

**T**

<b>Jurisdiction:</b>	Jersey
<b>Judge:</b>	Sir Philip Bailhache, Jurats Morgan, Olsen
<b>Judgment Date:</b>	08 July 2011
<b>Neutral Citation:</b>	[2011] JRC 133
<b>Reported In:</b>	[2011] JRC 133
<b>Court:</b>	Royal Court
<b>Date:</b>	08 July 2011

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Before:

Sir Philip Bailhache, **Kt., Commissioner, and** Jurats Morgan **and** Olsen.In The Matter Of T  
And In The Matter Of The Children (Jersey) Law 2002**Advocate** D. C. Robinson **for the Minister.****Advocate** V. Myerson **for the Guardian.****Advocate** C. L. Nicolle **for the Mother.**

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**Authorities**

Mental Health (Jersey) Law 1969.

Children (Jersey) Law 2002.

Children Rules 2005.

*In the matter of T* [\[2010\] JRC 126](#).

**THE COMMISSIONER:**

- 1 This case has had a chequered history but it is unnecessary, given the broad agreement between the parties, to do more than summarise it very briefly. The child, to whom we shall refer as T, is now aged 10 and is the daughter of a mother who suffers from Bipolar Affective Disorder. This disorder has wrought havoc to the early life of T who has been in and out of foster care on too many occasions. Eventually an application was made for an interim care order which was granted on 19<sup>th</sup> September, 2008. On 27<sup>th</sup> August, 2009, T was placed with Mr and Mrs A, to whom we shall refer as “the foster carers”. During 2010 it appeared to the experts that the mother's problems had been sufficiently brought under control to return T to her care. In August 2010, she returned to live with her mother and on 13<sup>th</sup> October, 2010, the Court granted leave to the Minister to withdraw her application for a full care order and the proceedings drew to a close.
- 2 Sadly the mother's recovery was short-lived; she decided not to take her prescribed medication with the result that, over the weekend of 13<sup>th</sup> and 14<sup>th</sup> November, she became severely psychotic. She destroyed many of T's treasured belongings and removed her mobile telephone to prevent T from making contact with any of those who had been intended to constitute a safety net. The mother had been singing loudly until the early hours of the morning and behaving in a bizarre manner. The mother told staff at her place of employment on Monday 15<sup>th</sup> November that she had been practising witchcraft over the weekend and cleansing her child of unnecessary sins. There is no doubt that for T this short period was a very frightening and, indeed, catastrophic experience. She was immediately placed once more with her foster carers and the mother was made the subject of an order under Article 7 of the Mental Health (Jersey) Law 1969 and admitted to St Saviour's Hospital. She remained a detained patient until early January 2011.
- 3 In December 2010 supervised contact took place with the mother who had been granted home leave. The contact was supervised because T had said that she did not want to be left alone with her as she did not feel safe. On 18<sup>th</sup> March, 2011, the Minister applied for and was granted a fresh interim care order. A Guardian, Miss Leonora Green, was appointed under Article 75(1)(b) of the Children (Jersey) Law 2002 to which we shall refer as “the Law” and various orders were made for reports from the experts to be brought up to date. In the meantime weekly supervised contact between T and her mother was

continuing. The Court has seen the notes of these contact sessions recorded by Miss Tracey Najib, the supervising social worker, and we think that they make uncomfortable and indeed distressing reading. It is plain, with the benefit of hindsight, that the sessions were of little or of no benefit to T.

- 4 On 13<sup>th</sup> May, 2011, the Guardian applied to the Court for a reduction in the frequency of contact. This was initially opposed by the Minister but an order was eventually made by consent, reducing the frequency to once every six weeks, or so. The Court also made orders with a view to bringing the matter on for an earlier final hearing than had been envisaged. We are grateful for the efforts made by all concerned to enable that early hearing to take place.
- 5 Yesterday it was agreed by all counsel that the threshold criteria for making an order under Article 10 had been met. It is nonetheless incumbent on the Court to make its own finding. We record that T has suffered emotional harm from the parenting that she has received over many years. That emotional harm has resulted from her mother's illness, which has involved repeated instances of bizarre and frightening behaviour, admissions to hospital, and the consequent inability to give T the stability and security that she craves and needs. The relationship between T and her mother has now collapsed to the extent that T has made it very clear that she no longer wishes to see her. The opinion of Dr Williams, Consultant Psychologist, is that T has been emotionally damaged by her experiences and that she ought not to be returned to the care of her mother. We agree. There are compelling reasons why T should be removed permanently from the primary care of her mother.
- 6 All the parties also agree that the appropriate order for the Court to make is a residence order in favour of the foster carers. An adoption order has been considered but the foster carers, with whom T now has a close and warm relationship, do not wish to adopt T for reasons which include the effect upon their own daughter's rights of succession. Their stance seems to us entirely understandable. It is perhaps regrettable that the Court is not able to make what in England would be called a "special guardianship order" which confers rather more extensive powers upon the special guardian than are possessed by persons in whose favour a residence order has been made. Nonetheless we think that it is possible by the means of conditions attached to the residence order to achieve something close to the same end.
- 7 We have considered the "no order" principle and our overriding duty to do what is in the best interests of the child. We have also taken into account the welfare check list. We have no doubt that T's best interests are served by the making of a residence order in favour of the foster carers. T asked through her Guardian to see the members of the Court in private; she is ten and we were satisfied that she was of sufficient maturity to express her feelings to the Court and we agreed to that request. We saw T in chambers with her foster carers. It was clear that T enjoyed a warm and close relationship with them and that fact is also evidenced by all the reports before us. T told us that she did not want to return to live with her mother and that she wanted to remain with her foster carers until she had grown up. We

have taken those views into account as well as all the submissions of counsel and the advice of the experts. We will, accordingly, with the agreement of all the parties, make a residence order in favour of the foster carers who may be taken to have applied for such an order subject to conditions to which we will come in a moment.

- 8 We turn to the question of other necessary orders to protect the interests of T and to ensure her future safety which has in recent months particularly, been severely compromised. We do not criticise any individual but we think it is necessary to state that there has been, over many years, a collective failure in the Health and Social Services Department to give proper weight to the need to keep T safe. Too much weight has been attributed to the desire to maintain the relationship between T and her mother. That desire was understandable, particularly because the mother was desperate to have T returned to her care and she was and is, her illness apart, a loving parent. Nevertheless, the concentration on the interests of the mother rather than the interests of T was in our judgment, mistaken. The question of contact between T and her mother in the future has caused this Court, and all those involved in this case, considerable heartache and anxiety. We are not going to make any order in relation to contact but we think that it is nonetheless desirable, in order to help the foster carers, to express our views on the matter which are of course informed by the situation as it currently exists. We acknowledge that the situation may change and the foster carers, guided always by the fostering and adoption team in the Health and Social Services Department, may in the future consider that their approach should be different. For the present, however, the imperative is to ensure T's safety and moreover, to make T feel that she is safe. T's faith and trust in the adult community has been adversely affected and needs to be restored. She is adamant at present that she does not wish to see her mother. She is angry with her mother but she is also embarrassed and frightened by her mother's behaviour when her mother's mental illness is not under control. We think, and we believe that this is also the view of Dr Williams, that there should be a reasonably substantial breathing space during which no attempt at contact is made. During that time her relationship with her foster carers can be strengthened and deepened. Such a breathing space might last until Christmas 2011. Even then however, we do not think that it is desirable to be too prescriptive about the possible restoration of contact between T and her mother. Much will depend on the circumstances at that time. We are content to leave this to the good sense and judgement of the foster carers, guided, as we have said, by Miss Sarah Michael, whose evidence greatly impressed us, and by others in the fostering and adoption team. We should not be taken to be endorsing that part of the care plan which deals with contact. Miss Stark emphasised that the intention was to ensure flexibility but we think that that flexibility does not emerge from that part of the care plan.
- 9 Two things seem to us to be pre-requisites before contact can be restored. The first is that T's mother is able to demonstrate that she has fully accepted that her illness means that she cannot act as a parent for T. She will always be T's mother but her illness prevents her from being her parent. Her relationship with T must in future be different; there can be no whispered invitations in corners of the room to come back and live with her. That will be very difficult for the mother but not impossible and we hope that, with help, she will be able to show that she is no longer a threat to T.

10 The second pre-requisite is that T feels comfortable and safe in seeing her mother again. We agree with Dr Williams that this can only happen at T's own pace; it may take a long time; it may not happen until she is much older. Nothing, however, must be allowed to threaten her safety and her sense of wellbeing in the home of her foster carers.

11 To that end therefore we will make the following orders:-

(i) We make a residence order pursuant to Article 10 of the Law in favour of the foster carers. As recommended by the Guardian, Miss Green, we make the residence order, subject to three conditions:-

That the foster carers shall apply for T to transfer to secondary school in September 2012;

(a) That T's attendance at church will be at the discretion of the foster carers;

(b) That prior to any direct contact taking place, the foster carers shall obtain confirmation from a member of the mother's mental health team, that the mother is sufficiently well for such contact to proceed.

We envisage that the fostering and adoption team may also be able to inform the foster carers from their own enquiries that the first pre-requisite to the restoration of contact which we have already mentioned, has also been satisfied.

We have considered carefully the suggestions that a supervision order or a family assistance order should be made but we are not persuaded that either order would assist in the circumstances. We wish to make it clear that the foster carers now hold the responsibility for making all important decisions relating to the upbringing of T. Counsel for the mother told us that the mother trusts the foster carers and, subject to everything that we have already said as to T's safety and as to not forcing T into contact before she is ready for it, we will leave the question of contact to the foster carers. We express the hope that the fostering and adoption team, will remain closely involved with the foster carers for so long as maybe necessary and that any necessary assistance will also be forthcoming from the Child and Adult Mental Health Services.

(ii) We will make an order under Article 66(8) of the Law prohibiting the mother from bringing any application under the Children (Jersey) Law 2002 in relation to T without the leave of a judge of the Royal Court. We have been referred to the judgment of this Court *In the matter of T* [\[2010\] JRC 126](#) where the Deputy Bailiff considered authorities on comparable statutory provisions in England. Counsel for the Guardian referred us to the same authorities. We accept that orders of this kind should only rarely be made and that there is no history of making applications under the Law. Nonetheless we accept the view of the Guardian that this protection is necessary in this case. Too much emotional

damage has already been caused to T to contemplate the possibility that her equilibrium with the foster carers might be upset by the knowledge that her mother was inappropriately seeking some contact order or even a revocation of the residence order.

(iii) We make a disclosure order pursuant to Rule 25 of the Children Rules 2005 and grant leave for copies of the statements of Laura Stark and the reports of Julie Stacey, Leonora Green, Dr Harrison and Dr Williams to be disclosed to the foster carers; we also grant leave for a copy of the report of Dr Williams to be disclosed to Dr Posner, redacted in relation to any references to T's mother. We also direct that this judgment be made available to the foster carers and we recommend that it is the first document that they read.

- 12 Finally, we express our appreciation to T's mother for the cooperation that she has shown during this hearing in seeking to protect the best interests of her daughter T. It will have been a difficult time for her and the months ahead will probably be even more difficult. Nonetheless she has done what is in the best interests of her daughter. We also express our thanks to all those involved in what has been a very difficult case.