



Neutral Citation Number: [2020] EWCOP 65

Case No: 12748362

**COURT OF PROTECTION**

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 19/11/2020

**Before :**

**MRS JUSTICE LIEVEN**

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**Between :**

**ESSEX COUNTY COUNCIL**

**Applicant**

and

**CVF**

**(by her litigation friend, the Official Solicitor)**

**First Respondent**

and

**JF**

**Second Respondent**

and

**ESSEX PARTNERSHIP UNIVERSITY NHS FOUNDATION TRUST**

**Third Respondent**

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**Ms Emma Sutton** (instructed by **Essex County Council**) for the **Applicant**  
**Mr Rhys Hadden** (instructed by the **Official Solicitor**) for the **First Respondent**  
**The Second Respondent** represented herself  
**Ms Sophie Barbour** (instructed by **Hempsons**) for the **Third Respondent**

Hearing dates: **19 November 2020**

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**Approved Judgment**

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MRS JUSTICE LIEVEN

**Mrs Justice Lieven DBE :**

1. This is the final hearing in Court of Protection proceedings concerning CVF. CVF is a 29 year old woman who is represented by Mr Hadden acting on behalf of the Official Solicitor. The Local Authority, the applicant is represented by Miss Sutton, and the third respondent, which are responsible for delivering mental health services to CVF, is represented by Miss Barbour. CVF's mother, JF, who is the second respondent, represented herself.
2. JF requested in writing that the hearing be adjourned, in part as she is out of the country. I rejected this request as I agree with the Local Authority and the Official Solicitor that it is important that the proceedings come to an end due to the considerable anxiety they cause CVF. I have done all I can to ensure that JF could participate effectively today and I hope she feels that she has been able to do so.
3. The background to these proceedings is that CVF has diagnoses of diabetes, learning disability, emotionally unstable personality disorder, low self-esteem and feelings of abandonment. JF made a personal welfare application in January 2018. The application stated that "*CVF is a vulnerable women whose capacity to consent to sex, to make decisions in respect of contact with unknown men and to make decisions in respect of her care is in dispute*" and that it "*would benefit CVF for there to be clarity in relation to her capacity and whether any best interest decisions need to be made. At present ... there is a high level of police intervention and numerous safeguarding referrals due to there being no agreed position on CVF's capacity*".
4. By order of HHJ Parnell on 10 August 2018, the Local Authority was substituted as applicant and the application was transferred to the High Court on 12 February 2019. I have been hearing the application since that transfer.
5. On 31 July 2019, I made final declarations made under section 15(1)(b) of the Mental Capacity Act 2005 ('MCA 2005') regarding CVF's capacity based on evidence provided by Dr Camden-Smith, the court appointed jointly instructed expert. The declarations that I made were that CVF lacks capacity to (i) conduct these proceedings, and to make decisions regarding (ii) her residence; (iii) her care and support needs; (iv) the contact she has with others; (v) her internet and social media use and (vi) her property and financial affairs. I also declared that CVF has capacity to (i) consent to sexual relationships and (ii) make decisions regarding her medication.
6. I also approved a care and support plan, which was before me on that date and authorised CVF's deprivation of liberty in her flat pursuant to section 4A(3) and section 16(2)(a) of MCA 2005 as it was agreed that CVF was under continuous supervision and control and was not free to leave her flat without support.
7. At the last hearing on 18 December 2019 the parties agreed that:
  - (1) CVF should continue to live in her flat on a long-term basis. Due to CVF's strong and consistent wish to remain in her flat, the parties agreed that it was unnecessary for further consideration to be given to CVF moving to supported living accommodation;
  - (2) An order was not needed regarding contact between CVF and JF;

- (3) The restrictions upon CVF's use of the internet and social media set out in the internet, social media and smart phone enablement plan dated 31 July 2019 were in CVF's best interests.
8. I have had a number of hearings in this case and I have talked to CVF on a number of different occasions. I feel that I have a reasonably good sense of her, but obviously that is only within the court setting and all that implies.
9. There are three matters for me to deal with today:
1. Amount of care and support CVF needs.
  2. Whether the Local Authority should substitute JF as CVF's deputy for property and affairs.
  3. JF's application to be appointed as CVF's personal welfare deputy.

### Background

10. There is a very long history to this matter before proceedings commenced. It is only fair to JF to record something of that history. Dr Camden-Smith, in her recommendations, says as follows:

*“[CVF] is a vulnerable young woman. She has a poor sense of self identity and very low self-esteem; this is common in people with EUPD, and also in people with LD. She is overly sensitive to perceived criticism or rejection. She is highly suggestible.*

*People with EUPD often perceive things as opposing extremes. They often see things in black and white terms and will ‘split’ people and teams into ‘good’ and ‘bad’ in their own mind. Their inability to find a comfortable middle ground or hold two opposing views is a core feature of EUPD.*

*[CVF's] enmeshed relationship with her mother has contributed to her poor sense of self identity and her inability to advocate effectively for herself. [CVF] has clearly internalised her mother's views about her incapability of living independently or spending even the briefest period of time on her own. [CVF] seeks an external solution to her internal problem and does not recognise that she has any control of her internal or external experience. One of the solutions [CVF] clings to is the potential that the right medication will magically solve her difficulties.”*

11. I note that this report was written over a year ago now, and that CVF has made considerable progress since then. CVF has a history of very severe mood and behavioural fluctuations as well as self-harm and risky behaviour. She also has a history of entering into what become exploitative relationships and needing to be ‘saved’ from those relationships. That is the background to the concerns that JF has to her safety and makes JF's worries about CVF and wish to protect her very understandable.

12. CVF has been living in her own flat and has at least in principle been provided with care on a 24/7 basis (15 hours during the day and then support overnight.) However, the level of care has in practice been reducing over the months and it is now not at that level of 24/7 care. I note that the gradual reduction entirely accords with Dr Camden-Smith's recommendations and her view that there needed to be a reduction in support to enable CVF to improve her own independent functional skills.
13. The final hearing has proceeded today by way of oral submissions and I have not heard oral evidence, but I have written evidence from CVF's social worker, TF, and from KC (her specialist mental health nurse). I also have a series of attendance notes from Miss Moore, acting as CVF's solicitor, through the Official Solicitor throughout these proceedings. All that material records the very great improvement in CVF's psychological and emotional wellbeing over the last few months. She has become much more stable in her moods and behaviour and has been functioning much better. In practical terms, CVF has started doing some paid work and she has become considerably more self-reliant with cooking, cleaning etc. CVF has also become more stable in her emotional regulation and is less blown around by particular events. It is important both to praise CVF for the great work and efforts she has made in what has been described in the papers as her "*extraordinary improvements*", but to also be realistic that there have been ups and downs. Happily, the evidence suggests that CVF has been able to cope with those ups and downs far better than she had in the past.
14. JF has put in a detailed statement from herself as well as a statement from one of CVF's former carers (Miss J) and a letter from CVF's GP. JF's position is quite different regarding how CVF has been over the last months. Her view is that CVF is repeating a pattern of seeking a relationship and then allowing herself to be exploited through that relationship, both by her boyfriend and friends, in particular, one ex-carer. JF says that this pattern will lead to another crisis for CVF and she will run back to her mother. JF wants to prevent this pattern repeating itself.
15. JF believes that CVF needs 24/7 care to keep herself safe. Having heard JF's submissions, it was not very clear to me why she felt CVF needed that level of care now as opposed to higher levels of care being restored if there was a downward move to a crisis. She also feels that she should remain in control of CVF's finances as her property and affairs deputy and also be appointed as CVF's welfare deputy.
16. JF is very concerned that CVF is open to exploitation by her boyfriend and ex-carer and that the Local Authority have been too quick to support those relationships without sufficient protective measures in place. In particular, she criticises encouraging a sexual relationship and allowing CVF to travel to Spain on holiday with her boyfriend and ex-carer. JF feels that, again, she (JF) has been given inadequate support by the Local Authority and NHS Trust. She alleges that the Local Authority have not taken her concerns seriously about CVF's boyfriend and have not properly investigated them. Miss Sutton however showed me the file note that made clear the Local Authority had indeed investigated those concerns and had acted with all due diligence in this regard.
17. As I have said, there are 3 issues before me.

First issue: the amount of care and support CVF needs

18. The first issue is the level of care that should be provided, per the care plan, which will be appended to the order. I find that CVF does not need 24/7 care. This is entirely supported by the evidence of the Local Authority, EPUT, Miss Moore's attendance notes, as well as my own view from speaking to her.
19. The evidence is clear that CVF is now more stable and articulate, and better at dealing with emotional fluctuations and daily tasks. It is also the case that CVF doesn't want 24/7 care – she feels it as being intrusive and stops her being independent. She wants more autonomy, and, in my view, she has a right to more autonomy.
20. Having said this, I fully appreciate JF's concerns. I suspect that CVF's history of cyclical behaviour has something to do with relationships, often with boyfriends. In my assessment, JF is both a protective factor for CVF, the ultimate safety net, but also has not managed to allow CVF to gain greater independence and autonomy. This is a tension in many parent-child relationships, but it is magnified enormously in CVF's case because of her diagnosis, behaviour and the family history. It is very important to make clear that when I say 8 hours of care a day is appropriate, that does not fix that level forever and is completely subject to review and CVF's behaviour. The care plan unusually builds in a 3 month review process, due to CVF's fluctuations and also an automatic review if CVF's relationship with J should fail, as that is clearly a risk factor. Those review provisions support a reduction of care and provide for a safety net now and in the future.
21. In summary, firstly, the reduction in care accords with CVF's wishes and feelings under section 4(6) MCA 2005. Secondly, it is the least restrictive option under section 1(6) MCA 2005. Thirdly it is proportionate under Article 8 ECHR. Fourthly, it accords with CVF's best interests as in my view it is positively detrimental for CVF to have 24/7 care at the moment as all it serves to do is to make her feel undermined, triggers disruptive behaviours and reduces her motivation to become more independent and to improve functional abilities. Fifthly, to reduce the care in this way reflects the reality what CVF is currently receiving.
22. Finally, I refer to the judgment of Mr Justice Munby, as he then was, in *Local Authority X v MM & Anor* [2007] EWHC 2003 (Fam) at [120] and the importance of understanding that those who lack capacity, must, to a proportionate degree, be allowed to take risks and to test out their own capabilities. It is not the function of the Court of Protection to remove all possible risk and protect the individual at the expense of a proportionate balance:

*“A great judge once said, “all life is an experiment,” adding that “every year if not every day we have to wager our salvation upon some prophecy based upon imperfect knowledge” (see Holmes J in Abrams v United States (1919) 250 US 616 at pages 624, 630). The fact is that all life involves risk, and the young, the elderly and the vulnerable, are exposed to additional risks and to risks they are less well equipped than others to cope with. But just as wise parents resist the temptation to keep their children metaphorically wrapped up in cotton wool, so too we must avoid the temptation always to put the physical health and safety of the elderly and the vulnerable before everything else. Often it will be appropriate to do so, but not always. Physical health and safety can sometimes be bought at too high a price in happiness and emotional*

*welfare. The emphasis must be on sensible risk appraisal, not striving to avoid all risk, whatever the price, but instead seeking a proper balance and being willing to tolerate manageable or acceptable risks as the price appropriately to be paid in order to achieve some other good – in particular to achieve the vital good of the elderly or vulnerable person’s happiness. What good is it making someone safer if it merely makes them miserable?”*

23. I will make the order sought by the Local Authority in respect of the first issue.

Second issue: Whether the Local Authority should be substituted as deputy for CVF’s property and affairs

24. There are two limbs under section 16(8) MCA 2005 for removal and substitution of a deputy:

*(8) The court may, in particular, revoke the appointment of a deputy or vary the powers conferred on him if it is satisfied that the deputy–*

*(a) has behaved, or is behaving, in a way that contravenes the authority conferred on him by the court or is not in P’s best interests, or*

*(b) proposes to behave in a way that would contravene that authority or would not be in P’s best interests.*

25. One limb is that the deputy has behaved in some way inappropriately (which is not being suggested or relied upon), the second is that it is not in CVF’s best interests for JF to continue to be her property and affairs deputy. I am dealing here with the second limb.

26. CVF’s wishes are very clear. She does not wish for her mother to continue as her deputy. She feels that her mother is using this as a way to control her via the money. In my view, this is a very clear-cut situation because JF’s role is leading to conflict between CVF and JF and is undermining the prospects of them having a better relationship. I can see no disadvantage to the Local Authority becoming property and affairs deputy and so clearing the way so that JF and CVF can try in the near future to regain a relationship. Such a change is plainly in CVF’s best interests and accords with her wishes and feelings. I have no hesitation in making the order sought by the Local Authority.

Third Issue: JF’s application to be CVF’s personal welfare deputy

27. The basis of this application by JF is largely the same as set out before. JF considers that the Local Authority and NHS Trust have failed to keep CVF safe, that they have underestimated the risks she is facing and are too amenable to accepting what she says despite the history of behavioural risks. JF feels that the Local Authority and the Trust have allowed CVF to be exploited over the last few months.

28. There is some question about whether it is appropriate for me to deal with this application given that it is incomplete and could properly be dealt with by a judge of a different tier in the Court of Protection. However, I have become very familiar with

this case and I agree with the Local Authority that it is strongly in CVF's best interests for this litigation to be brought to an end. CVF finds these hearings stressful and it seems to be best that all issues are dealt with today so that effectively a new chapter can be opened going forward. In my view, it is therefore efficient and proportionate to determine that application today.

29. I have had close regard to Mr Justice Hayden in *Re Lawson, Mottram and Hopton (appointment of personal welfare deputies)* [2019] EWCOP 22 regarding the appointment of a personal welfare deputy, and at paragraph 53(c) Mr Justice Hayden says that "*The structure of the Act and, in particular, the factors which fall to be considered pursuant to Section 4 may well mean that the most likely conclusion in the majority of cases will be that it is not in the best interests of P for the Court to appoint a PWD*".
30. I agree with the Local Authority that having regard to the particular facts of this case, it is not in CVF's best interests for her mother to be appointed as her personal welfare deputy.
31. Firstly, the application is not limited in scope and would give very wide-ranging power to JF over CVF's life. That could be remedied in an order being limited, but (secondly) CVF is strongly opposed to her mother having a deputyship order over her so such an order would be contrary to CVF's wishes and feelings. As I hope is clear from the earlier part of this judgment, although lacking capacity, CVF is very articulate and able to express her views. I therefore place a great deal of weight on her wishes and feelings and I would consider this to be the critical factor. That leads to the third point. Given her strong opposition to her mother having this power, it would be highly contrary to CVF's best interests for this application to be allowed. CVF has made exceptional progress over the last 9 months, largely because she has been able to exercise more independence and autonomy, in part because of lockdown, and the pandemic has forced a situation where she has had less contact with her family.
32. I do appreciate the risks, but the reality is that there has been a positive experience for CVF over the last 9 months. If I were to appoint JF as a personal welfare deputy, that would be deeply upsetting and contrary to CVF's emotional well-being. It also appears to be the case that over the last 9 months many of the things that have gone so well for CVF and enhanced her independence (travelling to Spain, work, engaging in relationships) are precisely the things her mother would think she should not allow as they are too risky. Therefore, the third reason is that such an order would be contrary to CVF's best interests. Fourthly, to grant the application would be an unnecessary and disproportionate interference in her Article 8 ECHR rights and there is no justification for such an interference on the facts of this case. CVF must be allowed to retain and develop autonomy and take risks within the safety net from the Local Authority. I therefore refuse JF's application.