

Judgment 8/2010

**In re Q (an infant) – Royal Court (Adoption File 899) –
11 February 2010**

Adoption (Guernsey) Law, 1960 – putative father’s application to be joined as a party – not a 'parent' within the meaning of the Law – principles on which the Court should exercise its discretion to join as a party - whether any 'family life' to be respected under Article 8 of the European Convention on Human Rights – application refused

IN THE ROYAL COURT OF THE ISLAND OF GUERNSEY

**Approved Judgment
11 February 2010**

IN THE MATTER OF Q A MINOR

IN THE MATTER OF THE ADOPTION (GUERNSEY) LAW 1960, AS AMENDED

**IN THE MATTER OF THE CHILDREN (GUERNSEY AND ALDERNEY) LAW 2008,
AS AMENDED**

Dates of hearing: 18th January 2010

Judgment handed down: 11th February 2010

Before: Lieutenant Bailiff Cherry Amanda McMillen

Counsel for the Adoptive Applicants:	Advocate Jessica Roland
Counsel for the birth father:	Advocate Sarah Brehaut
Counsel for the First Respondent (mother):	In Person (absent)
Counsel for the Second Respondent:	Crown Advocate Rupert Swards
Counsel for the Third Respondent:	Advocate Sarah Mallett

Statutes and cases referred to:-

The Adoption (Guernsey) Law 1960, as amended
The Royal Court (Adoption) (Guernsey and Alderney) Rules 2006
The Children (Guernsey and Alderney) Law 2008
Re. S (a child) (6th October 2000, CA, England, unreported)
Re. H (a child) and Re. G (a child) (2001), FLR 646
Re. G and B (2007) EWCA Civ. 338

**[The Lieutenant Bailiff set out the background to the matter in paras 1 – 25 of her Judgment.
She continued as follows: -]**

26. The parties and the birth father appeared before this Court on the 9th July 2009. On that date the birth father argued that he was automatically a party to the adoption application on the basis that he was a ‘parent’ and therefore under section 5(1) (a) of the Adoption Law 1960, as amended, his consent was required to the making of the adoption order, or if it was found that

his consent was being unreasonably withheld (section 6(1) (b)), then his consent could be dispensed with.

27. That submission was opposed by the applicants and I concurred with the interpretation of the law and rules as advanced by the applicants. I was satisfied that a birth father without parent rights and obligations or, as under the new law, without parental responsibility, was not a 'parent' for the purposes of definition in the Adoption Law 1960 as amended, or under The Royal Court (Adoption) (Guernsey and Alderney) Rules 2006.
28. If the father succeeds in his application to be joined as a party to the adoption proceedings his consent is neither required under section 6(1) of the Adoption Law 1960, as amended (as he does not have parental responsibility) nor would the Court have to dispense with the same, but it would be on the basis he was entitled to have his views taken into account by the Court when determining the application before it.
29. In these circumstances I directed that the Court should hear a formal application by the father to be joined as a party to the proceedings, and I further directed that he be given certain limited information in order to facilitate such an application.
30. The father's application to be joined as a party to the adoption application was heard on the 18th January 2010. It is also relevant to note that the father issued a further application (dated the 14th January 2010) *'for leave to apply pursuant to Rule 47 (d) of the Family Proceedings (Guernsey and Alderney) Rules 2009 to discharge the fit person order in respect of my daughter pursuant to 52(2) of the Children (Guernsey and Alderney) Law 2008.'*
31. Prior to the hearing the father, the applicants and the safeguarder filed written submissions on the law and on the relevant facts of the application(s) before the Court. The department, for reasons best known to themselves, chose not to file written submissions. In addition I also adversely commented on the delay in the filing of the other parties' submissions and also on the fact that I had received written submissions which were neither signed nor dated. I am not unaware of the volume of work on Advocates' desks but matters such as the dating and signing of submissions and complying with time scales set by the Court in relation to the filing of documents are of import and must not be overlooked.
32. The father accepted inter alia that if the Court refused his application to be joined as a party to the adoption proceedings then his application for leave to make an application under the Children (Guernsey and Alderney) Law, 2008 would also fail.
33. Advocate Brehaut on behalf of the father urged upon me a number of factors which she submitted demonstrated that it was in the best interests of [the infant] that the father be given

leave to be joined as a party to the adoption Law proceedings and be allowed to apply to discharge the fit person order. She submitted that the birth father could:

- offer a home to [the infant] for life,
- offer [the infant] a home which would address its cultural needs, [.....],
- demonstrate he was financially independent,
- demonstrate stability in that he had a partner of some 5 years standing and has stable accommodation and a stable job in England,
- offer [the infant] a supportive, close family network [.....].

34. Advocate Brehaut referred me to *Re S (a child)* (6th October 2000), unreported but as referred to at Para 33 of *Re H (a child)* and *Re G (a child)* (2001) IFLR 646 in which Lord Justice Thorpe stated, *“The terms of the Adoption Rules 1984 seem to me to be continuingly apt in conferring on the Court, an unfettered discretion. There will undoubtedly be cases in which the Court will exercise that discretion against joining the natural father. An extreme and obvious case would be the mother whose conception was a consequence of a violent rape. But in a case such as this, where the father has intermittently but transiently sought to play a part in the child’s life, it seems to me that a Judge acts wisely in ensuring that at least the father has notice of the proceedings the climate has undoubtedly shifted since the mid 1980’s and the shift is towards according greater involvement of the natural father, even though there has been no marriage and even though there has been no formal order of parental responsibility.”*

35. The father urged the Court to accept that in relation to the changing climate and the increasing recognition of the rights of the unmarried father that I should exercise discretion in his favour and grant him party status in the adoption proceedings. Advocate Brehaut submitted that it was ‘unfortunate’ that the birth father ‘was not notified of the fit person application’ when that application originally came before the Court *“since it appears that he was relatively easily identified in relation to these proceedings and it is submitted that the failure to notify him has had a seriously detrimental impact on his legal position.”*

36. In regard to this latter submission, I have already set out the chronology of how the identification of [the infants] birth father progressed and how his identity was not known until a few months after the commencement of these adoption proceedings and that, at the time of the fit person proceedings, another man had been identified as [the infants] father but when these tests proved negative, neither the department nor the Guardian in those proceedings had received any information which could have led them to identify the birth father. The only persons who had that knowledge were the birth mother and the birth father themselves and even they were uncertain until DNA tests were carried out in June 2009.

37. Advocate Brehaut urged the Court that as there was nothing known to the detriment of the father that the presumption should be one of joinder. She referred to the case of *Re G and B* [2007] EWCA Civ 538 which she submitted demonstrated that the father was entitled to be ‘fully assessed as a carer for the child’.
38. During the course of this application I was advised by the department that it had carried out a form of assessment of the father (and in fact had done so by 4th November 2009) but the assessment had not been committed to a written form – “*there were no guidelines*” to do so. It is my understanding that that assessment concluded that the department did not consider that the father was able to safely parent [the infant]. I asked for further clarification but unfortunately the relevant social work practitioner was unwell and the relevant file was not at Court.
39. Bearing in mind the lack of detailed information relating to the department’s assessment of the father, I have not been able to factor in what I was told was a negative conclusion to the assessment into my decision making on the applications. With this in mind I have had to consider therefore whether there should be an adjournment at least for further information on the assessment to be provided and I will deal with this later in my judgment.
40. All parties raised the issue of Article 8 of the European Convention on Human Rights: (1) “*Everyone has the right to respect for his private and family life, his home and his correspondence.*”
(2) *there shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedom of others.....”*
41. The identified issue in this case was whether there is a ‘family life’ which would not be respected if I decided not to allow the father’s application to be joined as party to the adoption proceedings, and if I determined there was no family life to be respected, what relevance that had.
42. In this case the father and child have never had any contact with each other. The father’s recounting of the circumstances of the conception left him uncertain as to which of a number of men (on his version) could have been the father and it was only when he was contacted by a social work practitioner, in early summer 2009, did he start to co-operate with the process, despite having been told by the mother that she was pregnant (although she did not tell him then that he was the father at that time) and two years ago when she approached the father

'and accused' him of being the father. In his advocate's submissions the father says this was a *'throw away remark'* but it was obviously sufficient to remain in the father's mind and yet he took no steps to ascertain either the whereabouts of the child or indeed the child's well being.

43. Even when the mother approached him in the street in 2009 and ascertained his phone number, the father waited until he was contacted and he did not initiate any enquiries of his own.
44. Re H and Re G (Adoption: Consultation of unmarried fathers) [2001] IFLR 646, the Court considered the impact of Human Rights legislation on the position of unmarried fathers. The Court considered that not only Article 8 was engaged but also Article 6, *'the right to a fair trial'* – on the basis that if the father or child was a person who was found to have a family life with his child then Article 6 (1) would apply.
45. At paragraph 38, Dame Butler-Sloss commented *"the first issue is whether there is a family life in respect of which there may be a breach. The European Court accepted in B v United Kingdom [2007] 1 FLR 1 that it is legitimate to treat married and unmarried fathers differently. Not every natural father has a right to respect for his family life with regard to every child of whom he may be the father..... The application of Article 8 (1) will depend upon the facts of each case"* and in those two cases on the facts as they presented to the President, she reached different conclusions on their respective facts, in Re H she held that the father did have the right to be given notice of the fact of a pending adoption application, but on the facts of Re G – these facts were *'less strong'* and she directed that notice need not be given. In Re H the parents had never cohabited, and whilst they had known each other for a period of 7 years, the relationship had been *'short of cohabitation'* which did at some point develop into a decision to become engaged to be married. Subsequently the relationship concluded and the father and mother lost contact with each other and the father had not known the mother was pregnant or had given birth to his child."
46. In Re G the President stated (paragraph 51), *"there were no exceptional factors to show, in the words of Kroon and others v The Netherlands (1994) 17 EHRR 2634, that the relationship had sufficient constancy to create de facto family ties. Unlike the case of H, there is nothing substantial to show that the father or G has a right to respect for his family life with G. In my judgment, this relationship is to be found on that part of the spectrum that does not come within the concept of family life within Article 8."*
47. [.....]. He neither had a relationship with the mother at the time [of conception] nor before, nor indeed since and even when he knew there was a possibility (and

I accept it was no more than that) that he was the father, he took no action to substantiate the possibility or indeed to enquire after the child.

48. I am satisfied that in these circumstances there is no evidence of a family life between this child and this father which could be breached. This child was four years old before this man demonstrated any interest in the child and even then he would not have done so if it had not been for the fact that proceedings had been issued.
49. I directed that the father be given notice of the fact of the adoption proceedings in order that the facts as to how he came to be the child's father and the background to the relationship could be investigated. These now having been disclosed, I am satisfied the facts as disclosed do not amount to de facto family life.
50. Since the father does not have a right to respect for his family life, "*no obvious issue arises under Article 8 which engages Article 6(1)*" (Para 52 of *Re H and G*, supra).
51. I am satisfied that this application falls on that part of the spectrum where there is no family life capable of being respected. This was due to the complete absence of the birth father in the child's life to date or at least until June 2009, and the fact he has been unable to demonstrate any identifiable relationship at all between himself and the child or its mother, which could have led to me to conclude that in this case there was a family life capable of respect.
52. This decision is based on these particular facts and no doubt other similar cases involving the same application by other unmarried fathers may fall elsewhere on the spectrum, depending on their own individual facts.
53. I am also satisfied that in these circumstances I would not grant the father leave to apply to discharge the fit person order. This is a child whose overwhelming need is for permanence and stability. The child has been in the care of the department for 4 years and, in the care of [the Adoptive Applicants], since August, 2006. Taking into account my finding that there is no family life capable of respect, between this child and this father and the factors that have led me to conclude this, I am satisfied that there would be little merit in the father's application to apply to discharge the fit person order.
54. I am satisfied that an adjournment for an assessment of the father would not be purposeful in the circumstances outlined above, and I am satisfied that I can proceed to dismiss both of the father's applications. If I had determined there was a family life capable of being respected between this child and the father I would have considered an adjournment but as I say on the basis of the conclusions that I have reached I do not do so.