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ROYAL COURT
(Samedi Division) 83

30th April, 1997

Before: Sir Peter Crill, K.B.E., Commissioner,
and Jurats Vibert and Jones

Between:	Y	Plaintiff/Respondent
And:	P	Defendant/Appellant

Appeal by the Defendant/Appellant against the decision of the Greffier Substitute of 26th February, 1997 (written judgment handed down on 4th March, 1997) granting the Plaintiff/Respondent unsupervised access to the two children born to the Defendant/Appellant of whom the Plaintiff/Respondent is the father.

Advocate A.R. Binnington for the Plaintiff/Respondent.
Advocate R.J.F. Pirie for the Defendant/Appellant.

JUDGMENT

THE COMMISSIONER: The matter before the Court is an appeal from an Order made by the Greffier Substitute on 26th February, 1997. It concerns the children of two unmarried people, a son, "J" and a daughter, "C", who are now 4½ and 3½ years old respectively.

Following complaints from the mother in February, 1996, statements were taken and submitted by the States of Jersey Police to the Children's Department and at that time, although the parties had separated, unsupervised access had been allowed voluntarily. That access was stopped.

The father of the children then brought an Order of Justice in March, 1996, seeking unrestricted access. A number of reports were commissioned by Order of the Court but in fact were not available - we have not been told the reason for this delay - until December, 1996. There was no interim report. In the meantime, in July and August, 1996, there were five sessions of supervised access.

Finally, in December, as I have said, the first report in respect of these children was issued and an Order was made by the Deputy Greffier (Family Division) in that month for six sessions of unsupervised access in the new year of 1997. There was a further report dated 20th February, 1997, and the hearing took place on 26th February.

Subsequently this Court was asked to review the decision of the Greffier Substitute to allow unsupervised access to the children after a period of supervised access.

In his judgment, the Greffier Substitute stated (and I quote from p.2):

"I was satisfied that the investigations carried out by the Children's Service were thorough and had reasonably concluded that no abuse had taken place".

He then qualifies that statement by continuing:

"However, once allegations of this nature have been raised it is notoriously difficult to prove absolutely that they are untrue. Mrs. Andrews agreed that referring the case to a child psychologist may very well be beneficial, but she said "the children have been put through quite a lot already", and she would be concerned that over-investigating the case would not be a good idea".

One comment which the Court wishes me to make is that Mrs. Andrews, who is a very experienced Child Care Officer, nevertheless was not the person who had originally seen the children, that was a Miss De Brito, but she was not heard by the Greffier.

At the last hearing when the matter came before this Court slightly differently constituted on 11th April, 1997, the Court gave leave to serve a notice of appeal out of time which it is not necessary for us to deal with now as arguments as to that matter have been withdrawn. Secondly, the Court ordered that the Plaintiff's costs of that hearing be paid personally by the Defendant's Advocate, which again is not relevant to this hearing. Thirdly, the Court said that *"pending the hearing of the appeal, access by the Plaintiff to the said children be permitted only to take place supervised on condition (a) that the appeal was heard within four weeks from the date hereof and the costs of the supervised access be paid by the Defendant's Advocate".*

We had hoped that it might have been possible to have before us today the report of the Child Psychologist, Dr. Richard Jones, however, that has not been possible for reasons that are not entirely clear and Mr. Pirie for the Defendant has suggested that it is necessary to have that report before the Court before he can properly adjudicate upon an appeal of this nature. Indeed, support is given to that submission by the remarks of the Court at the time of the hearing on 11th April, 1997.

What Mr. Pirie has now said is that the proper procedure for this court today, having already expressed the view that before it could give a proper judgment on the appeal it would need to have before it the psychologist's report, would be to send the matter back to the Greffier Substitute with an order that there should be a full oral hearing, including the evidence of Dr. Richard Jones, and Miss De Brito, rather than just the Children's Department or the Probation Service, who had para-phrased and edited, so to speak - no criticism is intended of the Probation Service in saying that - the report on behalf of Miss De Brito. Mr. Binnington, however, has drawn our attention to two English cases Re P [1996] 2 FLR 333 and Re H and R [1995] 1 FLR 643, where it is clear that there are two questions an English judge has to ask himself or herself in cases of this nature. The first is: whether he or she is satisfied on the balance of probabilities that the allegations have been proved. At p.659 of Re H and R, Millett LJ deals with the question of the standard of proof by citing the case of Re M (A Minor) (Appeal) (No

2) [1994] 1 FLR 59 and repeated by Balcombe LJ in Re W (Minors) (Sexual Abuse: Standard of Proof) [1994] 1 FLR 419 as follows:

> ***"The standard [of proof] is the balance of probabilities. The more serious the allegation, the more convincing is the evidence needed to tip the balance in respect of it".***

It does seem to us that the Greffier Substitute having said that the reports showed that the allegations of sexual abuse had not taken place, deprived himself of being in a position himself to apply the test of the balance of probabilities before considering whether there was a chance of further risk to the children from unsupervised access. That being so we think that the matter should now be sent back to the Greffier Substitute with a direction for a full oral hearing with the Child Psychologist and Miss De Brito and all those who gave evidence before, either in writing or in person, in order that he can arrive at the position where he can ask himself the question: whether, having regard to the seriousness of the allegations, he is satisfied on a balance of probabilities that abuse did, in fact, take place and then go on to consider, if he is so satisfied, whether he ought to allow supervised or unsupervised access.

We therefore make that Order but, in addition, we think that that hearing should take place no later than four weeks from today. It is unfair to the father in this case that matters as serious as this should be hanging over him. They should be disposed of as quickly as possible. If the Greffier Substitute was satisfied that the allegations had not been proved, then he should have immediately allowed the application for unsupervised access, but instead - as he himself frankly admitted - he effected a compromise. He allowed some supervised access and that was to be followed, if it went satisfactorily, by unsupervised access. This Court cannot see the logic of that decision. Accordingly, as I have said, we have sent the matter back to him for a full oral hearing. In the meantime, of course, there will be supervised access, but we think again that that is unfair that it should be paid for by the father. Although we have no power to order it, we express the hope that the Children's Office in providing a supervisor will not charge for that facility.

Authorities

Re P [1996] 2 FLR 333.

Re H and R [1995] 1 FLR 643.