

ROYAL COURT 103.  
(Samedi Division)

Before: F.C.Hamon Esq. The Deputy Bailiff and  
Jurats C.L.Gruchy and E.W.Herbert

4th June, 1997

Between C (Mr) Plaintiff  
And C (Mrs) Defendant

Advocate S.E.Fitz for the Plaintiff  
Advocate N. Santos Costa for the Defendant

JUDGMENT

DEPUTY BAILIFF: This case has followed an unusual course.

On 12th March 1988, the husband and the wife had a son,  
5 S. They were married on 29th March, 1986, and  
having lived apart since 20th June, 1991, entered into a  
separation agreement on 3rd April, 1992. That agreement set out  
that they would have joint custody of S and the wife would  
have care and control. There would be reasonable access to S  
10 for the husband. In about May of 1992 the wife told the husband  
that she would be educating S at home. The husband has  
reacted unfavourably to this suggestion to the extent that on 27th  
June, 1995, he served an Order of Justice on the wife. It was  
noted to be a "cause de brièveté" and it asked the Court *inter*  
15 *alia* to order the defendant to register S to attend  
R School for the September, 1995, term and further to order  
that S should remain in "mainstream education" until further  
order. Pleadings were filed and reports were prepared. The case  
20 came for hearing before us on 16th July, 1996, and we heard ten  
witnesses over three days. At the end of the trial but before  
final addresses had been made, Counsel asked for an adjournment  
whilst they explored the possibility of a shared system and  
intimated that they would return to Court, hopefully with an  
agreed order, by the end of October. We ended on a note of  
25 optimism. To conclude the saga we heard final addresses on 28th  
April, 1997, nearly two years since the "cause de brièveté" was  
launched. To put it in context S is now 9 years old. He was 7  
when the action was instituted.

30 Article 20 of the Loi (1912) sur l'Instruction Primaire was  
amended in 1972 to read (where relevant):

*"Sauf les dispositions du deuxième alinéa de cet  
Article, tout enfant entre les âges de six et quinze  
ans révolus devra fréquenter régulièrement une école*

publique élémentaire désignée par le Comité d'Instruction Publique, exceptée:-

5 (a) s'il reçoit de quelque autre manière une instruction au moins égale à celle donnée dans les écoles publiques élémentaires;

(b) .....

10 (c) .....

15 Un enfant sera censé recevoir une instruction suffisante aux termes de l'alinéa (a) s'il la reçoit à domicile ou dans une école autre qu'une école publique élémentaire, pourvu que le Comité d'Instruction Publique soit satisfait que l'instruction ainsi reçue par l'enfant est d'une valeur au moins égale à celle que recevrait dans une école publique élémentaire un enfant de son âge.

20 Dans le cas où l'enfant reçoit son éducation à domicile, il sera loisible au Comité d'Instruction Publique de le faire examiner afin de s'assurer que l'instruction qu'il reçoit est au moins égale à celle qu'il recevrait dans une école publique élémentaire. Si le Comité d'Instruction Publique n'est pas satisfait du résultat de cet examen il fera poursuivre par le Connétable de sa paroisse le chef de famille en question devant le Juge de la Cour pour la Répression des Moindres Délits, lequel le condamnera au paiement des frais dudit examen et ordonnera que ledit enfant soit envoyé à une école publique élémentaire choisie par ledit chef de famille, ou à son défaut, par le Juge.

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40 Although the wife argued in her reply that the Court did not have an inherent jurisdiction to make any order it is now conceded by Counsel's approach to the matter that this cannot be so. Certainly the Education Committee has not referred the matter to the "Juge de la Cour pour la Répression des Moindres Délits" but that does not mean that the Committee is satisfied with the situation. Indeed having read his reports and recalled Mr. D. Gibaut, the senior adviser for primary education on the last day of the hearing, we are of the opinion that the Education Committee would be relieved to have this gordian knot untied for them by this Court.

50 The wording of the statute is difficult to construe. It must be shown that the education that § receives at home is "at least equal" to that given in "les écoles publiques élémentaires". The words "au moins égale" - at least equal - are used twice more in the Article. The Education Committee must be satisfied in its own mind that the education is adequate where the child -as in

5 S's case - receives his education at home; the Committee is bound under the law to examine him in order to be so satisfied. The test is surely not that S must receive the education that he would have received at R School (for S lies within that catchment area) in exactly the same way as practised there. He can, in our view, be given an efficient education although it is given in some other manner. All that the law demands is that it is equal in value or equivalent to the formal education prescribed by law.

10 We have heard many experts on the problem that we face. All of them spoke of S as a delightful little boy. The bond between mother and son is obviously very strong. We have not met S ourselves and were not invited to do so. To some extent then, we are in the same position as Mr. James Hollywood, the experienced chartered psychologist who commented in helpful detail on the report of the chartered psychologist, Mrs. Lisa Blakemore-Brown, called by the mother.

20 The updated report of Mr. Gibaut written for this hearing says this:-

25 *"Mrs. C is making considerable effort to educate S well and is successful in many ways. There is sufficient evidence of progress to justify recommending to the Education Committee that permission to educate S at home during the academic year 1997-1998 is given."*

30 *That progress, however, is limited. It is impossible to be precise about his true potential, given the limited contact I have with him but I believe that in a school situation S would have better opportunity to prepare for adult life, both intellectually and socially."*

40 What has particularly interested us is the experience that S went through when, with the agreement of his mother (who has been most co-operative) and at the suggestion of Mr. Barry Jordan, S attended R School for four days in October, 1995. The evidence of Mr. Jordan was very compelling on this point:-

45 *"I read the report that had been prepared on S by Lisa Blakemore-Brown who is a consultant psychologist and by Mr. John Birtwhistle, the principal educational psychologist in Jersey and my reaction was that it was interesting and informative stuff but that I felt it would be pivotal to see how S behaved actually in school, and I asked for and obtained Mrs. C's permission for S to go to R School for a week during October."*

We heard from a teacher at R School, Mrs. A.

5 She is an experienced teacher and is now a class teacher with year 3 children and has responsibility for information technology throughout. It must have been something of an ordeal for a small boy but probably no worse an ordeal than faces all children of that age who have to start in a new school. Mrs. A described how S found distracting what she described as the working hum of a class of 25 children.

10 He clearly found it difficult to integrate and when it was suggested to him that he might improve a piece of work, his response was a straight-faced "No, I don't want to". We do not regard the fact that on one day he fell asleep as important. This was clearly a difficult and different situation despite the fact that the other children were not other than friendly towards him. But he was clearly ill at ease, although he responded well to a playing situation but not well to a learning situation. Mrs.

15 A has no doubt that S would instantly benefit from mixing with other children. He would also benefit from what she described as a "structured social skills development programme". If we understand that phrase correctly it means recognising the needs and the opinions of others and to learn from them. Mrs.

20 A gave us a truism which has concerned us deeply throughout this trial. The older you are when you start to try to integrate into a school, then the harder it is. We cannot see that three days is anything other than an unrealistic time to assess

25 S's potential. What we did find interesting in listening to Mrs. H the headmistress, is that the children are in school for six hours a day, they have a minimum of five hours' direct teaching time and an expectation of a minimum of half an hour's homework a night. There is, at R School, a close parent and teacher relationship. There are screening tests and there are five staff who have special needs qualifications.

30 Perhaps most interesting to us was the programme of reading recovery which is a programme of up to twenty weeks of half an hour a day to help specific children. But what cannot be underestimated in our view is the interaction in learning with other children. Of course, Mrs. Blakemore-Brown's report shows that in S we have a child of considerable intellectual potential. Mr. Hollywood pointed out that if S went to

35 R School on the basis of the scores that he earned from the tests that Mrs. Blakemore-Brown gave he would almost certainly be the brightest child in the school. And yet his reading is below average as is his writing. Mr. Hollywood did not put that down to dyslexia. He felt that it was because S was not being adequately taught. There is another aspect to the problem - and we are not criticizing Mrs. C here - because her achievements have been remarkable and her devotion is not in doubt. But here the Court and Mr. Hollywood are at one. Let us use the words of

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50 Mr. Hollywood as he gave evidence before us:

"The contingencies of a school setting, the whole set up, the fact that if it is a task that you don't particularly like doing, well the consolation is that

5           *the child next to you is having to do the same thing, you are not being picked on as an isolated child. But the whole contingencies of the educational establishment are one in which children learn from fairly early on that there are some things they like doing, some which they don't, but they are going to have to put up with a mixture."*

10           Mrs. Blakemore-Brown felt that the opportunities given to S by his mother were adequate. We say again that Mrs. C has gone to great lengths to give S as wide and diverse an education as she can. Mrs. Blakemore-Brown felt that it was important for S to learn without feeling "threatened or isolated". However, Mrs. Blakemore-Brown candidly admitted that  
15           this form of home education was experimental work. S for instance goes trampolining, does gymnastics and has been to the Freedom Activity camps. He is good at trampolining. His day is relatively structured, he has friends, and his life is no doubt an interesting one.

20           We have very carefully read all the evidence and all the reports. There has perhaps been too much emphasis on the academic side when social interaction with one's peers and with teachers is also vitally important in the progression to adulthood, where one  
25           cannot always choose the ideal environment in which to live and work.

30           We do not criticize Mr. Gibaut in this judgment but we do not feel that the Education Committee is complying with its obligations under the law in the way that it purports to assess someone like S. There should be much more informed appraisal which is not achieved by telephoning the mother to make an appointment at a convenient time and then assessing work that has already been completed. Be that as it may, we feel that it is in  
35           S's best interests to receive education in a school environment but we do not wish to cause a sudden and traumatic separation. We will give notice now that on what we have heard, we will expect S to commence formal schooling when he reaches the age for secondary education. It would in our view be better if  
40           it were earlier, but it must not be later. This, we repeat, is not to criticize Mrs. C but we feel that on the evidence before us there are inadequacies both educational and social which will only be remedied in a school. It is in a school that S will learn to compete with his peers both academically and in sport.  
45           This will prepare him for adulthood, where he will have to compete with others in order to make his way in life.

Authorities

Loi (1912) sur l'instruction primaire.

Matrimonial Causes (Jersey) Law, 1949: Article 25.