



In re X
Royal Court
13th November 2018

JUDGMENT
54/2018

Principles for the Court to consider when determining whether to give notice to a Father of proceedings taking place before the Court.

Judgment on Notification to Father

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13 November 2018

1. The States of Guernsey, acting by and through the Committee for Health and Social Care, has issued proceedings asking for a community parenting order in relation to X. As presently constituted, the respondents to the proceedings are the mother, and X through the family proceedings advisor. The question which I have to consider in this judgment is whether the father should be given notice of these proceedings.
2. By virtue of rule 21 of the Family Proceedings (Guernsey and Alderney) Rules 2009, the respondents to these proceedings shall be

“Any person whom the applicant believes to be interested in or affected by the proceedings, including, without limitation, the following persons –

(a) Any person who has parental responsibility for the child.....”

3. The father in this case does not have parental responsibility, and nor does he fall within any of the other categories of people who are identified for automatic inclusion by the Rule.
4. There is a general responsibility upon the applicant to serve those whom it believes to be “interested in or affected by the proceedings”. The usual practice is for the Committee to notify fathers who do not hold parental

responsibility of the fact that proceedings are to be, or have been, issued so that they are then able, if they so decide, to make an application to be joined as a party pursuant to rule 21(1)(e) of the Rules (which gives the Court a general overarching discretion to join parties).

5. It is the mother's case that X's Father should not be given notice of the proceedings because of the risk that he would pose to her and to X, should he learn of these proceedings.
6. As a result, an application has been made to this Court on the mother's behalf for a direction that he should not be given notice of these proceedings. Her application is supported by the applicant, and also by the family proceedings adviser acting on behalf of X.

The Law

7. There is no relevant authority to which I have been referred within Guernsey case law, All parties have, however, directed my attention to the helpful English case of CD (Notice of Care Proceedings to father without parental responsibility) [2017] EWFC 34. In that case the Court was considering a similar but not identical provision within the English rules, by virtue of which a parent without parental responsibility does not become a party automatically (as is also the case under the Guernsey rules), but **must** be sent notice of the proceedings [see the English Family Proceedings Rules Practice Direction para 3.1]. In the CD case, the mother sought a direction that the father, who did not have parental responsibility, should not be sent notice of the proceedings notwithstanding the Practice Direction, in circumstances where the father had a history of violence to the mother, a history of imprisonment, and had not played any part in the child's life for a number of years. She said there was a real risk that if he knew of the proceedings he would seek her out, and be threatening and violent to her.
8. In that case, HHJ Bellamy sitting as a judge of the High Court, decided that, when considering the application that the father should not be given notice, the following issues had to be determined:-

i) Whether the relationship between the child and the father could properly be described as amounting to family life for the purposes of Article 8 of the European Convention of Human Rights and Fundamental Freedoms (“the Convention”)

ii) In considering the question of whether family life in Convention terms exists, he distilled the following points which emerge from the authorities (at paragraph 80):-

a. the determination of whether family life exists is essentially a question of fact;

b. family life is not confined solely to marriage based relationships; however,

c. mere biological kinship is not of itself sufficient to constitute family life;

d. Cohabitation, though not a prerequisite, is an important factor to be taken into account when considering the existence or otherwise of family life; however,

e. Other factors may also serve to demonstrate that a relationship has sufficient constancy to create de facto family life;

f. There must be evidence of a close personal relationship, a demonstrable interest in and commitment to the child.

iii) In determining the issue of whether family life within article 8 terms is established, it is appropriate to adopt a balance sheet approach.

iv) If the Court finds that a father does have article 8 rights, Article 6 it is therefore engaged, and it would only be in very exceptional circumstances that his article 6 rights to participate in proceedings about his child would be displaced by the article 8 rights of another party.

v) If a father does not have any article 8 rights, then article 6 of the convention is not engaged (following the approach of Theis J in Re M (Notification of Step-Parent adoption) [2014] EWHC 1128

vi) However, even if the father does not have article 8 rights, that is not an end to the matter. The Court still needs to conduct a careful balancing exercise. In re CD the Court described it as follows (paras 44-46)

“.... The difference between a father who is able to establish de facto family ties and a father who is not able to do so is that the former is entitled to the protection of article 8 and article 6 whereas the latter is not. The practical consequence of that distinction, in my judgment, is that the threshold for determining that it is not appropriate for such a father to receive [notice] is lower for a parent who does not have the protection of article 8 and article 6 than it is for a parent who has that protection.

Although the threshold for determining that a parent should not be served with [notice] is lower for those parents who do not have article 8 and article 6 rights than it is for those who do, the decision that such parents should not be served with [notice] still needs to be justified on the facts and not in an arbitrary manner. Risk and welfare will be important factors in considering whether to give permission to a local authority not to serve a birth father with [notice].

.....The starting point must be twofold. Firstly, that it will normally be in the interests of the child that her birth father should receive [notice] thereby enabling him to apply for party status so that he can participate in the proceedings. Second, that the child and her mother should not be put at risk of harm as a result of seeking to engage the father in the proceedings. It is a matter of balance and that is the

case whether or not the father is entitled to the protection of article 8 and article 6.”

9. It is with these helpful principles in mind that I approach the issues I have to decide in this case.

Lieutenant Bailiff Pamela Scriven
