

In the Court of Protection

Sitting at Leeds

Case number 12952790

Before Her Honour Judge Anderson

Between

A Local Authority

And

AB

And

SB (by the Official Solicitor)

Judgment handed down at 2 pm on 29.07.20

NOTE: This judgment is issued in proceedings to which a transparency order applies. Nothing must be published which might identify P or her whereabouts

Appearances:

Dr Green instructed by A Local Authority

Ms Twist instructed by Ms Stuart of Irwin Mitchell Solicitors for AB

Ms Roper instructed by Ms Hurst of Simpson Millar Solicitors for SB (by her litigation friend the Official Solicitor)

1. The application before me today is an application by the Official Solicitor who asks me to conclude these proceedings without pursuing the instruction of a third independent expert psychiatrist, instructed to assess SB's capacity on the single issue of her capacity to make decisions about contact with other people. The Official Solicitor asks me to discharge a direction made by Her Honour Judge Richardson on 26th May 2020 which provided for this assessment.
2. The background is as set out in Her Honour Judge Richardson's judgment of 26th May 2020 following a fully contested hearing on 11th May 2020. I do not intend to repeat it. During that judgment she made it clear that the parties in the case had requested that there be a further assessment of SB's capacity in relation to contact, all parties considering it to be necessary. Judge Richardson made the order which was requested. She therefore considered it necessary. I note that the hearing was taken up with submissions concerning numerous contentious issues, all of which were dealt with by the judge in detail in her

judgment. Therefore, there was no need for her to state in her judgment why she considered the agreed assessment to be necessary.

3. This application has been dealt with by submissions at a remote hearing. I have read the written submissions of the advocates which have been supplemented by oral submissions at the hearing. I have also read evidence in the form of a statement by the Local Authority social worker. AB has not filed a witness statement for this hearing. I have seen SB with her solicitor, and I deal with that below.
4. The basis of the application is the belief of the Official Solicitor that SB does not wish to take part in a further assessment and (I summarise) would find it distressing and intrusive.
5. The Local Authority supports the application by the Official Solicitor and submits that the case should be concluded with no assessment as ordered by Her Honour Judge Richardson. The Local Authority now submits that there is no need for an assessment and that it would be detrimental to SB to require her to engage in the process.
6. SB's mother, AB, urges me to allow the instruction, and therefore the proceedings, to continue.
7. Dealing specifically with the history in relation to SB's capacity to make decisions as to contact it seems that there was a declaration that SB lacked capacity in this respect in February 2019. Subsequently, when it became clear that SB has capacity in other areas, the Official Solicitor wanted the issue of capacity in relation to contact to be revisited. The final declaration in relation to capacity regarding contact was discharged by Her Honour Judge Richardson at the hearing in May. It was in that context that a further assessment was directed. SB had indicated that she did not wish to see Dr O'D (the expert who had reported previously) again and a different expert was identified. The current position is that while SB does not have litigation capacity, she does have capacity in relation to decisions about residence, use of the internet and social media, contraception and care needs.
8. In relation to this further capacity assessment the Local Authority now relies upon indications of SB's wishes and feelings as set out in text messages received by SB's solicitor Ms H in June 2020 and as described in the evidence of SB's social worker. It was in the context of that indication of SB's wishes and feelings that the Local Authority and the Official Solicitor have taken stock in relation to whether it is necessary for there to be a further assessment.
9. I have further information from SB. I met her before the hearing, by telephone, in the presence of her solicitor Ms H. She had asked to see me. The parties have seen a record of what she said. In simple terms she stated that she wanted the proceedings to continue, there was a need for assessment, she was not prepared to be assessed by Dr O'D but would be prepared to be assessed by a different doctor. Subsequently she sent text messages to her solicitor Ms H which I have seen.
10. The hearing ended at the end of what had been a very long court day. Bearing in mind the importance of my decision to SB, and also to AB, I decided to reflect on what I had heard and to hand down a short judgment as soon as my court commitments allowed.
11. Having considered all the evidence before me and the written and oral submissions I do discharge the direction for assessment of SB in relation to capacity to make decisions for contact.

12. There is no need for such an assessment in my judgment.
13. This is because, firstly, no party wishes the court to make any decisions about best interests in relation to SB's contact with others. AB, who Her Honour Judge Richardson describes as "a concerned and committed parent" is clearly concerned about the history of the case, the risky behaviour of SB in the past, and her vulnerability. However, she does not wish the court to make any decisions about contact at present. There is no need to.
14. Secondly, and this is a related point, there is no evidence before me that SB is currently at risk from third parties or is engaged in activity which will draw them to her.
15. SB has been in a relationship with SJ since May 2017. Prior to the current Covid 19 emergency SB used to spend each weekend with him, spending midweek with her mother. It seems that SB has spent the months of lockdown living with SJ. No one suggests that her staying with SJ is not in her best interests.
16. It is submitted on behalf of AB that SB spends a lot of time communicating with people on social media and that she is very evasive when asked by her mother who she has been communicating with. I note that I have not seen any evidence from AB to this effect. I have not seen any evidence that there is a perceived risk from any specific individual or group of individuals as a result of this pastime. Furthermore, I have been reminded that SB has capacity to access the Internet and social media and is entitled to do so. I accept the submission of the Official Solicitor that it would not be unusual for a 30-year-old woman with capacity to engage in social media to be reluctant to inform her mother about the detail of those communications.
17. Next, in addition to there being no need for such an assessment I consider that there is a real risk to SB's emotional well-being if I allow such an assessment to proceed. SB now says to me that she is content to see another doctor. Therefore, I can assume that if I allow such an assessment she would cooperate. However, I note the evidence of both the social worker and SB's solicitor that SB has engaged less with them since the further work was ordered. She has told her solicitor that she finds questions from professionals distressing. I also take into account the evidence of the social worker that the involvement of a new professional is likely to cause SB distress, as all contact with professionals appears to do. The introduction of a new professional and therefore going over very difficult matters in SB's past, which she has perhaps covered with others, will be likely to cause SB anxiety and distress and increase the risk of emotional harm to SB. It cannot be said that the process will have a therapeutic element. It is purely discussion for assessment purposes and will not necessarily have any intrinsic benefit to SB. I take into account that when SB spoke to me she indicated a willingness to take part in a further assessment. However, SB also mentioned her wish to have the care of her son. She said, "if I have capacity I don't get and understand why I shouldn't have my son living with me now". I have a very real concern that SB was confusing the proposed assessment with an assessment relating to contact with her child.
18. It was submitted on behalf of AB that such an assessment might result in there being more or different support for SB. I am not persuaded that this would be the case. I do not consider that it would necessarily bring about any change in the safety planning. The agreed arrangements for SB's support have been in place for some time and appear to have been working well

19. Bearing in mind that the court is not being asked to make any decisions about SB's contact with others it would not be in her interests for me to direct that there be such an assessment. I consider that the level of anxiety and distress which would be caused by repeated conversations about very difficult matters is now likely to outweigh any perceived benefits.
20. Furthermore, bearing in mind that no party is asking for a best interest decision in relation to contact with others, I consider that, given the time specific nature of capacity, it would be appropriate for any capacity assessment to be undertaken if and when a specific concern about SB's contact with others arises. At this stage, in the current circumstances, I consider that an assessment would be intrusive and unnecessary.
21. Therefore, I do make the order sought by the Official Solicitor.

Her Honour Judge Anderson

29.07.2020