

The T Children

Jurisdiction:	Jersey
Judge:	The Deputy Bailiff
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Text

[2009] JRC 231

ROYAL COURT

(Family Division)

Before:

W. J. Bailhache, **Esq.**, Deputy Bailiff, **and** Jurats Tibbo **and** Clapham.

In the Matter of the Children (Jersey) Law 2002
And in the Matter of the T Children

Advocate E. L. Hollywood **for the Minister of Health and Social Services.**

Advocate M. J. Haines **for the mother.**

Advocate V. Myerson **for the Guardian ad Litem.**

Authorities

Children (Jersey) Law 2002.

Adoption (Jersey) Law 1961.

Devon CC -v- S [\[1992\] 2 FLR 244](#).

Re B (agreed findings of fact) [\[1998\] 2 FLR 968](#).

Re P-B (Placement Order) [\[2006\] EWCA Civ 1016](#).

In the Matter of B 2002/124.

JS and BS [\[2005\] JRC 108](#).

TS and Others [\[2005\] JRC 178](#).

Re W (1971) 2 AER 49.

Re L (1962) 106 Sol Jul 611.

The Deputy Bailiff

- 1 This is an application by the Minister for Health and Social Services (“the Minister”) in relation to the T children for full care orders under Article 24(2) of the Children (Jersey) Law 2002 (“the 2002 Law”) and freeing orders under the Adoption (Jersey) Law 1961 (“the 1961 Law”). There are three children aged eight, seven and four from the union of the mother and her deceased partner. The eldest child has learning difficulties and the second child suffers from mild cerebral palsy. The fourth child is nearly two and is the issue of a later relationship, which has since terminated. The mother has subsequently commenced a new relationship, which continues, and from which union there has been a further child who is not the subject of any application.
- 2 As is so often the case in applications such as this, the personal history of the mother has been touched by tragedy from an early age, her mother and grandparents having been killed in a road traffic accident when she was only four years old. She left the adoptive family home at the age of 16, and it appears that the extent of the familial support for her is now very limited. The relationship which she subsequently formed with the father of her eldest three children was marred by alcohol misuse and domestic violence, and indeed the father of those three children took his own life in June 2006.
- 3 From that point, matters deteriorated even further. The mother embarked on a couple of unsuccessful relationships, and in the course of one of them was introduced to heroin. The Children's Service had become aware of the family in June 2006 following the suicide of the father, and initially the mother had declined the offer of support. Thereafter the mother

commenced the use of heroin, and after a number of difficulties, she contacted the Children's Service on 2nd November, 2006, to advise that she could not meet the needs of her children. Due to her inability to do so, and to the fact that she had no additional support, the children were received into voluntary foster care. Between that time and 17th June, 2008, when the children were the subject of an interim care order, the day to day care of the children was sometimes with the mother, and sometimes, by agreement, with temporary foster carers. During some of the time when the children were with the mother, she was living in an abusive second relationship during which the Minister asserts that the children have also sustained emotional damage.

- 4 In April 2008, the three elder children were taken into Brig-Y-Don. In June 2009, the three older children moved out of Brig-Y-Don, the two boys to one pair of foster carers, and the eldest girl to different foster carers. Quite recently the boys were separated to different foster carers. The youngest child had been placed in voluntary foster care in February 2008, and this was continued when the interim care order was made.
- 5 The Minister's application for a full Care Order is based on allegations of possible physical abuse, neglect during pregnancy, neglect of physical well-being, emotionally abusive parenting and emotional harm through witnessing domestic violence.
- 6 The Minister's application is supported by the Guardian for the children. The mother, who has sole parental responsibility for each of the four children, neither consents to the application for a full Care Order, nor opposes it, but rests on the wisdom of the Court.
- 7 In those circumstances the first issue which has arisen is the extent to which it was necessary for the Court to engage in a detailed examination of the evidence.
- 8 The Minister contends that given that the Minister and the Guardian consider the threshold test in Article 24 of the 2002 Law is met, and the mother rests on the wisdom of the Court, the Court's duty to investigate the question as to whether or not a full care order should be made is curtailed. Reliance is placed on *Devon CC -v- S* [\[1992\] 2 FLR 244](#) and in particular on the judgment of Thorpe J (as he then was) where he said:-

“First, and foremost, whilst undoubtedly there is an overriding duty in the Court to investigate the proposals advanced by the parties, even when those proposals are fully agreed, the profundity of that investigation must reflect the reality that there is consensus amongst the parties to the litigation, particularly when the parties include a public authority with statutory duties and a Guardian ad litem on behalf of the child”.

The Minister also contended that where in effect a parent has conceded sufficiently to satisfy the threshold criteria and the order sought, it may not be necessary to proceed with a long trial, and in that respect reliance was placed on *Re B* (agreed findings of fact) [\[1998\] 2 FLR 968](#).

- 9 In the Court's view, neither of those two cases would justify a departure from the rule that sufficient evidence should be adduced before the Court before any order under Article 24 could be made. There are three reasons for this:-

Taking the applications together

- (i) Article 24 of the 2002 Law requires in the context of this case that the Court is satisfied that the child is suffering or is likely to suffer significant harm, attributable to the care given to the child or likely to be given if the order were not made, and falling short of the care which it would be reasonable to expect a parent to give the child. The requirement to be satisfied places a duty on the Court to make such enquiries as to the evidence as are appropriate to the case to reach that state of satisfaction;
- (ii) The principle that no order should be made unless the Court is so satisfied reinforces this view; and,
- (iii) The fact that the mother, who in this case is the only person with parental responsibility, does not consent to any order being made is conclusive of the need for the Minister to prove her case.

- 10 It is clear that the Minister had two separate applications, one for a Care Order and the other for a Freeing Order. It was submitted that the Court should determine the Care Order application first and then go on to consider the freeing application.
- 11 The Court decided not to approach the matter in this way. It was clear that the care plan for the children envisaged that they would be freed for adoption and given the ages of the two older children, the Court resolved that, having heard the evidence in relation to the application for a full Care Order, it would go on to receive the freeing application so that the whole issue could be determined in the round. It was noted that an option for the children was the continuation of the interim order, encouraging greater contact with the mother in the hope that the situation would improve sufficiently that they might be returned to her, and this option had to be balanced against the other options which included making both the Care Order and the Freeing Order which the Minister requested.
- 12 Support for this approach can be found in the decision of the Court of Appeal for England and Wales in the case of *Re P-B (Placement Order)* [\[2006\] EWCA Civ 1016](#). As in that case, there was no disadvantage to the mother in proceeding in that way here, not least because it was plain to her before this hearing that support for her from the Children's Service had evaporated and they were now seeking legal authority to separate her from her children permanently.

The evidence for the Full Care Order

13 As indicated above, the Minister's application was based on allegations of physical abuse, neglect during pregnancy, neglect of physical well being, emotionally abusive parenting and emotional harm through witnessing domestic violence committed towards the mother by one or more partners. The Court thinks it is desirable to deal with these allegations in a little detail in the hope that this may be of some guidance to the Children's Service in the future.

14 Physical abuse allegations:—there were three such allegations, two of which were not contested by the mother:-

(i) In January 2007 the mother admitted to biting her third child, then aged 2, on the arm. She said this was done to teach that child not to bite other children, and that she had done it on the advice of a previous health visitor. As this was deemed by the Children's Service to be unlawful chastisement, the mother was subsequently interviewed by the Police. No further action was taken.

(ii) In February 2007 the mother admitted to losing her temper and smacking the eldest child twice as she had refused to get dressed. It is not known where the smacks were delivered.

(iii) In January 2008, the Children's Service received a telephone call from a person who disclosed his or her identity but wished to remain anonymous, to the effect that the mother had, the previous day, struck her second child across the back of the head, causing the child to fall to the ground. The child was then picked up by the scruff of the neck. The mother denied this when challenged at the time. There was no evidence of any injury to the child and the school had no concerns that anything untoward had taken place.

15 The Court considers that these allegations of physical abuse would, on their own, be clearly and plainly quite insufficient as a basis for a care order, and even when viewed with the other evidence, carry very little weight indeed. Even if satisfied on all these allegations, and it is hard to see how one could be satisfied on the balance of probabilities on the third allegation, these do not amount, in the Court's view, to “**significant harm**” for the purposes of Article 24 of the 2002 Law.

16 Neglect during pregnancy:-in relation to her three older children, it appears that the mother smoked 30–40 cigarettes a day during her pregnancy, and also took cannabis regularly. In relation to the fourth child, she was also at that time using heroin, and was very underweight. It is apparent that the mother as a result was giving insufficient nutrients to her baby.

17 The allegations of neglect of physical well being fell into two categories:-

(i) Perhaps as a consequence of drug abuse, the mother found herself short of money,

and what money she had, she spent on some occasions on drugs for herself and her partner rather than on food for the children;

(ii) The mother is alleged on occasions to have failed to provide the children with clean underwear, allowed the two older children to sleep in their clothes and to go without a bath for a week at a time.

18 The Court views these allegations of neglect, which were for the most part not contested, to be more significant but again would not take them as sufficient, without more, to justify the making of a care order. It seems to the Court that this is classic territory for the Children's Service to work with the mother, as it appears may have been the case here, to enable the mother to learn and/or develop ordinary parenting skills.

19 Emotionally abusive parenting causing significant harm, the allegations here fall into four categories:-

(i) An inability generally, but illustrated by a number of examples, to put the needs of the children above her own needs particularly in relation to her choice of partner and to substance abuse;

(ii) A lack of protection of the children from witnessing incidents of domestic violence perpetrated upon her by a number of her partners over the years;

(iii) An exposure of the children to witnessing the abuse of drugs and alcohol in the home, and to unsuitable adults calling there who made it an unsafe environment;

(iv) An inability in relation to her second child to provide that child with the support and care necessary to overcome bed wetting.

20 Ms McNevin, the Children's Service representative, gave evidence to the Court that the children were leading what she called a roller coaster of a life. Instead of their home being a safe haven, they would never know whether the mother they left in the morning would be the same mother they came back to at night. At one point she could meet all their needs; at others she would be distracted, incapable, thinking only of her own needs.

21 The Court also heard from Dr Laura Posner, a clinical psychologist, who has had professional dealings with both the mother and these children since February 2007. The Court was impressed with her evidence. In summary, it was that the three older children have suffered significant emotional harm as substantial proportions of their childhood have been characterised by uncertainty, anxiety, hope and then disappointment. As a result, they have a poor sense of self worth and are inclined not to see adults as a source of support and strength. They are all anxious and need support.

22 Given the chronology which follows, that evidence is perhaps unsurprising. On 2nd

November, 2006, the mother contacted the Children's Service to say she could not meet the needs of her (then) three children, and they were taken into voluntary foster care, where they remained until 4th December. They returned them to the mother but contact with the Children's Service showed that in January 2007, the mother was unable to cope with the children, especially at weekends, and weekend respite care was subsequently arranged. A two week holiday for the children in France in April with respite carers was also arranged. In August 2007, the weekend respite was due to stop but the mother advised the Children's Service she wanted the children to go away for a bit as she was not coping. They were taken into voluntary foster care until 5th September, 2007. Thereafter they were in occasional respite care but otherwise in the care of the mother until February 2008. It is clear that at this time the mother was struggling with heroin abuse and with her relationship with her then partner, the father of her fourth child.

- 23 On 10th February, 2008, the mother again called the Children's Service out of hours Duty Officer asking that the children (now four of them) be taken into care, as she could not cope. They were all taken into voluntary care until 17th June, 2008, when an interim care order was made by this Court.
- 24 During most of the time the children have been in voluntary or statutory care, the mother has had regular contact with the children. She clearly loves them and the experts agree that they love her. The extent of the mother's love for her children was illustrated by her presence in Court for nearly all of the two and a half days of the hearing, which must have been extraordinarily difficult for her. It was clear to the Court that, whatever other problems there might be, she had no intention of abandoning them.
- 25 The evidence of Dr Posner was that the three older children were in crisis and urgently needed a sense of safety and of belonging. They needed, in her view, an anxiety free life in which they could start to recover from the stress they have experienced. That stress has been exacerbated by having to endure, as she put it, a ricochet between the family home and other carers between November 2006 and February 2008. While there was some evidence that the mother was beginning in the last six months to take better care of herself, she thought that if the older children were to return home, their needs would be too overwhelming for their mother to address. As to the youngest of the four children subject to this application, that child has received consistent sensitive care since being taken into the care of foster parents at the age of 10 weeks. It was urgent that this child should have a permanent family; and to return this child alone to the mother would be perceived as a great injustice by the older three children.
- 26 The Court also heard from the guardian of the four children, Ms Tracey Goode. Her expert evidence to the Court was consistent with that of the Children's Service and Dr Posner. She thought, as did Dr Posner, that it was unfortunate that there have been such delays in finding the right solutions to serve the children's future.

Decision on Care Order

- 27 The Court has been very troubled by this case, but has accepted the view of three experts that the balance of risk makes it appropriate that an order be made which provides a basis for certainty and consistency in the lives of these children. The Court is satisfied that the threshold criteria of Article 24(2) of the 2002 Law are met as a consequence of the matters set out in paragraphs 19–23 above. In considering the application, the Court has, as it is charged to do, had consideration to the welfare check list contained in Article 2 of the 2002 Law.
- 28 We have, of course, been concerned at removing the children from their mother, particularly in the light of their evident love for one another; but in the bringing up of children and providing them with a sound base for the rest of their lives, parental love may not be enough. In this case, we are clear from the evidence we have heard that it is not enough. For three full years these children have had to live with uncertainty and insecurity. That is too long. We recognise how difficult it is for those involved with children's care services, who have a natural desire to provide support to a birth parent who is struggling for one reason or another, but the price of delay has sometimes to be paid for by the child or children, as seems to have been the position here.
- 29 In the circumstances the Court has had no hesitation in granting the Minister's application for a full Care Order in respect of all four children.

The Freeing Application

- 30 The Minister made an application under Article 12 of the 1961 Law to free the children for adoption. This was opposed by the mother but supported by the Guardian. In the case of the three older children, the father having died, the mother had sole parental responsibility. In the case of the youngest child, the father has, through his advocate, indicated that he does not wish to be joined to the proceedings as he does not feel physically or emotionally able to deal with a relationship with his child at this time in his life. He trusts the Court to do what is best for that child's future welfare.
- 31 Evidence was given by Ms McNevin, Dr Posner and the Guardian. The mother did not give oral evidence, but the Court had before it the various witness statements which she had made.
- 32 The three experts were all of the view that the children should be freed for adoption. This was consistent with recommendations of best practice made by the British Association for Adoption and Fostering in respect of children up to the age of nine. By contrast, if there is long term fostering, the child cannot move to a state of permanency with its parent or parents, and there would be an absence of the stability which these children particularly need.
- 33 Ms McNevin told us that there were potentially strong matches for each of the children now

and that it was unlikely the position would be any better, and it might well be worse in twelve months' time. There has been an expectation that as each child had different needs, they would be placed with different adoptive parents. However, more recently the two youngest children were being considered for placement as a pair. It was too early to tell at this stage but this would have the advantage of a stronger long term sibling relationship than would otherwise be the case.

34 Of the seven potential sets of adoptive parents, only one was a potentially strong match for the eldest child. If this did not work out over the coming months, for whatever reason, the Children's Service would have to look out for other potential adoptive parents. She thought a decision for all the children might be taken by January or February 2010.

35 In opposing the application for a freeing order, Advocate Haines, on behalf of the mother, said there were too many unresolved issues, namely:-

(i) In April 2008, the three older children had been placed in Brig-Y-Don but now it was proposed to separate them which would damage important long term sibling relationships;

(ii) Dr Posner had pointed to potential damage being done to the youngest child if removed from the present foster carers, but now it was thought that there might be an advantage if the two youngest were placed together, and the present carers or their extended family would only look after one child;

(iii) It was unclear whether the latest care plan had developed taking Dr Posner's views into account;

(iv) There was a lack of clarity around the proposals for ongoing contact with the mother;

(v) The proposals for ongoing sibling contact, on a maximum of twice a year basis, were insufficient.

36 He also submitted that insufficient weight had been given to the wishes of the children, who clearly loved their mother.

37 The Court has paid careful regard to these submissions but, whatever force there is in them, the balance comes down in favour of making a freeing order in the hope that these children may be placed soon in an adoptive home where they can find the security and stability they need as they grow up. The Court accepted the evidence that children even as young as the older three children under consideration here can understand the difference between an adoptive and a foster carer and that the former provides a long term consistency which the latter does not.

- 38 We recognise that adoption remains an uncertain process until the matching procedures has been successfully accomplished. That uncertainty has its implications for the question of contact which is considered below. However, the administration of the adoption process is not a matter for the Court at this stage.
- 39 In the circumstances, the Court is of the view that freeing these children for adoption is in the best interests of each child. We have considered those interests separately, having regard to their different needs and circumstances, as disclosed in the evidence, although invariably we have also had to consider what the effect would be on one or more of the children if the freeing order were to be made with respect to some but not all of the children.
- 40 Having decided that adoption would be in the best interests of each child, we are then bound to consider whether the mother is withholding her agreement unreasonably for the purposes of Article 13(2)(b) of the 1961 Law, see inter alia *In the Matter of B 2002/124*, *In the Matter of JS and BS* [2005] JRC 108 and *In the Matter of TS and Others* [2005] JRC 178. The Royal Court has consistently followed the line of authority in England and Wales, a convenient summary of which is in *Re W* (1971) 2 AER 49, a decision of the House of Lords.
- 41 In that case the House of Lords, while indicating that the welfare of the child is not the sole consideration albeit that it is a fact of great importance, approved a passage from the judgment of Lord Denning in *Re L* (1962) 106 Sol Jul 611 where he said:-
- “In considering the matter I quite agree that: (1) the question whether she is unreasonably withholding her consent is to be judged at the date of the hearing; and (2) the welfare of the child is not the sole consideration; and (3) the one question is whether she is unreasonably withholding her consent. But I must say that in considering whether she is reasonable or unreasonable we must take into account the welfare of the child. A reasonable mother surely gives great weight to what is better for the child. Her anguish of mind is quite understandable; but still it may be unreasonable for her to withhold consent. We must look and see whether it is reasonable or unreasonable according to what a reasonable woman in her place would do in all the circumstances of the case”.***
- 42 Once the Court has decided that it is in the best interests of a child that he or she be freed for adoption, it is hard to see that there is much room for any finding other than that the parent(s) is/are being unreasonable in resisting that course. The Law clearly requires that the test is an objective one, which we have applied. Notwithstanding that the mother in this case clearly loves her children and suffers anguish at the thought of losing them; notwithstanding that in this context we do not blame the mother for any failings she may have and that we recognise she is far from indifferent to them; we find that she is objectively unreasonable in withholding consent to what is in their best interests as for the purposes of Article 13(2).

- 43 There was some clear water between the experts on two matters, which we mention briefly. The first is whether any adoption should be an open one, where the child continues to have contact with the birth family, or a closed one where the adoption team may allow letterbox contact and/or a passage of information from time to time to the birth parent. The Children's Service would expect to have some input although a lot will depend on the attitude of the adoptive parents, whose decision it would ultimately be.
- 44 Dr Posner's view on this was that one could not plan further contact in absolute terms because much would depend not only on the adoptive parents but also on the mother's ability to accept this decision.
- 45 The Guardian's view was that an open adoption was preferable. She went on to say that if that were not possible, the Children's Service might need to consider other putative adopters. Contact in this Island would be almost inevitable. The children would come across both each other, indeed they currently attend the same school, and their mother, and furthermore the older children would certainly not forget her. She would often be in their minds and they will want to know that she is well and doing alright.
- 46 Resolution of these issues is for the Children's and Adoption Services. The Court however considered there was much to be said for the comments of Dr Posner and the Guardian and hopes that these views will be taken into account. There is a consequent impact on the contact issues as set out below.
- 47 The second matter concerned the possibility that the youngest child might have been adopted by a daughter of the current foster carers. Both Dr Posner and the Guardian said it was regrettable that the time had not been taken to examine this possibility in greater detail. Again, this is a matter for the Children's and Adoption Services, but the possibility certainly has a superficial attraction on the grounds of continuity. The Court hopes that the Children's Service will investigate this further, though without incurring any inappropriate delays.
- 48 Accordingly we make the Freeing Order the Minister requests in respect of all four children.

Contact

- 49 Advocate Haines, for the mother, requested us to make an Order for contact for her with the children. This application raised first the question of what its statutory basis might be. It was submitted by Advocate Hollywood, for the Minister, that although the Court had considered a contact application under Article 27 of the 2002 Law in the matter of *TS and Others* (supra), this was not in fact the correct basis in law for such an application and that it ought to be considered under Article 10 of that Law. She submitted that it should not have been made under Article 27 for these reasons:-

(i) That Article relates to a child in care, and once the freeing order has been made,

the previous care order is extinguished.

(ii) Article 27 contains a presumption of reasonable contact between parent and children because, while the children are in care, there remains at least the possibility of a reunion with the parents. This clearly does not apply once the freeing order has been made.

(iii) The purpose of a freeing order is to place the children with a new family, which is inconsistent with a contact order for the birth family.

50 Advocate Haines did not contest that approach, nor did the Guardian. For that reason, we prefer not to reach any finding on the issue today, not least because it is clearly possible to found a contact application upon Article 10.

51 The Court has resolved that it would not be appropriate to make any contact order today. However, we gave leave to the mother under Article 10(6) to bring the application and we take this opportunity of confirming that she has liberty to apply. In that context we would like to say this.

52 The care plan proposals showed an early decrease in the contact between mother and children. Whereas that contact has been weekly, the proposal was for contact on November 12th, November 26th, December 17th, (the Christmas contact) with final contact on January 7th.

53 While we make no order today, we indicated on 11th November that we did not expect any substantial reduction in contact before the matching process was complete. It appears to the Court that there is potentially too much uncertainty about the timetable for the adoption process at this stage for contact to be reduced. We recognise that if the matching process is successful, then there is a need to look at a reduction of contact to enable the child or children to bed down with the new family and the children should not feel any conflict in committing to that. On the other hand, if the placement fails, they need to know that someone, their mother, loves them.

54 It is clear that the relations between the mother and the Children's Service have understandably become strained and we very much hope that, in the interests of the children, they will be able to work closely together in finding the best solution to what will be a difficult exercise in making the change if the adoption placement is to be successful. We noted Dr Posner's offer to be involved in this, which we thought would be helpful. We think that any diminution in contact must be matched against the need to be flexible depending upon how circumstances develop. This will include the question as to whether an open adoption is possible for some or all of these children.