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IN THE COURT OF PROTECTION
[2021] EWCOP 67

No. COP13364813

Royal Courts of Justice
Strand
London, WC2A 2LL

Monday 5 July 2021

IN THE MATTER OF THE MENTAL CAPACITY ACT 2005

Before:

THE HONOURABLE SIR JONATHAN COHEN

(In Public)

BETWEEN:

A LOCAL AUTHORITY

Applicant

- and -

(1) GA

(by her litigation friend, the Official Solicitor)

(2) TA

(3) XA

(4) SR

(GA's Deputy for Property Affairs)

Respondents

REPORTING RESTRICTIONS APPLY

JUDGMENT

(v i a M i c r o s o f t T e a m s)

APPEARANCES

MISS E. KEEHAN (instructed by Legal Services, A Local Authority) appeared on behalf of the Applicant.

MISS F. GARDNER (instructed by Simpson Millar Solicitors) appeared on behalf of the First Respondent.

MISS A. NIZAMI (instructed by Burke Niazi Solicitors) appeared on behalf of the Second Respondent.

THE THIRD RESPONDENT did not attend and was not represented.

THE FOURTH RESPONDENT did not attend and was not represented.

SIR JONATHAN COHEN:

- 1 This case has a very long history over a number of years and there has been an absolute plethora of litigation. I refer to my judgment of 19 February 2021 and the underlying chronology extending over some forty pages.
- 2 The nub of it, to put it extremely shortly, is that the local authority and subsequently the Official Solicitor representing GA, a lady now in her late eighties, became very concerned about the circumstances in which she was living in a house under the care of her son TA. I will not repeat what is set out in my judgment. That is the background and it is from that that I start.
- 3 TA rejects the concerns and in an application that he purported to issue this morning, he makes the most widespread complaints against the local authority which have extended to the attempted murder of his brother, providing information for proceedings which led to his false imprisonment, and fraud. During the course of this hearing, he has accused the court of being commissioned by the local authority. He holds what might be thought to be very fixed and irrational views.
- 4 At a review hearing fixed for May 2021, TA was for the first time represented by solicitors and counsel. When I say for the first time, I am not aware of him ever previously having been represented, but on Wednesday of last week, that is five days ago, his solicitors wrote a letter to the court saying that they had concerns about TA's ability to conduct litigation and thus this hearing, which was intended to determine the remaining aspects of GA's long-term, has instead been taken up in dealing with the issue of TA's capacity.
- 5 TA is very upset with his lawyers for raising these issues. He is not in any way pacified by it being pointed out that if they held those concerns, they were obliged to refer them to the court. I am quite sure that the decision was not taken lightly and I am quite sure that in referring to the court, they were doing their duty. I do not know the full reasons for why these concerns were raised, of course, because what transpires between TA and his lawyers is the subject of legal professional privilege.
- 6 TA says that his lawyers have singularly failed to explain what the mental impairment is that they believe he suffers from and what the incapacity is. I have not heard from them in response to that and nor should I have because the court cannot get into any dispute between lawyer and client. However, I am quite sure that there will be significant arguments raised on both sides in the debate as to whether or not he does have capacity. TA rightly points me to the plethora of hearings in which he has self-represented without issue being taken but, on the other hand, there will be reference to the vehement and unusual views that TA holds. He certainly brooks no disagreement as his highly combative approach today has evidenced.
- 7 It would not be right to say that this issue comes completely out of the blue because the Official Solicitor has referred me to the risk assessment that was carried out by an independent social worker, Mr R, in February 2021 and there four references there that I think are worth quoting. At the foot of item 2, he says this:

“As you are aware, I am not a clinician. However, I have noted that TA's behaviour fits the profile for paranoid personality disorder. I am not able to assess the level of risk he poses if he is aware that the court may order that he leaves his home.”

- 8 Then at subpara.2 on the same page:

“My concerns are based on TA’s history of coercive control, evidence of a personality disorder, and his paranoid views re the local authority and the court.”

9 At para.3, he says this:

“My opinions concerning risks set out below are in the context of not knowing what TA is capable of given his longstanding, entrenched mental health issues. I am unable to provide a clinical assessment.”

10 Then finally, at the second sentence of para.10:

“The practical implications of TA’s long-standing and entrenched mental health issue lead me to be fearful of TA’s potential reactions.”

11 I do not know some five months after that report was written what material Mr R had when he wrote that but it is plainly material to the issue of capacity.

12 I do not regard this as completely straightforward. TA has been extremely reluctant to tell me if he would cooperate with an assessment and, instead, has reiterated the injustice of it all. All that I do know is that he was very determined to tell me that he would not let anyone see his medical notes.

13 I am bound by Part 21 of the Civil Procedure Rules. By para.21.2(1):

“A protected party must have a litigation friend to conduct proceedings on his behalf.”

14 At 21.3(3) and (4):

“(3) If during proceedings a party lacks capacity to continue to conduct proceedings, no party may take any further step in the proceedings without the permission of the court until the protected party has a litigation friend.

(4) Any step taken before a child or protected party has a litigation friend has no effect unless the court orders otherwise.”

15 It seems to me, having considered those paragraphs, that I have no choice but to call for an inquiry into TA’s capacity to conduct proceedings. It is in the interests of TA as well as the interests of justice. I fully recognise that one potential outcome is that he will be found that although he holds strongly held views, he retains and always has had capacity but at least we will know. Exactly the same applies of the decision is the other way. However, I cannot and should not ignore these concerns once they have been raised and I remind myself that I am dealing with a very important matter, namely the future care and welfare of GA and the role that her son plays in it. So, therefore, the matter has to be investigated.

16 So I direct that a psychiatric assessment shall be carried out on TA to determine his capacity and that should be done on a letter of instruction prepared by his solicitors and, of course, at the expense of his legal aid certificate. I will hear from counsel and TA what documents need to go to the instructed psychiatrist but I also direct that TA’s medical notes should be made available.

- 17 Moving on to the second part of this judgement, the court needs to be cautious about taking any steps in the proceedings when capacity is in issue but there are three matters that are raised by TA today which really cannot be left undealt with. Two of them are requests that GA should attend events in the next couple of days, one being a family wedding and one being a celebration of the festival of Eid. I am not prepared to make such an order. Whilst I understand that these events may be important for TA and his sister with whom he lives, the reality is that they will mean nothing to GA in her current state and I remind myself that TA's sister has had no contact whatsoever with her mother since February 2021, and that is of her own volition in the sense that she has made no contact with the local authority or replied to any communication.
- 18 The issue of TA's contact with his mother needs to be considered with great care. I remain concerned that the issue of TA's contact with his mother is being deferred excessively. He, with persuasion, has taken up the remote contact that I ordered at the end of May. It has not been a great success but that is not a criticism of TA. It simply does not work very well so far as GA is concerned.
- 19 As far as I am aware, TA complied with the letter of expectations that was put in place for that contact and I would ask the local authority to give further consideration to a meeting between TA and his mother on neutral ground in the community, by which I mean not at TA or his sister's home, and not in GA's home, but somewhere where it can be properly policed, if that is the right word, and only after a full set of expectations have been drawn up and agreed. I remain anxious, as I say, that this issue is being pushed too far into the long grass. I am not in a position today to make a detailed order but I do ask that fresh consideration be given to the matter.
- 20 So far as the other issues that TA raises in his, what I think is still unissued, COP9, there seems to me there to be nothing that cannot wait until later.
- 21 That concludes this judgment.

CERTIFICATE

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This transcript has been approved by the Judge.