

GREFA VESELĂ

Hotărâre judecătorească din SUA sub forma unei scrisori către părți. Re A (Letter to a Young Person) [2017] EWFC 48 (Family Court, Peter Jackson J, 26 July 2017)

Case No. MA17P00163
Neutral Citation Number:
[2017] EWFC 48
IN THE FAMILY COURT

26 July 2017

Before :
THE HONOURABLE MR JUSTICE
PETER JACKSON

Between:
A Father
-and-
A Mother and Stepfather
-and-
A Young Person
Applicant
Respondents

The Father represented himself
The Mother and Stepfather
represented themselves
The Young Person
was represented by his solicitor

Re A : Letter to a Young Person

JUDGMENTr Justice Peter Jackson:

1. In July, I heard a private law case concerning the future of a 14-year-old boy.

I will call him Sam, though that is not his real name. He lives with his mother and stepfather and sees his father regularly. His father wanted to take him to live in an identified Scandinavian country, and the boy said that he wanted to go. Being competent to given instructions, he instructed his own solicitor and the matter reached High Court level because the original application was in fact made by Sam himself. After some preliminary skirmishing, the application was then taken over by the father.

2. One issue that arose was whether Sam should give evidence at the hearing. He wanted to do so and his father supported that, but his mother and stepfather and the experienced Cafcass officer disagreed, saying that I should instead see him privately, which I was willing to do. In fact, I decided that Sam should give evidence briefly at the beginning of the hearing, but that he should not be questioned directly by either of his parents. Instead, each of them prepared five questions which, after his solicitor had asked him five introductory questions, I put to Sam myself. In this way, his evidence took less than half an hour, and he was not subject to direct questioning by either parent. Sam was satisfied that he had got his point of view across, and been seen to do so. At the end of his evidence, he left court and went on a school trip for the rest of the week, which was what he wanted. After he had gone, I heard evidence from the three parents and the Cafcass officer.

3. At the end of the hearing, I gave my decision in the form of a letter to Sam, which I read to his parents and gave to his solicitor to give to him and to discuss with him when he returned from his trip. Sam received the decision with apparent equanimity.

4. Had I given a conventional judgment, I would have published it on Bailii in accordance with my normal practice. I therefore asked the parties for their views about whether the letter, amended to protect their identities, should be published in the same way. The response from Sam himself, from his mother and stepfather, and from the Cafcass officer, was that it should be published. In contrast, the father was vehemently opposed to any publication; however, he offered no reasons for his opposition. I therefore publish the letter below.

PJ / 26 July 2017



THE HON. MR JUSTICE PETER JACKSON

13 July 2017

Dear Sam,

It was a pleasure to meet you on Monday and I hope your camp this week went well.

This case is about you and your future, so I am writing this letter as a way of giving my decision to you and to your parents.

When a case like this comes before the court, the judge has to apply the law as found in the Children Act 1989, and particularly in Section 1. You may have looked at this already, but if you Google

it, you will see that when making my decision, your welfare is my paramount consideration – more important than anything else. If you look at s.1(3), there is also a list of factors I have to consider, to make sure that everything is taken into account.

The information I have comes from a variety of sources. There are the papers from the old proceedings years ago. There are more papers from the proceedings this year, especially your own statements, your mum and Paul's statements, your dad's statements, and the report of Gemma, the Cafcass officer. Then there is the evidence each of you gave at court. I have taken all this into account.

When I was appointed as a judge, I took the oath that every judge takes to apply the law in a way that is fair to everybody. Some people will say that this or that decision isn't fair, but that's usually their way of saying that they don't like the decision. People who like decisions don't usually say they are unfair. Here, your father loudly says that Cafcass is biased against fathers and during the hearing it became clear that he doesn't have much confidence in me either. He is entitled to his view, but I can tell you that I found no sign of bias on Gemma's part; on the contrary, I found her someone who had thought very carefully about you and your situation and used her professional experience of many, many family cases to reach an honest view of what would be for the best.

The decisions that I have to take are these: (1) should you go and live in Scandinavia? (2) should you become a citizen there? (3) if all your parents are living in England, should you spend more time with your dad? (4) if your dad goes to Scandinavia, and you stay here, how often should you see him?

Here are the main matters that I take into account:

1. Your stated views. You told me that you have long wanted to live in Scandinavia and that you could see yourself living there with your dad. If that doesn't happen, you want to go back to having week on/week off. It worked in the past and you enjoyed it. You feel that your father helps you more with your education. If your dad goes to Scandinavia without you, you would be extremely unhappy. Your mum and Paul are very against you seeing more of your dad.

2. I believe that your feelings are that you love everyone in your family very much, just as they love you. The fact that your parents don't agree is naturally very stressful for you, and indeed for them. Gemma could see that when she met you, and so could I when you briefly gave evidence. Normally, even when parents are separated, they manage to agree on the best arrangements for their children. If they can't, the court is there as a last resort. Unfortunately, in your case, there have been court orders since you were one year old: 2004, 2005, 2006, 2009, 2010 – and now again in 2017. What this shows is how very difficult your parents have found it to reach agreements. This is unusual, but it is how you have grown up. The danger is you get used to it.

3. I was impressed with the way you gave evidence. You are of an age where your views carry a lot of weight with me, and I consider them in the light of your understanding of what has made things as they are. As to that, I don't think anyone of your age in your situation could understand it better than you do, but nor could they fully understand the influences that you are under and the effect that has on you.

4. Your parents have very different personalities. There is nothing wrong with

that, it's one of the joys of life that people are different. One of your homes is quite conventional, the other very unconventional. There's nothing wrong with that either. What is of concern to me is this. I see your mother and Paul as being content with the life they lead, but I don't see that in your father. He is a man with some great qualities. When he is relaxed, he has charm and intelligence. But underneath that, I see someone who is troubled, not happy. He has not achieved his goals in life – apart of course from having you. Because of his personality style, and the love you feel for him, he has a lot of influence over you. All fathers influence their sons, but your father goes a lot further than that. I'm quite clear that if he was happy with the present arrangements, you probably would be too. Because he isn't, you aren't.

5. So I have a view on the question of whether the idea of these proceedings comes from you or from your dad. My view is that you brought the proceedings mainly as a way of showing your dad how much you love him. It was mainly to meet his needs, and not yours. I have seen the self-centred way that he behaves, even in the courtroom, and how he makes sure everybody knows how little respect he has for anybody who disagrees with him. Even as a judge, I found it hard work stopping him from insulting the other witnesses. Your mother certainly finds his behaviour difficult, so difficult that she avoids contact with him whenever possible. I don't think you yet realise the influence that your father has over you. It leads you to side with him and praise him whenever you can. You don't do the same for your mother. Why is that? Is it because you sense that he needs it and she doesn't? Also, I may be wrong, but when you gave your evidence I didn't get the feeling that you actually see your future in Scandinavia at all. Instead, what I saw

was you doing your duty by your dad while trying not to be too unfair to your mum. But you still felt you had to boost your dad wherever you could. That's how subtle and not-so-subtle pressure works. So I respect your views, but I don't take them at face value because I think they are significantly formed by your loyalty to your father.

6. And it is not just that. I believe your father has in some ways lost sight of what is best for you. He told me that he felt absolutely no responsibility for the state of the relationship between him and your mother. Nor did he satisfy me about his decision to emigrate without you (something he first mentioned in May), and why he would want to do something that would so obviously cause you such unhappiness. On Monday, he told me it was 95% likely that he would go alone. On Wednesday, he told me it was 100% certain. Today, Thursday, he said it was 99.9997% certain but in his closing remarks a short while ago he said "*If I go to Scandinavia...*" before correcting "*if*" to "*when*". My conclusion about all this, I'm afraid, is that, whether he knows it or not, your father has a manipulative side. I don't believe he has any real idea whether he will go to Scandinavia or not, so nor do I. I can see that for him personally, Scandinavia may have some attractions, but I don't believe he will find it at all easy to stop seeing you. I very much hope he will stay for your sake, even if it is at a cost to himself.

7. Sam, the evidence shows that you are doing well in life at the moment. You have your school, your friends, your music, and two homes. You've lived in England all your life. All your friends and most of your family are here. I have to consider the effect of any change in the arrangements and any harm that might come from it. In any case where parents

don't agree about a move overseas, the parent wanting to move has at least to show that they have a realistic plan. That plan can then be compared with other plans to see which is best. That has not been possible here. You will remember that at the earlier hearing in May, I made very clear to your father that if he was going to seriously put forward a move to Scandinavia, he had to give the court proper information about where you would be living and going to school, where the money would be coming from, and what the arrangements would be for you to keep in touch with family and friends in England. At this hearing, no information at all has been given. Your father described the move to Scandinavia as an adventure and said that once the court had given the green light, he would arrange everything. That is not good enough. In over 30 years of doing family law cases, I have never come across a parent who thought it might be, and no court could possibly accept it. What it means is that I have no confidence at all that a move to Scandinavia would work. Your dad thinks he would find a good life and good work there, but I have seen nothing to back that up – he hasn't made a single enquiry about houses, schools or jobs. You don't speak the language and you haven't been there since before you were 5. Even your dad hasn't been there for over 10 years. I also doubt his ability to provide you with a secure home and a reasonable standard of living if you lived with him full-time. I would worry about how it would be for you if things started to go wrong. I think you would find it exciting at first, but when reality set in, you might become sad and isolated. I also don't think it is good for you to be with your father 24/7. In some ways, he would expand your vision of the world, but in many more ways he would narrow it, because he holds such very strong views himself, and because I believe that (maybe sincerely

and without realising it) he needs you to fall in with his way of thinking. I also think it would be very harmful to be living so far away from your mum, from young Edward (who needs you too), and from Paul.

8. So I very much see you completing your schooling here. If, when you finish your A levels, you want to move to Scandinavia, you will be 18 and an adult – it will be up to you. Until then, I agree with Gemma, and with your mum and Paul, that you should make the most of the many opportunities that life here has to offer you. Although your dad is not that impressed with your school, most kids across the country would give a lot to have the life chances you already have. You don't need more chances, or changes, but rather to make the most of what you have already.

9. As you will not be living in Scandinavia, I also don't think that it would be in your interests to apply for citizenship there at this stage. I agree with Gemma that it would be a distraction. If you decide to do that when you're 18, all well and good.

10. I have thought carefully about your request to spend more time with your father. I'm afraid that I think that the idea of spending week on/week off would be disastrous. It may have worked, with some difficulty, when you were a primary school, but it will not help your development to share your time between two homes with such different philosophies. In the end, not without some hesitation, and only if your father decides to remain living in England, I'm going to follow something like the arrangement that Gemma recommends. It will give you some more time with your dad, and more independence in getting to and from school. It won't surprise you to hear that your dad told me that any outcome like

this would be totally unacceptable to him and to you: can I suggest that you do your own thinking and don't let his views drown out yours?

11. There needs to be an end to proceedings of this sort. They have been extremely stressful for everyone. This is the fifth case there has been about you and, unless something pretty extraordinary happens, it should be the last.

So, coming to the orders I am going to make:

A. I dismiss your dad's applications to take you to live in Scandinavia and for you to apply for citizenship there.

B. You will have a holiday of a week in the second half of August this year with your dad, to be spent at his home unless he and your mother agree that it is going to be spent somewhere else.

C. I shall direct your father to write to your mother no later than 1 September to inform her whether or not he will be moving to Scandinavia and, if so, when.

D. If he writes that he is going to be moving (or does not write at all), contact will remain as it is: i.e. alternate weekends from Friday evening to Sunday evening. After he goes, contact (face-to-face and by phone/Skype etc) will be as agreed between your parents.

E. If your father writes to your mother that he is not going to be moving, contact will take place as follows: From the beginning of September, alternate weekends from Friday direct from school to Monday direct to school, until the end of the year. From the beginning of 2018, it will be alternate weekends from Thursday direct from school to Monday direct to school. I have not followed Gemma's suggestion exactly because I think it is harder on you going backwards

and forwards between the two homes every week. I think it would be better if you did that once a fortnight and that the increase is phased in.

F. I will make an order under s.91(14) of the Children Act that no further applications concerning you can be brought before the court by anyone, including yourself, without the Designated Family Judge giving permission. This order will run until 1 September 2019, so after your GCSEs. I do not think it need run for longer than that. The court will always give permission if someone wants to bring a reasonable application, but it gives the court control before any fresh proceedings are started.

Sam, I realise that this order is not the one that you said you wanted me to make, but I am confident that it is the right order for you in the long run. Whatever each of your parents might think about it, I hope they have the dignity not to impose their views on you, so that you can work things out for yourself. I know that as you get

older, you will do this increasingly and I hope that you will come to see why I have made these decisions. I wish you every success with your future and if you want to reply to this letter, I know that your solicitor will make sure that your reply reaches me.

Lastly, I wanted to tell you that your dad and I enjoyed finding out that we both love the film *My Cousin Vinny*, even if it might be for different reasons. He mentioned it as an example of a miscarriage of justice, while I remember it for the best courtroom scenes in any film, and the fact that justice was done in the end.

Kind regards

A handwritten signature in blue ink, appearing to read 'Peter Jackson', written in a cursive style.

Mr Justice Peter Jackson

În atenția colaboratorilor

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