

JERSEY / JUDGMENT

X v Y [2004] JCA 137 (09 August 2004)

[2004] JCA 137

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court OF APPEAL th August, 2004 . Before: Sir de Vic Carey, Bailiff of Guernsey, President; C. S. C. S. Clarke, Esq., Q. C.; and Dame Heather Steel, D. B. E. Between Her Majesty's Attorney General (on behalf of the Health and Social Services Committee of the States of Jersey) Applicant And X First Respondent And Y Second Respondent Application for leave to appeal/appeal by the Second Respondent against the Order of the Royal Court (Family Division) of 22 nd July, 2004, whereby the Royal Court approved a proposal by the Applicant that the First and Second Respondents be allowed to exercise unsupervised access to the child of the marriage on the terms and subject to the safeguards set out in the report of Carol Rowe, dated 16th July, 2004. The said application for leave to appeal/appeal relating to so much of the Royal Court's Order as allowed unsupervised access to the First Respondent. [NOTE: In order to respect the privacy of the parties the factual summary of the circumstances of this case has been redacted to only what is perceived necessary to follow the judgment of the Court] The Facts A is a female child of tender years. Her parents' marriage had broken down and she had become ill, allegedly, as the result of one or both of the parents involving her in the acrimonious relationship that persisted between them. Consequent upon A becoming ill, a child protection conference placed her name on the Child Protection Register under the category of emotional harm. In August 2003 the Royal Court had made any Interim Fit Person Order in favour of the Health and Social Services Committee of the States of Jersey (Children's Service.) This Order had been renewed on a number of occasions. A's health had improved and she had been placed with a foster carer. Supervised access had been allowed to both parents. The Children's Service were moving towards presenting its application for a Final Order in September 2004 before Commissioner Bruce Blair, Q. C. As part of the preparations for that hearing, a child care officer and a child and adolescent psychiatrist had each recommended that both parents should have unsupervised contact on a number of occasions of not more than fifteen minutes at a time. This proposal was set out in more detail in the report of the child care officer to which the Order of the Commissioner refers. From the outset the Husband had opposed the Wife having unsupervised access because in his view the risk of emotional harm to which A might be exposed outweighed any benefit to be derived therefrom. Although its powers under the Interim Fit Person Order were probably sufficient to enable it to allow the parents unsupervised access on the terms proposed, H. M. Solicitor General on behalf of the Children's Service Committee of the States of Jersey had agreed that the matter would be the subject of a specific application to the Court so that the Husband might be heard thereon. The Commissioner heard that application on the 22nd July, 2004, by means of a video link and acceded to the application of the Solicitor General on behalf of the Children's Service for unsupervised access by both parents.

The Husband sought leave to appeal to the Court of Appeal against the Commissioner's decision. Advocate J. Hawgood on behalf of the Applicant; Advocate C. M. B. Thacker for the First Respondent; Advocate D. E. Le Cornu for the Second Respondent.

judgment

THE PRESIDENT: 1. This Court enjoys a wide jurisdiction in matters of appeal, but there is clear authority that an appeal should not be entertained unless it be shown that the trial judge exercised his discretion under a mistake of law, or in disregard of a principle, or under a misapprehension as to the facts, or that he took into account irrelevant matters, or failed to exercise his discretion or that the conclusion which the trial judge reached in the exercise of his discretion was outside the generous ambit within which a reasonable disagreement is possible and plainly wrong. 2. The leading case on the proper approach of Courts of Appeal to reviewing decisions involving children where the judge below has exercised a discretion is G-v-G

[1985] 1 WLR 647 and we quote from Lord Fraser at page 651: "I entirely reject the contention that appeals in custody cases or in other cases concerning the welfare of children, are subject to special rules of their own. The jurisdiction in such cases is one of great difficulty, as every judge who has had to exercise it must be aware. The main reason is that in most of these cases there is no right answer. All practicable answers are to some extent unsatisfactory and therefore to some extent wrong, and the best that can be done is to find an answer that is reasonably satisfactory. It is comparatively seldom that the Court of Appeal, even if it would itself have preferred a different answer, can say that the judge's decision was wrong, and unless it can say so, it will leave his decision undisturbed. The limited role of the Court of Appeal in such cases was explained by Cumming-Bruce L. J. in *Clarke-Hunt -v- Newcombe*

(1982) 4 F. L. R. 482, where he said, at p.486. "There was not really a right solution; there were two alternative wrong solutions. The problem of the judge was to appreciate the factors pointing in each direction and to decide which of the two bad solutions was the least dangerous, having regard to the long-term interests of the children, and so he decided the latter. Whether I would have decided it the same way if I had been in the position of the trial judge I do not know. I might have taken the same course as the judge and I might not, but I was never in that situation. I am sitting in the Court of Appeal deciding a quite different question: has it been shown that the judge to whom Parliament has confided the exercise of discretion, plainly got the wrong answer? I emphasise the word 'plainly'. In spite of the efforts of [counsel] the answer to that question clearly must be that the judge has not been shown plainly to have got it wrong." That passage, with which I respectfully agree, seems to me exactly in line with the conclusion of Sir John Arnold P in the present case, which I have already quoted". 3. The hearing before us is an application for leave to appeal the learned Commissioner's decision on the ground that it was "plainly wrong". The learned Commissioner carefully considered all the relevant material and

submissions.

He was fully appraised of the possible risk in giving the approval he did. He had the benefit of reports from two qualified experts, with whose assessment he agreed. In the light of his understanding of the case he felt justified in reaching a decision without hearing further evidence from a psychiatrist about the Mother. He sought and received stringent undertakings to supplement the safeguards contained in the proposed plan. His decision was in our judgment one which he was fully entitled to reach. 4. The application for leave to appeal is rejected.

Authorities. Rahman-v-Chase Bank (1984) JJ 127. In re T, an Infant [1987-88] JLR 677. Olsen: The Court of Appeal, Use or Abuse (1998) Jersey Law Review 150. Glazebrook-v-Housing Committee (13 th November, 2002) Jersey Unreported; [2002/217]; [2002] JLR N.43. In re O, an Infant [2004]JRC079. Ashmore -v- Corporation of Lloyds

(1992) 2 All DER 486 HL. G -v- G

[1985] 1 WLR 647 @ pp.651-2. Clarke-Hunt -v- Newcombe (1982) 4 F. L. R. 482. Page Last Updated: 24 Mar 2017 BAILII: Copyright Policy | Disclaimers | Privacy Policy | Feedback | Donate to BAILII

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