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**ROYAL COURT**

Samedi Division

167.

11th November, 1991

Before: Deputy Bailiff and  
Jurats Myles and Herbert

Representation of Her Majesty's Attorney General, in re  
C , infant child of Mr and  
Mrs T.

Miss S.C. Nicolle, Crown Advocate  
Advocate A.D. Hoy for the parents.

**JUDGEMENT**

DEPUTY BAILIFF: The Representation in this case is, in effect, an application for a declaration, under Article 27(1) of the Children (Jersey) Law, 1969, as amended, (the Law) that C (the child) born in 1990, the child of Mr and Mrs T is in need of care and protection, and for an Order, under Articles 28(1)(b) and 31 of the Law committing the child to the care of the Education Committee as a fit person. We shall refer to Mr T

as "the father", to Mrs T as "the mother" and to them collectively as "the parents".

In order to make the declaration sought, the Court has to be satisfied that one or more of the conditions mentioned in Article 27 (2) is or are satisfied with respect to the child and that he is not receiving such care and protection as a good parent may reasonably be expected to give.

Two of the conditions mentioned in Article 27(2) of the Law are applicable to the present case. They are:-

- "(b) the lack of care and protection is likely to cause the child unnecessary suffering or seriously to affect his health or proper development; or*
- (c) any of the offences mentioned in the First Schedule to the Law has been committed in respect of him..."*

The First Schedule offences applicable in the present case are:-

- "Assault, whether common or aggravated, on a child.*
- Any offence under Article 9 of this Law.*
- Any other offence involving bodily injury to a child".*

We interpose here to say that the words "whether common or aggravated" in relation to assault have no place in Jersey Law and must have been borrowed from the comparable United Kingdom statute. There are only two kinds of assault in Jersey, namely assault and grave and criminal assault, and the difference between them is solely one of fact and degree.

These are civil proceedings and the standard of proof is the balance of probabilities. Notwithstanding that fact, the Court is wholly satisfied, and beyond all reasonable doubt, applying the

criminal standard of proof, that the child was assaulted on at least two occasions.

The Court is also satisfied, on the balance of probabilities, that an offence under Article 9 of the Law - "**Cruelty to Children under Sixteen**" was committed by both parents.

In the judgement of the Court, the majority, if not all the injuries sustained by the child, were committed by the father.

The Court also finds that the mother was guilty of collusion with the father in that she condoned and attempted to conceal the assaults committed by him and lied as to the cause of the injuries in that attempt.

Moreover, the parents were guilty of neglect of the child in that they, on several occasions, either left the child unattended in their flat and on one occasion left the child unattended in the corridor outside the manager's office, whilst they drank in O Public House; on two or three occasions left the child unattended in their car whilst they together took a meal on licensed premises, and on one occasion at least, left the child unattended in the car in the car-park whilst they were in O bar. These acts amount to neglect in a manner likely to cause the child unnecessary suffering or injury to health under the terms of Article 9 of the Law.

The principle of law to be applied in this case is that the interests of the child are paramount.

The Court is in no doubt at all that conditions (b) and (c) mentioned in Article 27(2) of the Law are satisfied with respect to the child and that he was not receiving such care and protection as good parents might reasonably be expected to give.

Accordingly, the Court makes a declaration under Article 27(1) that the child, **C**, is in need of care and protection.

Article 28 of the Law provides that the Court, being so satisfied may either:-

- (b) *commit him to the care of any fit person, whether a relative or not, who is willing to undertake the care of him; or*
- (c) *order his parent or guardian to give an undertaking that he will exercise proper care and guardianship and to give such security in such amount as the Court may determine for the carrying out of the undertaking;*"

Paragraph (a) has been repealed, and Paragraph (d) is not applicable to the present case.

The Court is satisfied that remedy (c) is insufficient to meet the needs of the present case.

Article 31 of the Law provides that: "*the (Education) Committee shall, for the purposes of the provisions of the Law relating to the making of orders committing a child to the care of a fit person, be deemed to be a fit person willing to undertake the care of him.*"

No alternative proposals have been made to us whereby the child should be committed to the care of a relative or other person as a fit person.

Accordingly, the Court makes an Order committing the child, **C**, to the care of the Education Committee as a fit person.

Article 30(1) of the Law requires the Court, before making a fit person order, to: "*endeavour to ascertain the religious persuasion of*

the child" and paragraph (2) that: "every order committing a child to the care of a fit person shall contain a declaration as to the age and as to the religious persuasion of the child with respect of whom it is made." We are advised that the child has not yet been baptised but that the parents wish the child to be brought up in the faith of the Church of Scotland.

Accordingly, the Court declares that the child, C  
is 15 months of age and that his religious persuasion is Church of Scotland.

We wish to add two items.

Firstly, Miss Janette Kathleen Ison, Health Visitor, acted with commendable efficiency, speed and tact when she was alerted to the fact that the child had suffered injury. She persuaded the mother, despite the mother's apprehension as to the father's reaction, to cooperate and to accompany her and the child to the General Hospital. It would be easy to say that she was merely "doing her job" but, in our view, she deserves commendation.

Secondly, Woman Detective Constable Sandra Genée impressed us with the extent of her investigation, her interviews of the parents and the manner in which she gave her evidence which was equal, if not better than many more senior and experienced officers. She also deserves commendation and we ask Miss Nicolle, the Crown Advocate to convey our views to the appropriate authority.

**AUTHORITIES.**

The Children (Jersey) Law, 1969: Articles 9; 27(1); 28(1)(b); 30(1) &  
(2); 31(1).