



IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION
COURT OF PROTECTION

No. FD07P00104
11288998

Royal Courts of Justice
Wednesday, 31st March 2010

Before:

MR. JUSTICE BAKER

BETWEEN:

LONDON BOROUGH OF WALTHAM FOREST

Claimant

- and -

WD
DKD
MDW

Defendants

*Transcribed by **BEVERLEY F. NUNNERY & CO**
Official Shorthand Writers and Tape Transcribers
Quality House, Quality Court, Chancery Lane, London WC2A 1HP
Tel: 020 7831 5627 Fax: 020 7831 7737
info@beverleynunnery.com*

J U D G M E N T

APPEARANCES

MR. H. HARROP-GRIFFITHS (instructed by Legal Services) appeared on behalf of the Claimant Local Authority.

MISS N. GREANEY (instructed by the Official Solicitor) appeared on behalf of the Defendant WD.

MISS A. AHMED (instructed by Makonda Bart & Co.) appeared on behalf of the Defendant DKD.

MDW appeared In Person

The judgment is being distributed on the strict understanding that in any report no person other than the advocates or the solicitors instructing them may be identified by name or location and that in particular the anonymity of the children and the adult members of their family must be strictly preserved.

MR. JUSTICE BAKER:

- 1 These are proceedings under the inherent jurisdiction of the High Court and under the Mental Capacity Act 2005 in respect of WD, born 21st December 1983 and therefore now aged 26. WD has a diagnosis of mild mental retardation and some learning difficulties, with an IQ that has been assessed at 59.

- 2 The background history can be summarised shortly as follows. WD was born in New York and has not had any contact with his mother since he was approximately 11 to 12 months old. His parents separated before he was born and his father, known hereafter as “DKD”, reports becoming involved in WD’s care when he was contacted by WD’s mother’s sister. DKD resumed full care of WD at the end of 1984 when the mother disappeared. I am told it is not known whether the mother is still alive.

- 3 From the age of one WD was cared for in Trinidad by his paternal grandparents and paternal aunts, including MDW and another aunt called N. Meanwhile, at that stage, DKD remained in America with his second son, WD’s step-brother D (born 1988 and therefore now aged 21) until 1992 when DKD returned with D to live with his parents and WD in Trinidad.

- 4 In 1990 MDW moved to the UK. In 1993 a guardianship deed in respect of WD was made and registered in Trinidad and Tobago in favour of his other aunt, Nikisha. In the same year DKD and D moved to the UK to reside with MDW. In 1994 WD's aunt Nikisha moved to the United States. At that stage WD remained in Trinidad in the care of his paternal grandmother until 1996, when he moved to live in London with MDW. At that stage he had regular weekend contact with DKD and D. WD was given an educational statement by Waltham Forest Local Authority in 1997 and attended a special needs school in Walthamstow called the William Morris School, until 2003.

- 5 At some point after the Millennium (the date is not agreed between DKD and MDW) WD moved to live with DKD and D. Thereafter MDW has persistently maintained that it was not in WD's interests to live with DKD and she contacted the Local Authority, the London Borough of Waltham Forest Social Services to express her concern about WD's development.

- 6 Following leaving school in 2003 WD attended Waltham Forest College. In addition, he has attended clubs organised by Mencap. He was arrested in 2006 following an allegation that he had made an inappropriate comment to two girls in the street, but in the event, no charges were pursued. At that time WD was allocated a social worker from the Local Authority's Learning Disability Team.

7 Later that year, in the course of that social worker's work with WD, he informed her that DKD had struck him with a piece of wood and on occasions with a stick or belt. WD made a similar disclosure to another member of the team. Following that, he was removed from DKD's care to a place of safety where he remained for some six months. After that, in about April 2007, WD returned to live with his father. It is not clear to me, nor to any of the professionals currently involved with the case, exactly why it was or how it came about that WD returned to live with DKD and D. For whatever reason, the fact remains that WD has remained ever since with DKD and with D, and there have been no further allegations that he has been abused by either DKD or his brother.

8 The return of WD to DKD's care prompted MDW, who had by this stage not seen WD for several years, to start proceedings under the inherent jurisdiction in early 2007, seeking an order for frequent and regular contact with WD and also a declaration that WD is a vulnerable adult, and a non-molestation injunction against DKD restraining him from using violence towards WD. In addition, MDW sought an account of WD's financial circumstances and savings, and the appointment of the Official Solicitor to act as WD's litigation friend and as guardian of WD's estate.

9 After two adjourned hearings, a psychiatrist report was ordered at a directions hearing in these inherent jurisdiction proceedings on 28th July, and, subject to the

content of that report, the Official Solicitor was invited to act as WD's litigation friend. A preliminary report was thus prepared by a psychiatrist, Dr. Halstead, on 4th June 2007 which concluded inter alia that WD was not competent to manage his property and affairs by reason of a mental disorder within the meaning of Section 1 Mental Health Act 1983.

- 10 On 7th June 2007 the matter came before the then President of the Family Division, Sir Mark Potter. At that hearing, the court having received certain undertakings from DKD, made orders appointing the Official Solicitor to act as litigation friend, joining the Local Authority, the London Borough of Waltham Forest, as defendant, making an interim declaration "on the limited evidence so far available" that WD lacked capacity to make decisions as to residence and contact, or issues concerning his care, or the management of financial affairs, or the conduct of litigation on his own behalf. Further directions were given in the proceedings, including one for a further report from Dr. Halstead, and for the instruction of an independent social worker to assess WD's best interests. By a separate order made on the same day in the Court of Protection, it was ordered that the Local Authority should have the conduct and management of aspects of WD's financial affairs.

- 11 The independent social worker appointed to act following that court hearing was Ms Thakrar. She undertook an assessment. In her first report filed in September

2007, she concluded that WD seemed very settled with DKD and his brother, with whom he appeared to have a good relationship. The independent social worker was concerned at the poor relationship that then existed between DKD and the Local Authority following WD's earlier removal from DKD's care after the allegations were made about abuse. As a result, the independent social worker, Ms Thakrar, felt that WD's best interests were not being served because at that stage WD was not having an opportunity to access certain resources which might improve the quality of his life, nor was he being allowed to meet Local Authority workers who would be able to formulate a care plan. Concern was also expressed by WD's lack of structured social skills, as a result of which he had, Ms Thakrar thought, few practical skills. Prior to that, a reintroduitory contact visit with MDW had been arranged but, it seems, had not gone as well as had been hoped. However, Ms Thakrar recommended persisting with attempts to rebuild the relationship between WD and MDW.

- 12 Ms Thakrar proposed an assessment in a neutral environment to assess WD's needs and how they might be met. This was endorsed by Dr. Halstead in his second report dated 18th September 2007 in which he reiterated his opinion as to WD's capacity, but said that he could not rule out the possibility that WD would recover capacity and, given suitable conditions, be able to express his wishes, feelings and judgements more authentically. It was, concluded Dr. Halstead, in WD's best interests to maintain good relationships and contact with as many

members of his large extended paternal family as possible. He criticised both DKD and MDW for failing to prioritise WD's interests above their own emotional needs, and proposed they should endeavour to achieve a working relationship through mediation. He expressed concern that the health and social services' input into WD's care had been "fragmented and intermittent".

13 On 4th October 2007 the matter came before Sumner J. He reiterated the interim declaration as to WD's capacity and made further interim declarations that it would be in WD's best interests to be assessed by a Local Authority social work team and by Dr. Halstead and Ms Thakrar, and to have regular access to his advocate, Mr. Julian Christopher, based at Waltham Forest College with whom WD had built a good relationship in the previous few years. The judge issued an injunction forbidding DKD from preventing or impeding WD meeting these professionals, or attaching any recording device to WD prior to any such meetings after an earlier instance where it was alleged such a device had been attached to WD's body.

14 Following a further joint assessment by Dr. Halstead and Ms Thakrar in which they concluded that WD had the potential to develop his own opinions and express his own wishes and feelings, a professionals' meeting on 24th January 2008 concluded that WD should continue to live with DKD in the interim, that he should commence supervised contact with MDW, that the Local Authority should

devise a care plan for WD, and that the Local Authority should consider ways to rebuild DKD's trust in them.

15 At the next hearing, this time before Black J., the framework of the proceedings was changed so that the Local Authority became the claimant, with MDW becoming the Third Defendant, and an order was made that the Local Authority should file a detailed care plan and consult Ms Thakrar with a view to drawing up guidelines for the purpose of supervised contact between WD and MDW.

16 Thereafter, a community care assessment was carried out leading to the preparation of a care plan on 14th February 2008 dealing with his assessed needs and how they would be met, to which an addendum was added on 19th March 2009 dealing with such matters as occupational therapy, assertiveness training, psychological support to address WD's social skills, health action, and links with Mencap services. In addition, it provided that WD would continue to attend the Waltham Forest College on three days a week. Shortly before this care plan had been compiled, WD had resumed contact on a supervised basis with MDW. The plan provided for ongoing support from his social worker, working jointly with DKD.

17 Following this care plan, the next court hearing on 21st April 2008 was vacated and the matter returned to court on 2nd June 2008. For that hearing Ms Thakrar

prepared a further report recording that supervised contact with MDW had started but that there remained significant difficulties between her and DKD. On 2nd June Judge Bevington, sitting as a Judge of the Division, gave further directions. The Local Authority undertook to keep the contact under review, to explore the possibility of respite care, and to monitor WD's expression of his wishes and feelings in respect of contact.

- 18 For reasons that are not entirely clear to me, there then occurred something of a pause in these proceedings. Contact continued, albeit with a gap, during summer 2008. That contact was described by the social worker as “universally positive”. WD continued to reside with DKD and to attend college. He continued to receive support from his advocate, Mr. Christopher, and also from a community nurse, psychologist and speech & language therapist, together with being able to access support services at Mencap.
- 19 When Dr. Halstead prepared a further report in November 2008 those professionals reported to him that the family dynamics had improved. Dr. Halstead adhered to his previous views about WD's capacity, but noted that now he was in receipt of a more appropriate and comprehensive care plan he was slowly starting to improve and take more decisions for himself, although many of his statements depended on his environment and social influences including in particular his family. Dr. Halstead recommended that contact with MDW should

continue and proposed a reduction in the level of supervision, whilst recognising that it would continue to need to be facilitated contact for the foreseeable future.

Dr. Halstead did not himself perceive any need for a change of residence.

20 Following his report, a further detailed care plan was produced. Prior to that, on 10th February 2009 MDW had filed a document described as a “statement of petition” seeking full custody of WD, or alternatively, that he should be removed from DKD’s care and placed elsewhere.

21 At the next court hearing, on 20th February 2009, a final hearing was listed for the first open date after 19th August, with lengthy directions given in preparation for that final hearing, and further undertakings provided by the Local Authority in respect of work to be done with WD for that final hearing. The interim declarations as to WD’s capacity were extended again, and further declarations made that it was in WD’s best interests to have fortnightly contact with MDW, and also to attend the Argyle Road Respite Unit on one weekend per month.

22 Pursuant to the court’s direction, a further letter of instruction was sent on 15th April 2009 to the independent social worker, Ms Thakrar. She reported and concluded in July 2009 that, whilst there was no doubt that WD remained a vulnerable adult, there had been a significant improvement as a result of the range of activities that he was now undertaking, although she identified a number of

areas where further support was required. So far as his future residence was concerned, she expressed the view that his current accommodation was too small and therefore proposed that consideration be given either to moving WD with DKD and D to larger accommodation, or to the identification of residential accommodation for WD. So far as contact was concerned, Ms Thakrar felt that there was scope for moving on to unsupervised contact.

23 This impression of progress was confirmed by a report from the Argyle Road Respite Unit, which WD had begun to attend. The staff there observed an improvement in his skills, but they also felt that further progress was achievable if he spent more time there. The same impression of progress and the scope for further improvement was given at a meeting of professionals, attended by DKD, on 26th August 2009. At that meeting DKD spoke vividly about how caring for WD was a 24/7 job which, on occasions, he found draining. Extending the contact with MDW was recognised as a positive aim within the plan drawn up as a result of that meeting, although MDW herself, who had not been present at the meeting, wrote in September 2009 seeking more contact and complaining that the Local Authority was still being too slow to move it along.

24 Yet a further care plan was produced in October 2009 by the Local Authority. That same month WD met with his advocate, Mr. Christopher, again, who noted that WD was now well animated and vocal, and demonstrated an improved ability

to think for himself, for example, about his contact with MDW and others members of his extended family. At that stage, a report was received from his community nurse, Mr. Wilson, who reported on work that he had been doing with WD, and in particular over sensitive issues about his sexuality and relationships.

25 In a social work report dated 5th November 2009 Cynthia Gowdie reported that WD remained happy living with DKD and D and spending time at the respite unit. She expressed the view that WD should be supported in developing independent living skills with a view to enabling him, in due course, to move to a supported living environment. She recorded that MDW had expressed the wish again to have WD living with her at least 50% of the time. But Miss Gowdie expressed the view that this was neither in his best interests nor in accordance with his wishes. She did, however, recommend extended contact between WD and MDW on to an unsupervised basis. Relations between the DKD and MDW, however, remained strained, as was demonstrated by MDW's statement dated 22nd October 2009 and DKD's statement dated 29th October 2009.

26 In that latter statement DKD indicated that he did not, at that stage, support the idea of WD moving to supported living and expressed disappointment that the Local Authority had not done more to support his proposal that he and the boys should move to larger accommodation. As for MDW's statement, she exhibited a

large number of letters, emails and other documents demonstrated the longstanding tension and difficulties within the extended family.

- 27 The final hearing had been listed for November 2009 but had to be adjourned because of a family bereavement. A report, however, was produced for that hearing by the Official Solicitor dated 19th November in which he summarised the history and noted, as had other professionals, that there had been no further suggestion of abuse following WD's return to DKD's care. The Official Solicitor accepted Dr. Halstead's advice, albeit now some months old, as to WD's capacity and invited the court to make final declarations about that matter.
- 28 So far as best interest decisions were concerned, and in particular the question of WD's future residence, the Official Solicitor supported the current placement with DKD, but accepted Ms Thakrar's advice that in the middle to long term WD should move to independent supported accommodation and therefore recommended that the Local Authority should keep the issue of his long term accommodation under regular review and introduce WD to various options for independent supported living. The Official Solicitor also supported the ongoing work done by the Local Authority, and the ongoing work done by his advocate, Mr. Christopher, to extend WD's confidence and independent living skills.

29 The Official Solicitor expressed the hope that these efforts would continue to be supported both by DKD and MDW. As to the latter, the Official Solicitor was pleased at the improvement and extension of MDW's contact with WD, and supported the gradual move towards unsupervised contact whilst noting WD's wish that this contact should not cut across his other activities. The Official Solicitor expressed disappointment, however, that the Local Authority had not done more to bring about contact between WD and other members of his extended family and reminded the Local Authority of its statutory duties in this regard. He also expressed concern that the Local Authority had failed to issue any application with the Court of Protection to take over responsibility for WD's finances, notwithstanding the order and undertakings given to the court in respect of that matter two and a half years earlier. The Official Solicitor indicated that he would support the Local Authority becoming WD's appointee for the purpose of receiving benefits.

30 Overall, the Official Solicitor supported the care plan devised by the Local Authority, but subject to the caveat that they should continue to provide WD with support for a move into independent living and address his wish to have more contact with his extended family.

31 On 1st February the matter came before Pauffley J. who listed the final hearing for 31st March, i.e. the hearing I am conducting today, and gave the Local Authority

permission to apply to be made a financial deputy for WD under the Mental Capacity Act 2005 as amended, and further directed that application be made by 18th February. She gave full directions for the final hearing and made certain interim declarations, including reiterating the declaration as to capacity, and that residence with DKD and contact with MDW and other family members as set out in the schedule was in his best interests.

- 32 At that hearing MDW raised a question whether she could take WD to a Valentine's Party on 13th February, and it was agreed that Mr. Christopher (WD's advocate) would speak to WD about this to establish his wishes. Mr. Christopher duly spoke to WD who informed him that he wanted to be with his friends that evening and not go to the party.
- 33 On 17th February the Local Authority duly filed its application in the Court of Protection seeking a declaration as to WD's capacity to make decisions as to his property and financial affairs, and whether it was in his best interests that those affairs are managed by the Local Authority as financial deputy under the 2005 Act. The purpose of the order was said to be ensure that WD is in receipt of all benefits and other sources of income to which he is entitled, that his financial responsibilities for rent, bills, etc are properly met, and that money is available for his personal spending needs. It was said to be needed because of the long term plans to move WD to independent supported living accommodation. Appended

to the application was a standard form assessment by another psychiatrist, Dr. Nelson, confirming that WD lacked capacity as to financial matters.

34 On 8th March the Local Authority filed its final care plan containing a range of provisions to meet WD's needs. The matters covered included WD's personal care and living skills, employment, contact with MDW and other members of the extended family, leisure and other activities, education, housing, respite care, the possibility of a move to supported living, finances, speech & language and occupational therapy. In respect of each matter the plan identifies what the needs are, how they are currently being met, the aim of the care plan, the person responsible, and the timescale. I am satisfied that the care plan prepared by the Local Authority is comprehensive and properly identifies his needs and how they can be met.

35 As to contact, the plan records that WD has started having unsupervised contact with MDW. The first such visit was on 23rd January and it consisted of a 30 minute unsupervised slot within MDW's three hour contact on a Saturday. It was reported that that contact had gone well, although DKD had later complained that MDW had made comments during those 30 minutes critical of him. The care plan states that the aim of the plan is indeed to move towards full unsupervised contact in due course. In addition, the plan records that WD has had contact with

other members of his family, including his cousins C and A, and Cindy's baby. That contact was said to have gone well.

36 The plan recorded that respite care was continuing, that a second weekend a month's respite care had been considered but that WD had expressed reluctance because it cut across his other activities, in particular his time with his friends from Mencap. His education was continuing at Waltham Forest College where he is receiving training on life skills.

37 The plan confirmed that the current proposal is that WD should continue to reside with DKD for the moment, but that the possibility of supported living should be actively encouraged and considered, starting with some preliminary visits to possible establishments. I note that the therapists' reports describe how WD has been helped by the use of a daily visit prompt board to enable him to focus on independent daily tasks. A further report from his community nurse, Mr. Wilson, was also available, which reported on work to heighten WD's awareness of what is and is not appropriate behaviour in intimate relationships.

38 Finally, in this lengthy summary of the history, on 22nd March 2010, some nine days before the hearing, a meeting took place attended by, amongst others, the social worker, the advocate Mr. Christopher, DKD, MDW, the Official Solicitor's representative and the independent social worker Ms Thakrar. The meeting

focused on all elements of the plan. It highlighted ongoing difficulties between MDW and DKD.

- 39 The matter comes before me today to consider the remaining issues so far WD's future is concerned. The Local Authority, DKD and the Official Solicitor are represented legally, the aunt appears in person.
- 40 The issues which I have to consider are four fold: first, WD's future accommodation and residence; secondly, his contact arrangements with other members of his family; thirdly, the application by the Local Authority for the appointment of a deputy under the Mental Capacity Act 2005; and fourthly, whether or not these proceedings should now come to an end. Other matters of the care plan are fully agreed between the parties. As I have said, the plan put before me is comprehensive and this court is happy to endorse it.
- 41 So far as accommodation is concerned, the position of the parties is as follows. The Local Authority, supported by DKD and the Official Solicitor, propose that WD should continue to live with DKD in the short term, but that steps be put in train to identify a suitable independent supported living establishment to which he can move at some point in the next 12 months. MDW opposes the proposal that WD should continue to live with DKD. She asks me to order that he should go to live with her. Alternatively, if I do not do that, she proposes that WD should

move as soon as possible away from DKD. This demonstrates the persistent ill feeling that exists between DKD and MDW.

42 So far as contact is concerned, if I acceded to MDW's proposal as to accommodation, it would obviously follow that detailed consideration would have to be given as to the future contact between WD and all members of his extended family, including DKD. If, however, I do not follow what MDW proposes about residence, then the issue arises as to what contact WD should have hereafter with MDW.

43 The proposal of the Local Authority is that that contact should continue and that the level of unsupervised contact should be increased. That is supported by the Official Solicitor and of course by MDW herself. She seeks as much contact as possible and says that none of it needs to be supervised. She wants to move forward to staying contact in due course. The father opposes any extension of unsupervised contact because of concerns he has about things that MDW might say disparaging him to WD during those periods of unsupervised contact. This demonstrates again the strained relationships between DKD and MDW.

44 So far as financial matters are concerned, the Local Authority proposes the appointment of an officer of the Local Authority to act as deputy under the

Mental Capacity Act 2005 to take over responsibility for WD's financial affairs. That is supported by the Official Solicitor and by MDW but opposed by DKD.

45 I heard brief evidence from four witnesses to enable me to make this decision, in addition to reading the copious documents in the bundle. The four witnesses were: first, MDW herself; secondly DKD; thirdly, Ms Thakrar the independent social worker; and finally, Mr. Christopher, WD's advocate.

46 I deal first with the question of accommodation. MDW put in an impassioned plea that I should allow WD to return to live with her. She said that she had looked after him in the past and could do it again in the future. She said that she understands him. She did not trust DKD, she said, because he has a hold over WD. She accepted that if asked WD would say and had said that he wanted to live with DKD, but she said that that was a reflection of influence of DKD over WD.

47 DKD gave evidence and stressed how closely WD was both to him and to his brother, D. He accepted that it is in WD's interests to move to independent living in the future. He points out with realism that he will not be around for ever, and what is to happen then to WD, he asks. Clearly, it is in WD's interests, says DKD, to be prepared for that eventuality. Thus he wholeheartedly supports the

Local Authority's plan that WD should be encouraged to move on to independent living.

48 Ms Thakrar gave evidence and stated that in her view WD was settled with his father, although she supports the long term aim of a move to independent living. She commended DKD for the way in which he had recognised that it was in WD's interests to move on. Mr. Christopher confirmed that WD seemed comfortable where he lives, but confirmed that he had spoken with WD about the possibility of moving to independent living – a suggestion which Mr. Christopher supports.

49 Clearly, the balance of evidence is in favour of WD remaining where he is. I listened carefully both to MDW's evidence and also to her final submissions to me in which she stressed how she and WD had a good relationship until DKD got involved and interfered. I have considered carefully the strong arguments that MDW puts forward, but in the end I am entirely satisfied that the evidence points in one direction and in one direction only, namely, that for the moment WD should continue to reside with DKD.

50 I fully endorse, however, the plan which the Local Authority put forward, supported by Ms Thakrar and the other professionals, and, importantly, endorsed by DKD, that WD should move soon to independent living if that can be

achieved. It seems to me, with respect to MDW, that she does not demonstrate that she really understands WD's needs. I am sure she feels strongly about him and loves him and is concerned about him, but I am not satisfied that she has really appreciated where his needs lie. I think DKD has demonstrated that he has a better understanding of what is in his son's best interests. So the order I will make in due course will be an order that provides WD should remain living with DKD for the moment.

51 Secondly, the question of contact. This, of course, is on the basis that WD will remain with his father. I was concerned, when I listened to MDW's evidence, that she seemed to be so strongly critical of DKD and to hold such strong views that I found it difficult to imagine that she would be able to restrain herself from repeating those views to WD. If that were to happen, I would be concerned about the risk of harm to WD, who loves everybody in his family and would find it confusing and distressing to hear one member of his family criticise another. I am assured, however, by Ms Thakrar and by Mr. Christopher – both of whom know more about this case than I – that in their view MDW is able to restrain herself during contact and to concentrate on WD's needs and looking after WD during contact, and to refrain from making critical comments about DKD.

52 On the basis of their evidence, I propose to endorse the Local Authority's plan and make an order that contact should continue, not less than twice a month, that each

visit should be of not less than three hours' duration, and that at the Local Authority's discretion the unsupervised component of that contact should continue.

- 53 Thirdly, the question of a deputy. The Local Authority put their case for the appointment of a deputy under the Mental Capacity Act on the basis that the plan is for WD to move to independent supported living in the medium term, and that at that point it will be important for his financial affairs to be handled by one of their employees acting as a deputy.
- 54 DKD is opposed in principle to that, but with an element of realism in his evidence he acknowledged that this was a matter for the court and if the court felt it appropriate he was confident that he and the deputy could work together. This, it seems to me, is something to be considered but not at this stage. I have no reason to believe that the arrangements for control of WD's finances are not being handled properly by DKD. I see no need to change that at this point. If WD moves to independent living, then that will have to be considered again.
- 55 The fourth issue is the question of the future of these proceedings. It is obviously undesirable for court proceedings to continue indefinitely, although in cases of this sort it seems to me there is a danger that they do. Nonetheless, these proceedings, it seems to me, should continue for the time being for these reasons.

First, no final decision can be taken about his long term residence until the possibility, of and options, for independent supported living have been investigated. The Local Authority intends to embark upon that process in the next few months and then a decision can be taken. In my view, that is a decision which should be carried out under the umbrella of these proceedings. Secondly, I am far from satisfied that the future of contact is so clear and unproblematic that I can let the proceedings come to an end at this stage. I think it will be in WD's interests to review contact and to see whether it is still working in the interests of WD before these proceedings come to an end. Thirdly, by not allowing the proceedings to come to an end, I will be able to postpone the decision about the appointment of a deputy until the future of WD's residence and accommodation has been clarified.

56 Thus, the order that I propose to make is in the following terms. First, I have asked both DKD and MDW to give me an undertaking that they will not criticise the other in the presence of WD. I am happy to say that both DKD and MDW are willing to give me that undertaking. Secondly, I make declarations which I propose shall be final declarations that WD lacks the capacity to (a) litigate in relation to issues; (b) make decisions as to where and in what sort of accommodation he should reside; (c) make decisions about the care he needs; (d) make decisions about the nature, extent and frequency of contact with others; and (e) make decisions about his property and affairs. Thirdly, I propose to declare

that it is in WD's best interests to reside with DKD for the time being, pending any move into supported accommodation. Fourthly, I declare that it is in his best interests to have the comprehensive care package set out in the Local Authority's final care plan dated 8th March 2010. Fifthly, I declare that it is in his best interests to have contact with MDW, his cousins Cindy and Andy, and other family members at the discretion of the Local Authority, having regard to his own wishes and feelings as ascertained by his advocate, Mr. Christopher, provided that his contact with MDW shall be not less than two visits per month, that each visit should be of not less than three hours' duration and that there should be an increase in the unsupervised component of that contact at the Local Authority's discretion. Sixthly, I propose to make an order adjourning the Local Authority's application for the appointment of a deputy to make decisions on behalf of WD in relation to his property and affairs to the hearing provided for below. That hearing will be on a date to be fixed in December 2010 with a time estimate of two hours and shall consider: (a) whether WD should move into supported accommodation; (b) future contact with his family members; and (c) the appointment of a deputy pursuant to the Local Authority's application.

57 I propose the following directions. First, I invite Ms Thakrar to prepare an updated assessment of WD and his needs. Secondly, I propose that Mr. Christopher should prepare a further report outlining WD's wishes and feelings about the matters to be considered at the hearing, namely accommodation and

contact. Thirdly, I direct that the Local Authority should, having received those reports from Ms Thakrar and Mr. Christopher, prepare an updated care plan supported by such further evidence as they think appropriate. Fourthly, I direct that, upon receipt of those documents, DKD and MDW should be at liberty to file such further evidence upon which they wish to rely at the hearing. Fifthly, I invite the Official Solicitor to file a statement, having received all those previous documents.

58 I leave it to the Local Authority's representative to draw up an order providing for the matters I have set out. I would be grateful if he, in conjunction with the parties, could agree a timetable for the filing of those documents.

59 Finally, I direct that a transcript of the judgment I have delivered today be prepared at the joint expense of the publicly funded parties, which I apprehend is the Local Authority, the father and the Official Solicitor.

MISS GREANEY: My Lord, the first thing was I think in your judgment you referred to the date of the parties' meeting as 27th March and it was actually 22nd March.

MR. JUSTICE BAKER: Thank you for correcting me. It said 27th in my note. I must have just misread it.

MISS GREANEY: The other matters were one matter in relation to your declaration as to lack of capacity in relation to contact. The Official Solicitor has quite a strong view that generally lack of capacity in relation to contact is general as opposed to person specific, so the Official Solicitor's preferred wording is the WD lacks capacity in relation to decisions about contact with others.

MR. JUSTICE BAKER: Yes.

MISS GREANEY: Rather than with members of the family.

MR. JUSTICE BAKER: I saw that the draft had been broadened, but I broadened it still further to “others”. No difficulty, Mr. Harrop-Griffiths?

MR. HARROP-GRIFFITHS: No problem with that, my Lord.

MISS GREANEY: The other matters were the Official Solicitor suggested that as well as the Local Authority filing a care plan, there were specifically reports from Waltham Forest College and --

MR. JUSTICE BAKER: I saw that that was mentioned, and I said such evidence as they see fit. I think that is all right, is it not?

MISS GREANEY: It is. I think the Official Solicitor would very specifically like to have a report from the College, because he is doing this Skills for Life course.

MR. JUSTICE BAKER: Do you note that, Mr. Harrop-Griffiths? I am happy for you to put that in the order.

MR. HARROP-GRIFFITHS: It does not cause a problem.

MISS GREANEY: Also, the speech and language therapists, because they have been so helpful in terms of advising on WD’s progress.

MR. JUSTICE BAKER: Yes. I saw that in the draft and I read it as such further evidence as they advised.

MISS GREANEY: We have noted it. That is fine. Thank you.

MR. JUSTICE BAKER: Anything else?

MISS AHMED: My Lord, just the matter of the disclosure.

MR. JUSTICE BAKER: Yes. Will you please also include in the order disclosure of ...

MISS GREANEY: It is unopposed because my understanding is that Ombudsman’s reports are anonymised in any event, but that was one matter that the Official Solicitor wanted to ensure: that any report by the Ombudsman is appropriately anonymised, so that WD’s privacy is protected in that way.

MR. JUSTICE BAKER: Is that a matter over which I have control? It does not seem to me it is. I cannot control that.

MISS GREANEY: I think in the sense that the Official Solicitor consents to it on the basis that the Ombudsman does not reveal WD's identity.

MR. JUSTICE BAKER: There will be disclosure on the basis that they are not disclosed further without leave of the court. That must be right, must it not? Say to the Ombudsman that no further without leave of the court, so the report of the ombudsman will not be entitled to break that. Will you draw that to the ombudsman's attention, please, Miss Ahmed, or whoever is acting for the father in respect of that matter?

Can I hand the papers back to you. Yes, MDW.

MDW: I want to say I am really disappointed about decision because this man has violently beaten me up, this man has beaten up his child. This man has done so much damage to this child and yet still the court sees fit to have him living there. This contact I have is just three hours and whenever in the past for an hour I try to be very, very calm, very understanding to WD, no aggression whatsoever, but yet still none of that was brought in. Because he is living with his father and everybody say he is settled and he is quiet, I'm not against that. What I am saying is that I want to share that.

MR. JUSTICE BAKER: MDW, I have listened carefully to what you have said. I have given my judgment. I have got nothing further to say. I will have the matter back before me, reserved to me Mr. Harrop-Griffiths, in December. MDW, you will be able to address me then. I hope very much that relations within the family improve. I hope contact goes well. Thank you. I am going to rise now. I am going to give the papers back.