

# Minister for Health and Social Services v A (the mother)

<b>Jurisdiction:</b>	Jersey
<b>Judge:</b>	Bailiff
<b>Judgment Date:</b>	28 February 2019
<b>Neutral Citation:</b>	[2019] JRC 34
<b>Date:</b>	28 February 2019
<b>Court:</b>	Royal Court

**vLex Document Id:** VLEX-803704997

**Link:** <https://justis.vlex.com/vid/minister-for-health-and-803704997>

## Text

[2019] JRC 34

ROYAL COURT

(Samedi)

Before:

Sir William Bailhache, Bailiff, **and** Jurats Christensen **and** Dulake

In The Matter of Lucy (Care Proceedings)

And In The Matter of the Children (Jersey) Law 2002

Between

Minister for Health and Social Services

Applicant

and

A (the Mother)

First Respondent

B (the Father)

Second Respondent  
Lucy (the child, through her guardian)  
Third Respondent

**Advocate J. A. E. Kerley for the Minister.**

**Advocate N. S. H. Benest for the First Respondent.**

**Advocate M. J. Haines for the Second Respondent.**

**Advocate R. S. Tremoceiro for the Third Respondent.**

## **Authorities**

Children (Jersey) Law 2002.

Care proceedings — reasons for the Court's decision on 27th November, 2018

Bailiff

## **THE**

- 1 This case concerns the child who is aged 13. Our decisions were announced on 27<sup>th</sup> November, 2018, and this judgment contains our reasons.
- 2 On 16<sup>th</sup> November 2017, the Minister obtained an interim care order with a care plan for an off-island therapeutic residential placement for Lucy (not her real name). This had followed a sustained period of disturbance in young Lucy's life. She and her parents had relocated to Jersey from another Channel Island in April 2015, when they moved in to live with the maternal grandparents, initially a temporary arrangement but subsequently one which took on a degree of permanence. Unsurprisingly, that disturbance was reflected in Lucy's behaviour and by April 2017 the maternal grandfather was seeking support and assistance from the Children's Service. It was thought by CAMHS in April 2017 that Lucy was not experiencing mental health problems but behavioural problems within the context of stress in the family. Her relationship with her mother was characterised by regular arguments, several of which were witnessed by members of staff at school, and she became disruptive in class. Her maternal grandfather considered that she was becoming out of control, increasingly agitated and violent towards her mother and at risk of causing herself or others serious harm. By contrast with her behaviour at home, it appeared that during her hospital stay Lucy presented quite differently – she was calmer and easier to contain, and settled well to sleep without any medication. This was reported in a letter from Dr Posner in September 2017.

- 3 In August that year there was a family holiday abroad. This was not successful, and on the parents' arrival back in Jersey, they separated and the mother commenced divorce proceedings with the mother and Lucy remaining at home with the mother's parents.

### Threshold

- 4 It was agreed between the parties that at the relevant date Lucy was at risk of suffering significant physical harm due to the restraint techniques used by the father and the maternal grandfather when Lucy's behaviour deteriorated. It was also agreed that she was at risk of physical and emotional harm due to the treatment of her by the maternal grandfather and the mother; that she was at risk of physical harm for incorrect use of medication; that she was at risk of emotional harm due to the repeated calls to the police and their attendance at the grandparents' home when her behaviour deteriorated. Furthermore it was agreed that at the relevant date she was at risk and continues to be at risk of emotional harm due to both parents involving her in the dispute over the breakdown of the marriage. At the relevant date it was also said that Lucy was at risk of harm due to her non-attendance at school – her school attendance at the time was 65%.
- 5 The question of physical harm seems to us to have been very clearly linked to the emotional tension in the household at that time. However, there is no doubt that the risk of emotional harm due to the parents involving her in the dispute over the breakdown of their marriage has continued and has been very real indeed. There is in our judgment no doubt that the parties were right to agree that the threshold criteria have been met, as do we.

### Disposal

- 6 Following the granting of the interim care order in November 2017, the child was placed in a therapeutic residential placement in the United Kingdom. This property is part of the New Reflexions care service, described as a response service which provides a therapeutic based placement to care for young people who are in crisis. In January 2018, Lucy was transferred from there to a more long-term placement also in the United Kingdom. These placements appear to have been reasonably successful, albeit there is no doubt that Lucy missed her parents, and particularly her mother during this period of her life. She demonstrated good social skills and engaged well with staff members, although there were occasions of physical aggression. It is clear from the social worker's report that Lucy was very aware indeed of the progress of these proceedings from discussions with her parents, particularly her father, and aware that Dr Gillett was carrying out psychological assessments, but indeed also aware of the state of the proceedings more generally. The impression we have is that that knowledge came principally from discussions between Lucy and her father.
- 7 In her witness statement prepared for the hearing in July 2018, the then social worker, described a visit she had made to see Lucy in her therapeutic placement in April 2018. She

described how Lucy had spoken about feeling as if her parents wanted to abandon her when she was at home, and she then said:-

*“Dad not my mum. Lucy spoke about when she was at home she would sometimes feel upset and scared when Dad was angry. She said that when her parents separated and she and her mum were living in the winter let her Dad would threaten to call the police on her if she ended her phone calls with him. Lucy spoke about being ‘frightened’ saying that when all the adults would start shouting and when Dad was missing. She said her Dad has told her loads of times he does not want her and she can go into care. This made her feel upset with him. She said that sometimes she feels different about contact with her mum and dad but she did not really expand on this. Lucy spoke about sharing with her therapist that she is feeling anxious about her mum or dad are starting to put her in the middle of them and wanting her to act like the adult. The worker asked if she could give her an example of what has been said or done to make her feel like this. She said that when no one is there (during contact) her Dad will say I want you to come and live with me. This was a clear report of how Lucy was reflecting on her past and her parent's behaviours towards her.”*

- 8 In July 2018 the father applied for a contact order, for monthly contact on a Saturday for a minimum of four hours and regular telephone contact. At one point he was also suggesting that he should have care of Lucy. The applications with which the Court was concerned in November 2018 were the Minister's application for a supervision order and an application by the father for monthly supervised direct contact with the child and weekly Skype / telephone contact. By this stage, there had been a reunification between the mother and Lucy. This had followed further advice from Dr Gillett, who had revised her opinion as to the minimum time scale within which such reunification might take place. We were informed at the hearing in November that it had been largely successful. The mother is emotionally warm and provides a good home, but she is not always strong with boundaries. We heard evidence from an agency social worker to whom this case had been allocated, who told us that Lucy had confirmed her mother was in charge. The social worker added that it would devastate this child to go back to the United Kingdom. She is aware that that is a possibility and is very anxious about that. The agency social worker agreed that it was important to identify how best Lucy's future in Jersey could be secured. In that context, the school counsellor is offering Lucy pastoral support, as is one of the support social workers at that school.
- 9 In the final written material put before us, the Minister contended that a supervision order, with the child remaining with her mother, would be the correct approach. The guardian suggested that a supervision order for 12 months with Lucy remaining in the care of her mother would be acceptable, although we might wish to consider a residence order in favour of the mother, with a contact order of some kind in favour of the father and an Article 66(8) order preventing the father making any further applications without the leave of the Court.

- 10 Before us, it became clear that, having heard the evidence, no one opposed the making of a supervision order in favour of the Minister and a residence order in favour of the mother and indeed, on behalf of the child, Advocate Tremoceiro supported this.
- 11 Having regard to the welfare test under Article 2 of the Children (Jersey) Law 2002, we considered the following.

### **Ascertainable wishes and feelings of the child**

- 12 It is clear that Lucy does not wish to return to the UK, and is anxious that she can stay in Jersey. There is little doubt that she loves her mother, although she is bewildered at the fact that her parents appear to have acquiesced in her being put into care and sent away from the Island. She is not willing to go into foster care in Jersey – not that it is available anyway.

### **Lucy's physical, emotional and educational needs**

- 13 There seems to be no doubt that Lucy's physical needs are being met by her mother; and also that schooling is available to her in the Island and the school is supportive. As to her emotional needs, the evidence from Dr Gillett and the other professionals suggest that it is in her emotional interests for the placement with her mother to work if possible.

### **Likely effect on the child of any change in her circumstances**

- 14 There have been a number of changes in Lucy's life so far, but no change would be envisaged by the making of the supervision order and a residence order in favour of the mother, reunification having taken place.

### **Child's age, sex and background**

- 15 These are all consistent with a residence order in favour of the mother.

### **Any harm the child has suffered**

- 16 We will come to the question of harm in more detail when reviewing the contact application of the father but it is enough to note that it was sufficiently real that in 2017 a therapeutic placement in the UK was necessary. We are informed that in so far as the risk of harm is concerned, the mother has already undertaken some work in starting to address her own issues, which has had a positive impact on her emotional and mental health, and that can only be to Lucy's benefit. The main risk of further emotional harm does however seem to lie in Lucy's exposure to the parents' disputes.

## How capable are the parents of meeting the child's needs?

- 17 The guardian's evidence before us is that Lucy loves both her parents and wants to have a relationship with them. She has been clear that she wants to live with her mother and have contact with her father. At her age, the child's wishes are likely to be material in assessing the capability of the mother to meet them. We are concerned at the possibility of a placement breakdown, in which case there seems to be no plan B other than a return of Lucy to the UK, which would not be at all a desirable outcome, but, conscious that this would appear to be the only alternative, it seems to us that there is a probability that both Lucy and the mother will work together to improve the mother's capabilities.
- 18 Dr Gillett said that she was strongly of the view that an on-island plan B was an essential component of a care plan for Lucy. She recommended the pairing of Lucy with foster carers on-island who can develop a long meaningful relationship as alternative adults in her life, people to whom she can turn to in times of difficulty or tension. This might be in the form of telephone calls, visits, outings or occasional overnight stays, an equivalent of long-term friendship that one might expect to see with extended family members. Those shadow carers might then be available as a plan B should that be required at some future point, whether for a few nights or on a longer term basis. The intention is that such shadow foster parents would be able to give both Lucy and the mother reassurance that there are plans in place and there would be some ongoing supportive relationships.
- 19 We are conscious that there is difficulty in finding sufficient foster parents in the Island at present and we are aware that the Minister is endeavouring to overcome that problem. Dr Gillett's recommendation probably therefore will not be easy to accommodate in the current foster parent climate, but it may be that there are those who would be prepared to offer the kind of friendship/guidance and/or respite relief which would be to both Lucy's advantage and the advantage of the mother. In principle, given that all agree that a return to the United Kingdom would be a bad option for the Court to follow at some future date, Dr Gillett's suggestion seems to us to be a sensible one for the Minister to pursue.

## The range of powers

- 20 Neither the Minister nor the guardian would support making no order, which it is thought might jeopardise the rehabilitation plan. A supervision order would be a possibility; an interim care order, continuing the status quo, would mean that the Minister would continue to share parental responsibility although it is not obvious he needs it, and also that the proceedings would not have come to an end. Neither the Minister nor the guardian contend for this option. As to the making of a final care order, this would ensure the Minister shared parental responsibility with both parents, but, as the guardian put it, making such an order would subject Lucy to the looked after child procedures, which means that she would not have the security of a family of her own. In the guardian's view, that would affect her sense of emotional well-being as she grows up.

- 21 The Court accepts that the primary efforts at the moment are focussed on the rehabilitation plan. All other options are so firmly second best to a successful rehabilitation that the Court's orders should be designed as far as possible to be supportive of that objective. For these reasons, we consider that making a supervision order for 12 months on conditions set out in the Act of Court coupled with a residence order in favour of the mother, which provides some certainty to the mother and Lucy as to where Lucy is to live, and some support both to Lucy and her mother to help them get through this next period, is the best course. The purpose of such orders is to give Lucy the confidence that her mother will provide a home for her, and give the mother the confidence of knowing that she does not have to come back to court for further orders.

## Contact

- 22 In the father's position statement, he confirms that during Lucy's therapeutic placement in England he had consistent and ongoing direct and indirect contact with her. He indicated that he had travelled from a northerly part of the UK, where he is now living, fortnightly, to have direct contact with her. This direct contact continued until the end of July 2018 when it was reduced to monthly contact to take account of the rehabilitation plan. There was also weekly indirect contact with her until her return to Jersey on 29<sup>th</sup> October, 2018. On 19<sup>th</sup> November, the father issued a C2 form for a contact order. He sought monthly supervised direct contact and weekly Skype or telephone contact which he felt was in line with Lucy's wishes and in her best interests.
- 23 The Minister's final care plan proposed supervised direct contact between the father and Lucy three times a year for a maximum of four hours duration, and an additional four supervised Skype contacts per annum. The guardian in her report dated 13<sup>th</sup> November suggested that Lucy was not happy with the contact proposals and that the Minister should reconsider the care plan and the guardian's proposal in that connection was supervised direct contact on a monthly basis with supervised telephone contact on a fortnightly basis.
- 24 The Court had the advantage of a second addendum psychological report prepared by Dr Gillett. The general thrust of her advice was that Lucy was likely to seek additional contact with her father, particularly at times of distress or displeasure, for example when in dispute with her mother. Accordingly, Dr Gillett was of the view that contact arrangements with the father, whilst not without issues, should be set at a level that takes into account the risk of unauthorised contact and the consequences of things becoming hidden and clandestine. Dr Gillett went on to advise that the father should openly report any unauthorised contacts with Lucy, which would involve enhanced prospects of regularly monitoring the position. Dr Gillett was of the view that monthly supervised contact with the father was at an appropriate level and likely to be agreed by both father and daughter alike and provide a suitable and sustainable long-term arrangement.



- 25 As to indirect contact, whether by telephone or Skype, Dr Gillett thought this should have a regularity to it but in any event that there should be attempts made to find a consensus with Lucy. Dr Gillett thought that such contact on a fortnightly basis, on the clear understanding that this was a maximum, would be appropriate.
- 26 The Minister sought permission to put before us a telephone recording of Lucy's telephone conversation with her father on 20<sup>th</sup> November – Lucy herself had recorded it on her iPhone. On his client's behalf Advocate Haines said that the application to play the tape recording had come very late and the father was not present either to listen to it or to provide instructions or balance. As to the lateness of the application, that was inevitable given the fact that it had only recently taken place. As to the inability of the father to provide instructions and/or listen to the tape, that of course followed from his decision not to attend the hearing. He chose this outcome as we understand it on cost grounds because he was scheduled to come to Jersey for a contact session in December which coincided with his birthday. Advocate Haines then said that this was a private conversation between the father and the daughter and the father did not know he was being taped. He went on to say that Lucy herself had not consented to it being played. It was unfair to the father and to her and a breach of the father's rights to privacy. There had, he said, been many telephone conversations and he did not know whether there were more that might have been taped.
- 27 The agency social worker told us that at the LAC review on 22<sup>nd</sup> November, Lucy had been present. She told the meeting that she wanted people to understand how her father talked to her. Thereafter she left for supervised contact, and the meeting listened to the telephone recording in her absence with the independent reporting officer present.
- 28 The Court decided that it was in the best interests of the child that we should listen to the recording, which we did. On a couple of occasions during the course of the recording, Lucy videoed herself listening to the conversation and talking. On one of those occasions, her father's conversation left her close to if not in tears. He obviously considered that she was not accepting what he had to say to her about the financial arrangements between himself and the mother. He told her that he did not think he could be any influence in her life and it might be better for her if he just moved out of it, at which point she said she had had enough and she was going; to which his response was that he would not talk to her the following day as previously arranged.
- 29 This conversation took place between 11 and 11.30pm. As the agency social worker put it to us, Lucy was crying. How could she go to sleep after that call? This was a child who needed answers but the telephone conversation was devastating. At different points the father says he will take away the Christmas presents he has bought, or he won't come to see her, which reinforces all her insecure attachment issues. What should he have said? Something, no doubt, along the lines of "Lucy I love you but I cannot talk to you now, it really is time for you to go to bed – why don't you put me through to your mum?". Instead he discussed financial arrangements, and whether there were trusts for the benefit of the mother, and he made various comments about the mother wanting all his money.



Interspersed with this were statements that perhaps it was best that he did not see Lucy and when she was grown up she could see him if she wanted to.

- 30 More than anything else, the telephone recording shows that the father was in transmit mode. He did not listen to his daughter, but instead he talked and talked at her. We emphasise that he talked at her and did not talk to her. It was a devastating conversation and in our view a text book demonstration of how a parent ought not to behave.
- 31 In making these remarks, we are absolutely aware from what we have read that there is little doubt that the father loves Lucy in his way, and that she loves him. We do not doubt that the circumstances which have led to the breakup of the relationship between the mother and the father have had a devastating impact on him as well as upon her. We do not doubt that, living at considerable distance, he has found it difficult to contend with these proceedings in Jersey, and difficult to maintain a relationship with his daughter – nor do we doubt that he has tried to do so.
- 32 We also think that the father was right to say that Lucy has had too many adult conversations, particularly over the circumstances of the divorce and the conduct of the care proceedings. It is ironic that he was able to see that she has had too many adult conversations and then promptly went on to have another one with her.
- 33 Perhaps slightly reluctantly, so it seemed to us, both the social worker and guardian considered that Dr Gillett's recommendations in relation to contact with the father ought to be supported. We can understand why – the recording of the conversation between Lucy and her father shows that, given her feelings, he is an important person to her. His views count with her and we consider that we should respect that. In her best interests, he simply must learn to moderate what he talks to her about, to look forward rather than to look back and perhaps even sometimes to divert the conversation rather than allow it to go into territory which will simply cause more difficulty.
- 34 In the circumstances the Court considers that supervised contact is essential, and that there should be direct contact once monthly, and indirect contact once every two weeks. We take the view that it is important that both mother and father take reasonable steps to ensure that at least during the foreseeable future, indirect contact is strictly limited to that extent and that the father seeks to keep his conversations with Lucy at an age-appropriate level. If rehabilitation is to be successful, the mother must act as a parent, and the father must ensure he puts Lucy's interests first in all sessions with her, direct and indirect.
- 35 There was a suggestion that we should make an order under Article 66(8) of the Law inhibiting the father from bringing any application to court in relation to the residence order without leave during the next three years. We think it is appropriate to do so in order to cement Lucy's domestic arrangements. As to contact, our judgment is that the probability is that whatever order that we make at the moment is likely to change in the future in any

---

event, and it is contact which is most likely to be the subject of the next application. Hopefully the parties will be able to agree variations to the existing contact arrangements, but if for any reason they do not do so, Article 66 is not going to get into the father's way until further order. The order is limited to applications in relation to residence.

36 Order accordingly.