indirect contact are appropriate and will more likely kindle the father/daughter relationship. Her mother must keep the father's cards and letters in a safe place so they cannot be destroyed. In terms of contact taking place at a later stage, Dr Edwards stated that when a child becomes 15 or 16 she may decide to "test out her relationship" with her non-resident parent. If that parent has kept in touch, it makes it easier for the child. 9. Advocate Colley asked whether there was anything in the history of the case that leads her to have concerns that if the father were given photographs, he would use them in an inappropriate way. Dr Edwards said that the father was in denial about the reasons for his conviction and those of his parents for assault on and false imprisonment of the mother. Dr Edwards stated that she could understand the caution of the Independent Domestic Violence Advisor (IDVA) in advising that photographs of Child 1 should not be sent to the father. Dr Edwards said the father lacked appreciation as to the effect of his behaviour on Child 1. Without this insight by him, the risk patterns of inappropriate behaviour could continue. 10. Dr Edwards

was referred to paragraph 5.3.1 of her report which states:- "It is difficult to quantify the risk Mr W poses to Child 1 as he continues to deny any inappropriate behaviours towards Ms X and takes no responsibility for their relationship failing. This poses a dilemma in relation to assessing risk, as without at least some ability to reflect, show insight, take responsibility for his part in the difficulties, accept that his mother in particular may have behaved inappropriately, or show a degree of remorse it is really difficult to gain a perspective as to whether similar incidents could occur in relation to Child 1." Dr Edwards was asked in the light of this, does this sum up her concerns regarding the psychological assessment of the father and she confirmed that it did sum up her concerns about him. 11. Dr Edwards was asked by Advocate Colley about her statement that a child of 15 or 16 may want to rekindle their relationship with their non-resident parent, and if in the light of this there should be some link to the duration of an indirect contact order. Dr Edwards stated that repeated applications for matters to be looked at would be very stressful. Dr Edwards considered that it would be helpful for Child 1 if there were no further applications about her until she was 14 or 15. There is a danger that when there are repeat applications, even if a mother tries to shield a child from learning about them, this can be stressful for the child. Child 1 should have time to get on with her life without being anxious. 12. Dr Edwards was questioned further by the father. She was asked if she had looked at all the documents sent to her in the case and had seen the findings of fact. Dr Edwards confirmed that she had done so. The father asked her if she was aware that the threat of abduction had been found to be unfounded and she confirmed that she was aware of the finding. The father said that the convictions were nearly ten years ago, and asked that surely if he were going to do something he would have done it during that time. Dr Edwards said that this was not necessarily so. 13. The father asked about attempted suicide, and Dr Edwards responded that when one talks about the risk of self-harm, and in particular in relation to the mother, this occurs under extreme stress but although the mother may have previously attempted this, she knows she can seek help. In contrast, although the father had convictions, he has difficulty in accepting they are correct and has shown little insight into his behaviour. Without such insight and ability to reflect on his behaviour and his convictions, there is no change in behaviour. She therefore has concerns about his inappropriate use of the photographs. She confirmed that she had no evidence that if he had photographs they had been used inappropriately. However they could be used inappropriately by him such as to forge documents or to take Child 1 out of Jersey. It was for others to comment further as to the use that may be made of the photographs. 14. Ms Fernandes, the JFCAS officer, was referred to her report by the father. He asked her what evidence the mother had provided to state that Child 1 was at high risk of abduction, that he was capable of doing this, and that he had contacts abroad. Ms Fernandes responded that this was information provided by the Court to her, which included that he had forged documentation and got remarried before he was divorced in the UK. The father asked if she was aware that the mother had forged travel documents to take Child 1 abroad and Ms Fernandes said she was not aware of this. The father said this can be verified by documents, although he produced none. 15. The father asked Ms Fernandes if she knew if he had met the IDVA and Ms Fernandes said that she did not know if he had met her. Ms Fernandes stated that the IDVA works with the victim, not the perpetrator. 16. The father stated that he had only received the report on the 13 th February, 2017, but it was pointed out to him that he could

have asked for an adjournment but informed the Court that he wanted to proceed with his application. 17. Ms Fernandes was asked by the father if there was anything other than what the IDVA had said which led to her recommendation that he is not provided with photographs of Child 1. She said that she had dealt with the issues in her reports and she had also sought the view of an appropriate expert, namely the IDVA, who can advise on safety. 18. Advocate Colley referred Ms Fernandes to the documents received from Jersey Children's Service which Ms Fernandes confirmed that she had read, and had taken into account. She was referred to the notes of a Case Review of August 2015 and the "Specific concerns". Outlined in the record of the review which includes risk of abduction, Child 1 had raised concerns, inter alia which were reported: "When her father is in Jersey she is frightened that her father will take her to the airport or ferry. She said she could run away and tell someone but that he would catch her. She explained that she had been chased abroad by her father's family before and she had to leave the country with her mother." It also reports Child 1 as saying that: "She is worried that the whole family have a plan to kidnap her and take her abroad." Ms Fernandes said that the IDVA and Protection Unit were part of the discussions that had taken place about Child 1. 19. In terms of the duration of any orders for indirect contact, Ms Fernandes said that she was in agreement with Dr Edwards. She said she had spoken with Child 1 and although Child 1 had wanted no contact, it had been explained how important it was for her that her father remains part of her life. Child 1 knows her father sends her things and she can respond if she wants to but the decision is left to her. Child 1 herself mentioned no direct contact being considered until 14 or 15, but Child 1 needs to feel that in the meantime the chance of her father bringing back a case to court is not there. Ms Fernandes considered that if the professionals' advice on the time frame is heeded by the father, at an appropriate time if Child 1 wants direct contact, she is sure there is a way to re-establish direct contact between Child 1 and her father. 20. The father commented that whilst Child 1 may have said 14/15 she is only 9 and he accepts that the Children Service have concerns but he does not agree with them. 21. The mother said she was against the father being given photographs of Child 1 because of the concerns she has for her safety, and abduction. She has taken advice for the authorities and they are providing safeguarding. She cannot divulge what this comprises but the police and the IDVA are involved. She stated that she has not posted photographs of Child 1. She is not on social media nor does she have profiles. The school is aware not to upload photographs of Child 1. 22. The mother vehemently denied she had forged documents to take Child 1 abroad when she was 5 and she said she had never forged the father's signature. She had to obtain a Visa because Child 1 is British and did this by providing her divorce certificate and a birth certificate in order to obtain a 30 day Visa. However the visit was cut short because the father's family heard they were abroad so they left immediately. The travel abroad for a funeral was legitimate and they were back within a week. The mother said that the foreign authorities had told them to leave because his uncle and another relative had arrived at the funeral village demanding to see their blood relative. 23. In terms of the timing of the order, the mother said she agreed to five or six years from now. The mother confirmed that Child 1 had never been abducted but whilst she was in the marital home the father had made threats to do so and after she left there were also threats about this from him. No Court had ever ruled that there was no risk to her safety. The mother confirmed that Child 1 had been on holiday out of the

country with her father and Child 1 and Child 1's passport were returned to her. The mother said that because she had been physically assaulted and because of the convictions, there are safety measures in place. The father asked her to confirm that between 2007 and 2017 she has never suffered any physical assault from him. The mother said that whilst there had been no assault, threats had been made. She said the father had not acknowledged the damage done to her and Child 1. She confirmed that there are safety measures in place and she has taken advice, for example that no photographs should be made available, but she cannot discuss the safety measures. The mother said that she is aware the father is an IT person and that he has forged divorce papers, and forged a Visa for his wife to come to the UK. She said in this day and age even a faded photo can be used. 24. The mother said that Child 1 has suffered emotionally over the years. Dr Edwards has suggested that she be given the opportunity for a life without anxiety. The damage done to her needs to be acknowledged. 25. The father asked the mother if she accepted he had parental responsibility and she agreed that he did so. She was asked why she had notified the school about not uploading pictures and she said that this was a safety measure just as the police had told her not to upload photographs. The mother said that the father gets annual reports from Child 1's school as to how she is doing. 26. Closing submissions were made. The father, although a litigant in person was articulate in putting forward his case. He said he had shown over the years how committed he is to his daughter both emotionally and in terms of money spent. Despite the 2010 convictions he considers he is law abiding. The mother breached the UK order, hence his application to the Jersey Court. 27. The father said that he had pictures of Child 1 from birth but also recent pictures which he said were available on the internet. He said he poses no threat to her directly or indirectly and he has not used Child 1's photographs in any way. He said that whilst the mother had confirmed she had a number of safety measures in place, he is a British national who has two other children in Britain, has no other assets abroad and all his travel is done legally. No child of his has ever been abducted. He considered it important that he has pictures of Child 1. He has two other children who are her half-siblings and Child 1 and one of her half-siblings did have a close relationship. Her sister has a memory of her but the pictures are outdated. He and her half-sisters want to know how she is blossoming. 28. He said that he had too much to lose should he do something so stupid as to abduct her. He has a lot of responsibilities. He considers that his dedication to her and the fact that he had a close relationship should not be ignored. If he looks at her recent pictures her face has not changed dramatically. 29. He expressed concern that the mother may violate the indirect contact order. In addition he did express concerns that he may not be told if she leaves her current school or Jersey. He confirmed that he went on holiday with Child 1 and also had direct contact with her in the past but did nothing to abduct her. 30. Advocate Colley said the only issue before the Court was in respect of photographs. She had understood that all the issues regarding indirect contact had been sorted out when he had a lawyer and hence the only issue before the court was in regard to the photographs. She submitted that the Court had more than enough information to make a decision based on the current reports and the evidence. Advocate Colley referred to the report of Dr Edwards and specifically paragraph 5.3.1. The father continues to deny any inappropriate behaviour and takes no responsibility which does impact on future risk. Advocate Colley submitted that all the Court can do is consider the current risk. Dr Edwards is clear that

the father has shown no insight into his behaviour so the risk remains. Advocate Colley also referred to the papers from the Jersey Children's Service and in particular the Case Review of the 13 th August, 2015, and the specific concerns outlined. She said that the documentation highlights the risk of abduction and threats. The honour based violence not only involved the father but his mother and father. 31. With regard to the photographs, the mother and the IDVA and the police have concerns about regular updated photographs of Child 1 being provided. The mother is unclear where he got his recent photographs from and the Court has not seen these. If he has obtained these, it shows he is searching around. The risks are such, particularly according to Dr Edwards that if he is provided with photographs he could potentially put them to inappropriate use. 32. When the mother went abroad for a family funeral, and this is referred to in the Children's Service Case Review papers, threats were made by the father's extended family. If the photographs were given to the father, even if he did not wish to do anything with them, someone in the extended family could put them to use and this is in the minds of the IDVA. 33. Advocate Colley said that the mother does not deny the father has parental responsibility. The school reports are regularly supplied to him. There is nothing to suggest that if Child 1 changes schools the father would not continue to receive reports. The mother is settled in Jersey, she has moved to be here with her husband and there is no reason why she should leave. 34. It was submitted on behalf of the mother that whilst the father is a British citizen, he holds dual nationality. Dr Edwards maintains there are psychological risks in terms of the father's make up. It is however not just the father involved but also his parents. Therefore Advocate Colley submitted the risk is far wider than just the father. She also wants the court to make an order about the timing of any application, which was a recommendation from both the JFCAS officer and Dr Edwards. The decision 35. When considering a children application a judge is required to consider the Children (Jersey) Law 2002 ("the Law"). The Court must bear in mind Article 2, namely that the welfare of the child is of paramount importance and in cases such as this, the Court shall have regard to section (3) of the Article, the "welfare checklist". This includes the ascertainable wishes of the child (considered in the light of his/her age and understanding), her emotional needs, the likely effect on her on any change in her circumstances, her age, sex and background and harm she has suffered or is at risk of suffering. The wishes of the parents are not specified in this checklist. 36. The father has made an application that photographs of Child 1 be provided to him every six months. He put his case clearly, pointing out that he is her father and also wants to be able to show her pictures to her half-siblings. He stated that he has had photographs of Child 1 in the past which he has not misused and had even taken her away on holiday but brought her back and returned her passport. He denies he is a risk to Child 1 and that there is a risk of him forging documents and abducting her. 37. The mother opposes this application. She accepts the father has parental responsibility. However she believes Child 1 is at high risk of abduction and said that the father has made threats to do so, he has IT skills which he has used to forge documents, he has dual British and foreign nationality, he does not accept the damage done to her and Child 1 nor the conviction against him and his parents. She has taken advice from the IDVA and the police about not supplying photographs to the father. Advocate Colley in her submissions stated that the Court must have good reasons in departing from the advice of experts. 38. The experts in this case are clear that the father should not be provided

with photographs. In the case of Dr Edwards she said that as the father has shown no insight about his behaviour, is in denial about the reasons for his convictions and that he may have behaved inappropriately and has not shown any remorse, there are concerns he could use photographs inappropriately. She said she could understand the concerns of the IDVA. Dr Edwards said that Child 1's concerns about photographs being provided and shared are part of her general anxiety. 39. Ms Fernandes was also clear that photographs should not be provided to the father. She had read the papers provided by the Children's Service, including the concerns presented by Child 1 and the specific concerns raised. She had taken into account the concerns of the IDVA and the police about the father being a high risk to Child 1. She had also read the report of Dr Edwards and heard her evidence. Therefore she does not recommend the father has photographs. 40. In the case of *Re B (Care: Expert Witnesses)*

[1996] 1 FLR 667 it was held that a judge did not err in law in departing from the opinion of experts. However it is: "necessary for a judge to give reasons for disagreeing with experts' conclusions or recommendations." 41. In this case I agree with the recommendations of the experts that the father is not provided with photographs of Child 1, bearing in mind Article 2 of the Law that Child 1's welfare is paramount, taking into account her background, the harm she has suffered, is at risk of suffering, her emotional needs and her wishes albeit she is 9 at present, and having read the reports provided and also heard from the parents. 42. It was submitted by Advocate Colley that a time limit be placed on the father making any further applications regarding contact in the light of recommendations made by Dr Edwards that further applications are not made until Child 1 is 14 or 15. This was supported by Ms Fernandes who said that Child 1 herself had mentioned the age of 14 or 15. However no application had been made by the mother prior to the hearing as to any time limit. Although I was not referred to any case law I was aware that there was a case in which the English Court of Appeal had considered an application under Section 91(14) of the Children Act 1989, the equivalent in Jersey being Article 66(6) of the Law. The case is *E v M*

[2015] EWCA Civ 1313. The father, who was also a litigant in person, was only put on notice about such an application during the hearing, and it was held that the father did not have sufficient notice of the application and the manner in which it was made did not accord with case law or proper procedure. It is wrong in principle for a litigant in person to confront the making of such an order at short notice. It was held that an application for such an order: "should be issued in advance and supported by evidence unless there are urgent and exceptional circumstances. There was no urgency in this case which required the court to dispense with the guidance, and no reasons were given for doing so". That part of the case was remitted for further hearing. 43. In this case, Advocate Colley did not pursue the matter on behalf of her client at the hearing as to a time limit before a further application is made. Both parties did agree that it be noted that Dr Edwards considers that it is not in Child 1's best interests that an application is made by the father regarding contact until Child 1 is at least 14 or 15 years old. *Authorities Children (Jersey) Law 2002. Re B (Care: Expert Witnesses)* [1996] 1 FLR 667. *Children Act 1989. E v M* [2015] EWCA Civ

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