

Care order – approval of care plan and revised contact arrangements and final care order made.

[2017]JRC072

ROYAL COURT
(Family)

22 May 2017

Before : J. A. Clyde-Smith, Esq., Commissioner, and Jurats
Blampied and Grime

Between	The Minister for Health and Social Services	Applicant
And	A (the mother)	First Respondent
And	B (the father)	Second Respondent

IN THE MATTER OF MARIA (CARE ORDER)

AND IN THE MATTER OF THE CHILDREN (JERSEY) LAW 2002

Advocate P. F. Byrne for the Minister.

Advocate C. G. Hillier for the Mother.

Advocate A. T. H. English for the Father.

JUDGMENT

THE COMMISSIONER:

1. On 20th October, 2016, the Court made a final care order, placing 13 month old Maria (this is not her real name) (“the child”) in the care of the Minister, on the basis of a care plan that she would live permanently with her paternal aunt, Ms C and her partner, Mr D, with a view to adoption by them.
2. The child is the second known child of the first respondent, A, (“the mother”). The mother’s first child was known to the Children’s Service prior to her birth and now lives with her maternal grandparents under a residence order, following a history of exposure to domestic violence. The child’s biological father is the second respondent, B, (“the father”). His paternity was confirmed

by DNA testing, but he is without parental responsibility having determined not to pursue an application for the same. At the time of the hearing, he was in custody as a result of breaching a harassment order in respect of the mother made for a period of ten years on 27th February, 2012. He has a teenage daughter who resides with her mother.

Background

3. Care proceedings were commenced shortly after the child's birth and before she had been discharged from the Maternity Hospital, due to concerns surrounding the extensive history of domestic violence between the mother and the father, which took place on occasion in the presence of the mother's first child. The mother and father had continued associating with each other resulting in the child's conception, despite the existence of a ten year harassment order. In addition, both the mother and the father had a long history of alcohol and drug misuse, which was a contributory factor in many of the domestic violence incidents. The mother had been prescribed Subutex during pregnancy, and although born healthy, the child was placed in a special care baby unit, as she developed a rapid heartbeat, irregular breathing and was described as "*jittery*", all of which could have been symptoms of her exposure to Subutex.
4. On 7th October, 2015, the Court considered the Minister's application for an interim care order for the removal of the child into foster care following her discharge from the Maternity Hospital. The Court heard how the mother claimed she had been abstinent of alcohol since the previous December, and the father for some 15 months. The Court had reservations about the claims that the couple were no longer in a relationship, but on the basis that the mother had been providing good enough care in the Maternity Hospital and her undertakings to the Court, including an undertaking to have no contact of any kind with the father and a residence requirement to stay at the Women's Refuge, it declined the Minister's application in favour of an interim supervision order.
5. A further application was made by the Minister for an interim care order on 13th October, 2015. The reason for the application was that the residency undertaking given at the previous hearing could not be complied with, as the Women's Refuge refused to take the mother, on the basis that she did not feel she needed a place of safety and had her own accommodation, separate to that of the father. The Court once more declined the Minister's application, retaining the interim supervision order with modified undertakings as to residency.
6. On 11th December, 2015, the Minister made an application to the Court for an emergency protection order, in the main due to an alleged assault by the father on the mother in her home while she was holding the child. His presence there was unexplained and the mother did not call

the police nor did she inform the Children's Service about the incident, despite the fact that Mr Jonathan Collins, the social worker, visited her on the following morning. It was unclear why the father was at the mother's home. The Bailiff declined the application, but adjourned further consideration of the proceedings pending an application for an interim care order.

7. On 17th December, 2015, the Court heard the Minister's application for an interim care order on the basis of, inter alia, continuing contact between the mother and the father, resumed alcohol use by the mother, the alleged assault referred to above, the presence of substance misusers in her home and the mother's failure to volunteer significant information. On this occasion, the Court granted the application and the child was removed into foster care. She was placed with her paternal aunt on 9th February, 2016, where she remained.
8. In spite of the existence of the harassment order, the mother and the father continued to associate with each other and from the evidence before the Court, it was clear that both had been complicit in this. For example, there were reports from the police of incidents between them on 6th May, 2016, 5th June, 2016, 10th June, 2016, and 7th July, 2016.
9. On an unannounced welfare visit made by Mr Collins and an assistant team manager to the mother on 7th July, 2016, undertaken because she had missed two consecutive contacts that week, citing illness, they could find no evidence of the mother at her property, but whilst outside, they found the refuse bin to her property was full of empty lager cans, estimated to be several dozen. The mother later claimed to Mr Collins that these belonged to her neighbour, who had had a barbecue, an explanation which the Court treated with some scepticism.
10. On 13th July, 2016, the Children's Service was informed that the mother was to be evicted from her property due to the number of police attendances in breach of her tenancy agreement.

Hair Strand Test

11. The hair strand tests ordered by the Court concluded that the mother had consumed chronically excessive levels of alcohol in the approximate time from July 2015 to January 2016, as well as testing positive for drugs, including diazepam and cannabis during the twelve months of 2015. This was contrary to the mother's evidence to the Court on 7th October, 2015, when she asserted that she had been abstinent from alcohol since December 2014. The father also tested positive for drugs, although a greater number and the alcohol consumption was similarly described as chronically excessive. The second test on the mother covering the period February to July 2016 showed a similar positive test for the drugs previously identified, but no longer suggested

chronically excessive levels of alcohol. The father's second test covering the period March 2016 to July 2016 continued to show a positive drug result but as with the mother, no longer suggested chronic excessive levels of alcohol.

Drugs and Alcohol Service

12. The Drug and Alcohol report in respect of the mother, dated 21st July, 2016, noted that she had completed several detoxifications but only managed brief spells of abstinence. The overall view was that she lacked the personal and social resources to overcome her addiction to substances within a community setting and the author was not convinced she would avail herself of a residential treatment program. The report on the father of the same date noted that despite his poor compliance with treatment, he had managed to achieve significant periods of abstinence and is more likely to overcome his substance abuse if he maintains contact with the child and does not resume the relationship with the mother. It recorded that he was on a detoxification program in prison.

Psychological assessments

13. In February 2016, Dr David Briggs, a forensic and clinical psychologist, carried out assessments of the mother and the father.

The father

14. He advised that the father had a somewhat addictive personality and dependent personality traits. He used substances to self-medicate and soothe, but they compromised his coping skills and hindered the development of more effective emotional regulation skills. He recognised that the father's behaviour may have been shaped by early life experiences. He was without any sort of personality disorder and was found by Dr Briggs to be empathetic, with genuineness to his presentation and an ability for self-criticism.
15. The relationship between the mother and the father was described by Dr Briggs as toxic, traversing from representing both an intense positive experience and emotions of despair, hostility and negativity. It was one, he said, of unpredictability and volatility; a relationship so overwhelming that at times the parents appear to have neglected the wellbeing of those around them. The father was unable to evidence to Dr Briggs that he would sustain stability sufficient to guarantee that the child would be free of exposure to intimate partner violence or substance misuse. This was acknowledged by the father in his suggestion to Dr Briggs of there being a need for at least a two year period of stability in his life, evidencing the management of his drug

misuse proclivities and potential for intimate partner violence, before his parenting of any child might be thought viable. Dr Briggs agreed with this.

16. The father demonstrated to Dr Briggs that he was sensitive to the child's position, and supportive of the child's placement with his sister. He understood the importance of the child building a relationship with his sister and her children and of him not disrupting that placement longer term.
17. In terms of future risk to the child, Dr Briggs advised that the father was at risk of resuming his relationship with the mother in the future and under such circumstances there was a risk of the child being exposed to volatility and aggression within that relationship, and this having a potential to be harmful to her emotional and psychological development. There was also the risk of her being caught in the crossfire of that violence. In addition, there was the risk of the father resuming the misuse of substances, so providing an unsatisfactory role model to the child, along with the inherent risks were he to be under the influence with her in his care.
18. As regards to the father's capacity to change, Dr Briggs expressed, simply, that whilst at the time of the assessment in February the father was at a point in his life where he was motivated to change and to be considering the options available to him, he was some way off evidencing his ability to change and more importantly, to sustain such change in his behaviour and way of thinking. His best hope, as the father himself acknowledged, was for him to commit to some form of long-term therapy and counselling. Although capable of understanding the child's needs at an intellectual level, the father was not equipped to meet those needs now, with his future capability being uncertain. Dr Briggs noted that the father was respectful, showing a capacity for warmth and candour. Most telling, he said, was the father's position that he could not parent the child at this point in time and realistically does not expect to be in a position to do so over the immediate years ahead. His comments were focused on the child's needs and he was clear in suggesting that the best outcome for her would be the placement with his sister.

The mother

19. In his report on the mother, Dr Briggs noted her significant history of substance misuse, her apparent resistance to change and significant risk of relapse. Similarly to the father, he advised on her use of substances to possibly perform a self-soothing function. He said that her history was not one of a single issue, but of various and significant concerns. He said she displayed features associated with an emotionally unstable (borderline) personality disorder. He noted that despite the high probability of intimate partner violence in her relationship with the father, there was a significant risk of the mother continuing to have an involvement with the father in the future, despite her stated intentions. He advised that the mother presented longer term as somewhat

unpredictable and referred to the record of her attendances at the Accident and Emergency Department, where she was portrayed as verbally abusive towards staff and on occasion, when attending for chronic arthritis and inability to use her hands (yet observed to be texting with both hands) “*unapproachable*”.

20. In terms of her ability to parent, Dr Briggs advised that parenting along with the father was simply not viable. As to her ability to parent the child alone, it would be, he said, significant experiment, given the ongoing concerns, namely:-

- (i) her lack of insight as to her past parenting failures;
- (ii) her vulnerability to low mood;
- (iii) her significant emotional regulation difficulties;
- (iv) her focus on her own emotional needs to the potential exclusion of those around her;
- (v) her potential for aggression and hostility when challenged;
- (vi) the risk that she will mix with drug misusing associates due to her isolation and history; and
- (vii) the possibility of intimate partner violence.

21. As the root cause of her behaviour, Dr Briggs said that there were unsubstantiated comments made in the records he read which suggested that there may have been aspects of her upbringing which were problematic and possibly dysfunctional, but due to her being unwilling to allow exploration of these matters, he could not consider the issue further. Dr Briggs noted the mother’s failure to co-operate or engage with professional assistance, including over her substance misuse or interventions targeted at understanding and dealing with intimate partner violence.

22. In terms of the risk posed to the child, he included the following:-

- (i) exposure to intimate partner violence and hence the harm to the child's psychological and emotional wellbeing and longer term development through such exposure, as well as the possibility of her being hurt in the crossfire of violence;
 - (ii) the possibility of physically abusive parenting practices due to the mother being intoxicated and later in the child's life, if she presented with oppositional or challenging and defiant behaviours;
 - (iii) an un-sustained attuned attention to the child's emotional and psychological needs;
 - (iv) exposure to substance misuse; and
 - (v) exposure to substance misusing associates of the mother.
23. Dr Briggs stated that even if the mother were to separate from the father, there was a risk of her forming a relationship with other abusive individuals and of her being a victim of and/or her perpetrating violence in those relationships.
24. As to her ability to change, Dr Briggs believed that notwithstanding her stated intentions, she lacked essential precursors for change. It was, he said, difficult to evidence that she understood the nature of her difficulties, or that she would cope with the discomfort of the change process and challenges that would be inherent within counselling, noting that the removal of her elder daughter had been insufficient to sustain change. He also noted her potential to relapse towards substance misuse which, given her chronic history, made a sustained focus on addressing her needs and maintaining stamina, questionable. He concluded that there was insufficient evidence to reassure the Court that this was a mother who was able to change her behaviour and ways of thinking so as to prioritise the child's needs at this point in her life.
25. Dr Briggs believed that the mother's difficulties were complex and required intervention at the level of sophisticated psychotherapy, rather than more simplistic interventions such as stress or anger management, but that the timescales for any form of psychotherapy were likely to be medium to long-term rather than short-term. It would be unsurprising if psychotherapy were to take twelve months or more to progress so as to achieve durable change. The situation was further compounded by the mother's relative isolation and the lack of infrastructure that would support her in any form of long-term psychotherapy and counselling. In respect of substance misuse, Dr Briggs envisaged that a demonstrated period of abstinence for at least 18 months

would be required, but that her personality difficulties, her problems in interpersonal functioning and the impact of such difficulties on her parenting capacity, all present an additional challenge.

26. Dr Briggs found the mother to be good humoured when they met and capable of ready wit. He said that she could be charming and devoid of any obvious global learning disability. There was nothing he had found from her narrative to suggest that she would seek to harm the child deliberately, but that her problems appeared to be those of her being trapped in a web of personality and emotional difficulties, impoverished social support, a weak infrastructure to support her parenting and a vulnerability to substance misuse.
27. Dr Briggs concluded that neither parent was in a position to care for the child, opinions which were confirmed in updated assessments which took place in August 2016.

Minister's position

28. The Minister's position was that due to the risks posed to the child and the parents' inability to provide for her safe care, now or within the child's timescales, permanence must be achieved beyond the parents by her remaining in her current placement with the paternal aunt under as final care order, pending an application for her to be freed for adoption in nine months' time. The reason for that delay was explained by Ms Sue Clark, the guardian, in her report of 9th October, 2016, at paragraph 5.6:-

"[The child's] placement with Ms C and Mr D is settled and stable. She has been welcomed into their family and is regarded as one of their own. Ms C and Mr D are fully committed to [the child]. However, concerns have arisen which lead them to defer their original plan to adopt [the child] at this stage. The day to day care of [the child] is not the issue for Ms C and Mr D. Their concerns relate to the mother and the father. In particular they are worried that the mother may at a future date seek to destabilise [the child's] placement with them. It is apparent that the mother has chosen to contact Ms C at times of crisis. This contact can be quite intense and although the mother has not attempted to visit the family home her telephone contact has at times been intrusive. For the mother this reflects her own lack of any support network. Ms C has wanted to try to support the mother but is fearful that this may be an attempt to maintain close links with [the child]. Consequently Ms C and Mr D have decided to delay any adoption application for a period of time so that they are able to have support from Children's Service in the weeks and months following the conclusion of the care proceedings. Ms C and Mr D have concerns about ongoing contact between [the child] and her parents after Children's Service withdraw from the case. The father has indicated, and it is generally believed, that he does not

intend to pursue contact with [the child.] He recognises that he is unlikely to be in a position to be consistent and he would prefer to allow Ms C and Mr D to care for [the child] unencumbered. The mother seeks an open form of adoption at a later stage.”

Threshold and Welfare Test

29. The mother, father and guardian all agreed that the threshold under Article 24(2) of the Children (Jersey) Law 2002 had been met, and the Court agreed. The background set out above makes it unnecessary for the Court to expand upon that for the purposes of this judgment.
30. As to the welfare test, the Court had regard to and followed the guidance set out by the Court of Appeal in paragraph 8 of In the matter of F and G (No 2) [2010] JCA 051, but in this case, the mother and father, supported by the guardian, agreed with the Minister's care plan, save in one respect (which we deal with below), and that a care order should be made in favour of the Minister. The inability of the mother and father to parent the child was clear and there was no realistic chance of their changing within the child's timescales. The child was, thankfully, well settled within the wider family and it was hoped would find permanence there.

Contact

31. The only issue at the hearing related to the proposals for contact between the mother and the child put forward by the Minister. The mother had attended some 108 contact sessions since the child had been put in foster care and she wanted this to continue permanently; hence her suggestion that any adoption would be an open one.
32. The care plan, however, provided for the current contact of three times a week to be reduced to one contact in each of October, November and December 2016 and one contact in each of March, June and September 2017, the last being a final contact prior to adoption.
33. Whilst the mother professed a good relationship with the paternal aunt, the guardian made it clear from her discussions with the paternal aunt that it would assist if contact were to be stopped. She needed a buffer to see her family through the next months before the adoption order.
34. However, there had been a very high level of contact up until the hearing and the guardian would not expect it, using her words, *“to fall off a cliff”* as proposed in the current plan, which could be described as somewhat brutal.

35. This was the subject of discussion between the guardian and the parties overnight, and helpfully agreement was reached on a revised care plan that allowed for more gradual reduction in contact between the mother and the child, but ultimately down to a final contact in September 2017, when contact would revert to letter-box contact.
36. The issue of contact post adoption would be a matter for the Court at that stage, but the Minister gave notice that he would be seeking a closed adoption.
37. In order to ease the pressure upon the paternal aunt and by way of support for the child's placement with her, both the mother and father volunteered an undertaking that they would not contact or attempt to contact the paternal aunt and her partner either directly or indirectly except through the Minister.
38. The Court joined with Advocate Byrne in commending the mother and father on the way they had managed to put the child's interests first in what must have been very distressing circumstances for them, and the Court commended their counsel, who had clearly been very helpful in the process.
39. In conclusion, the Court approved the care plan and the revised contact arrangements and made a final care order, placing the child in the care of the Minister.

Authorities

Children (Jersey) Law 2002.

[In the matter of F and G \(No 2\)](#) [2010] JCA 051.