

IN THE HIGH COURT OF JUSTICE
IN THE COURT OF PROTECTION

Case No: 1145479102

Sitting at The Royal Courts of Justice

19th November 2009

Before:
THE HONOURABLE MR JUSTICE HOLMAN

BETWEEN:

N C C

And

KM and SM

Transcript from a recording by Ubiquis
Clifford's Inn, Fetter Lane, London EC4A 1LD
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MR J O'B. appeared on behalf of the LOCAL AUTHORITY
MS F M appeared on behalf of the FIRST RESPONDENT
MR J C . appeared on behalf of the SECOND RESPONDENT

JUDGMENT

(as approved)

MR JUSTICE HOLMAN:

1. This hearing and these proceedings concern KM. KM is a young adult now aged 23. He has a long-term range of associated autistic spectrum disorder, bipolar affective disorder and mild learning disability, which all contribute to significant impairment of his intellectual functioning. As a result, arrangements have been made, and indeed evolved over recent years, whereby the N [redacted] C [redacted] C [redacted] provide a package of care and support for him. He resides in accommodation financed and provided for him within the community and is helped and supported there by a team of dedicated carers who have been specially trained to appreciate and minister to his own particular needs. As I understand it, at any given time such care is provided on a two to one ratio. By paragraph 27 of his statement dated 18th November 2009, the official solicitor, Mr P [redacted], who acts on behalf of KM in these proceedings, says as follows:

‘I would invite the court to acknowledge the remarkable, conscientiously managed care package that has been provided to KM by the N [redacted] C [redacted] C [redacted] and their multi-disciplinary team which not only affords this vulnerable young man with appropriate protection, but enhances the quality of his life in such a way that he is able to acknowledge and hence, perpetuates the improvement in his well-being.’
2. My own involvement in this case has been very short-lived and I only first knew anything about it at all late yesterday afternoon, but I would like specifically to endorse what Mr P [redacted] said in that passage. As one reads the papers in this case, one can only be filled with admiration for the way in which the N [redacted] C [redacted] C [redacted] have responded, I am sure at very great expense, to the needs of KM. It is indeed an example of how caring our society can be when it is functioning at its very best.
3. All these arrangements have been made and are proposed to continue to be made on the basis that KM himself lacks capacity to make decisions on a whole range of matters concerning his care, welfare and wellbeing. They do involve deprivation of his liberty in

that the accommodation in which he lives is generally kept locked and he does not have access to the key. That is designed entirely for his protection so as to avoid what I might call 'unauthorised wandering'. When he moves out and around in the community as he regularly does, he is escorted by one or more of his carers. One purpose is ultimately to ensure that he does not wander off and in some way act to his own harm and detriment. That, too, ultimately involves a deprivation of his liberty.

4. Further, it is a feature, albeit a sad one, of this case that contact with his mother, who is his closest relative, can trigger an adverse reaction in KM. I wish to stress that so far as I am aware, this derives entirely from his mental state as I have so briefly described and is not in any way at all a reflection upon the love and devotion of his mother; but it remains the sad fact that some supervision and control is required upon his contact with his mother in his own best interests.
5. That, in briefest of terms, is the background to this hearing today. Before and during this hearing, a detailed order has slowly evolved and been drafted. Its terms are now fully agreed and consented to by each of the N C C, KM's mother and the official solicitor as litigation friend on behalf of KM. To anyone who needs or cares to read it, the terms of the order are, in fact, full, detailed and self-explanatory. It contains within it a series of declarations as to those respects in which KM does lack capacity to make decisions for, and in relation to, himself.
6. I am absolutely satisfied (and nor is it disputed by anyone within these proceedings) on the basis of the evidence that I have read and heard that is recited in preambles to the order, that KM does indeed lack capacity in all the listed respects. That being so, it is both appropriate and necessary under the Mental Capacity Act 2005 for the court to make certain decisions on his behalf, and also for decision-making on his behalf to be undertaken by others; specifically, the N C C and the director of Social Services of

that council who, by consent, I appoint as financial deputy for KM.

7. All such decisions must be made by the touchstone of KM's best interests and generally applying the principles in Section 1 of the Act. Again, those matters which are declared in the order are fully rooted in, and justified by, the evidence which I have heard and read. I myself am quite satisfied that all aspects of the order in its finalised form are indeed in the best interests of KM.
8. Insofar as they refer and relate to contact between KM and his mother, they undoubtedly involve a restriction on the contact that his mother might ordinarily expect to have with an adult son. To that extent, there is or may be some infringement of her own rights under Article 8 of the European Convention on Human Rights. A balance, plainly, has to be performed between the rights and needs of KM himself and those of his mother. The mother has accepted the restrictions on her contact with her son and I, for my part, am satisfied that a fair, appropriate and proportionate balance is struck by this order. It is, of course, essential and indeed necessitated by Article 5(4) of the European Convention on Human Rights that there be a provision for regular review at appropriate intervals by a court of whether or not KM continues to lack capacity; and if so, the continuing need for, and appropriateness of, the restrictions on his liberty, including the restrictions on his contact with his mother.
9. In the light, in particular, of the oral evidence which I heard this morning from Dr A and Dr F, it seems to me that the provision which has now been agreed does afford a lawful, proportionate and appropriate mechanism for review as required by Article 5 (4). There is, in any event, within the order a general liberty to all parties to apply such that, at any time, any of these parties can make application to the court. But even if no such application is made, there is within the order a mechanism requiring, and providing for, annual review by a District Judge of the Court of Protection after a process of the

circulation of evidence for submissions by all parties.

10. The mechanism includes provision for any one or more of the parties to seek an oral hearing or, of course, for the court itself to decide that an oral hearing is requisite or appropriate. If, however, no party seeks an oral hearing, and provided that the District Judge himself does not consider that an oral hearing is appropriate or necessary, then it seems to me, on the facts of this case, that proper and full respect for the rights of both KM and his mother is afforded by the provision for a review on paper.
11. It is, of course, of the utmost importance, indeed fundamental, to such annual reviews that KM himself can fully participate and be represented through the official solicitor as his litigation friend. Sadly, the prognosis is that KM's overall condition and lack of capacity is unlikely to improve so far ahead as one can reasonably foresee. Therefore, there will be a long-term need for involvement by the official solicitor in this case. However, as has been explained to me today and as I fully understand and appreciate, the scheme of public legal funding is such that some endpoint has to be applied to the scope of any current certificate.
12. I will accordingly direct, as asked, that there be a detailed assessment of the publicly funded costs of both KM himself and his mother, and as this hearing today is characterised as a 'final' hearing, the effect will be that the existing certificates come to an end. I have absolutely no power, of which I am aware, positively to require or direct the grant of new certificates for the purpose of the proposed annual reviews, still less to dictate that any given item of expenditure is a proper cost to be incurred for the purpose of annual review. However, it is crystal clear to me that justice to KM and indeed his mother, as well as proper application of both Articles 5(4) and 6 of the European Convention on Human Rights, will require that fresh certificates are granted, enabling both KM and his mother fully to participate in the process of review as the provisions of the order contemplate. I am accordingly very willing to state, as I do state on the face of the order, that in the opinion of

the court, the preparation of evidence or submissions for the purpose of annual reviews would be a proper cost to be incurred pursuant to new certificates issued by the Legal Services Commission to KM and indeed, if she wishes to participate, his mother.

13. For those reasons and with those explanations, I am very pleased indeed to make an order in the terms of the final draft placed before me today. I only part from this case by repeating my admiration for all that the N. C. C. have done and continue to do for KM; my gratitude to the official solicitor for all that he has done so ably to represent KM and my very real respect and understanding for the position of KM's mother in this situation which must, fundamentally, be a sad one for her. With considerable eloquence, she stressed this morning how everyone must be focussed on the best interests of her son. That has made it necessary for her to make great personal sacrifice in order to respect and accommodate his particular needs. Therefore, I leave this case with respect and admiration for the mother, supported, as I am sure she is, by her partner, Mr W who is also present today.
14. Finally, I repeat my sincere regrets and apologies on behalf of the system that so many people, and in particular the mother and Mr W, have had to travel so far from . . . to London for this hearing today. That should not have happened and I hope it will never happen again.

End of judgment.
