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**Neutral Citation Number: [2021] EWHC 1233 (Fam)**

Case No. H90LS935

IN THE HIGH COURT OF JUSTICE

FAMILY DIVISION

[OUT OF HOURS: URGENT]

Royal Courts of Justice

Strand

London, WC2A 2LL

Friday, 30 April 2021

Before:

MR JUSTICE COBB

**(In Private)**

B E T W E E N :

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WAKEFIELD METROPOLITAN DISTRICT COUNCIL

Applicant

- and -

(1) FH

(2) MH

Respondents

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*Tel: 020 7831 5627 Fax: 020 7831 7737*  
*civil@opus2.digital*  
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MR B DAVIES (instructed by the Local authority) appeared on behalf of the Applicant.

MR M KENNEDY (instructed by Switalskis Solicitors) appeared on behalf of the First Respondent.

THE SECOND RESPONDENT appeared in Person.

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**J U D G M E N T**

**(Via Telephone Conference)**

MR JUSTICE COBB:

- 1 The application that is before the court this evening is one brought by Wakefield Metropolitan District Council under the court's inherent jurisdiction. The application is brought in respect of FH who is the first respondent. The local authority is represented by Mr Brett Davies and FH is represented by Mr Michael Kennedy. The second respondent to the application is MH, husband of FH, who appears at this court hearing unrepresented. This court hearing commenced at 8.00 p.m. and was taken as an emergency out-of-hours application.
- 2 The application is supported by a witness statement of JS, social worker within the hospital social work team in the Wakefield district. Appended to that witness statement is an exhibit which is in fact an audio recording of a telephone call between MH and the Care Link service. The telephone call took place on 29 April, that is to say, yesterday.
- 3 The case comes before the court in this way. FH is I believe seventy-eight years old. She is currently an inpatient at the Dewsbury Hospital where she has been since yesterday, 29 April. FH has multiple sclerosis, cerebellar ataxia, a history of strokes, Alzheimer's disease, anxiety and depression, epilepsy and bowel problems. She has a history of self-harm. That is the assessment of JS and those factors, together with her domestic circumstances, lead JS to form the view that FH is a vulnerable adult. That conclusion, provisional as it might be, is not one in fact which is challenged on FH's behalf by Mr Kennedy.
- 4 FH has very extensive care needs at home. They arise in respect of her toileting, her general care and support in washing and dressing, in the provision of meals and drinks, and in respect of all her domestic tasks. Those care needs are currently provided by her husband, MH. I pause here to highlight that FH and MH are a couple who have been together for over sixty years and one important agreed fact on the information that I have received is that they deeply love each other and want to be together. MH is a man who himself does not enjoy good health. He is said to be suffering from cancer and it has been suggested, though I do not know for sure of the accuracy of this diagnosis or prognosis, that he has only a limited time to live. MH told me during the course of the hearing this evening that his earnest hope was that he would be able to die in the arms of his wife.
- 5 Over a period of time stretching over years, a number of concerns have been raised with the local authority adult social services about the dynamics of the relationship between MH and FH in which it is said that physical and verbal abuse have been a feature. JS's professional view is that FH is subject to coercion and control by MH, who it is said manipulates her. There have been, over the years which are the subject of review in the witness statement of JS, a number of referrals which raise concerns about the wellbeing of FH. I do not propose to rehearse those in this short judgment, but they are reproduced at paras.29 through to 36 of that statement and should be read alongside this judgment.
- 6 Matters plainly came to a head yesterday when FH was admitted first to Pinderfields and then to Dewsbury Hospital; the circumstances of her admission have caused the local authority to make this application. I pause here for it is important to reflect on this now, both as to context and chronology, but I had the chance to listen before this court hearing to the audio recording of the Care Line phone call from yesterday. It is apparent from that call that FH was in a state of very considerable distress, having apparently fallen out of bed. What was striking about

MH's response to that situation was that he appeared to show no empathy or care for her in her situation but, on the contrary, demonstrated high levels of verbal abuse of her, both directly *to* her and *at* her. It makes, if I may say so, extremely distressing listening. I propose to direct that a transcript of that telephone call is obtained so that it is available for the court considering this case in the future.

- 7 A question of course now arises as to what should happen next. In that regard, it is material to note that Mr Kennedy, on FH's behalf, accepts that she is a vulnerable woman. Mr Davies' case is that FH needs the protection of the court exercising its inherent jurisdiction, having regard to the dynamics in the relationship between MH and FH, to protect her from the various forms of domestic abuse to which she has been subjected, including physical abuse and emotional abuse, which is, says Mr Davies, amply evidenced by the Care Link call, and it is the local authority's case that absent an order protecting her and facilitating her transfer into a care home, she would be being returned to an environment in which she would continue to be subject to intolerable and unacceptable coercion and control.
- 8 Mr Davies submits that FH is no longer able to make free choice about her future because of the influence of her husband. This is to some extent, he says, evidenced by what she herself says about his conduct towards her, and her minimising of it (see the position statement of Mr Kennedy). It is further evidenced, says Mr Davies, by the fact that at times she herself recognises that she needs care and support away from her marital home and in a care home and says that she wants to have the benefit of such care. Mr Davies submits that FH does not altogether appreciate the risks for her own safety.
- 9 Mr Kennedy was able during the course of the day today to visit FH in her ward room at the Dewsbury District General Hospital and he spent a little over an hour with her. He has prepared, for which I am immensely grateful, an extremely helpful position statement which summarises FH's instructions on her understanding of her admission and treatment in hospital. She was able to explain why she felt she had been admitted, that she was now in receipt of medication and on a drip for dehydration and that she was aware that she had been transferred between hospitals, namely Pinderfields and Dewsbury, and was pleased to have received treatment. Secondly, in relation to discharge from hospital, she has confirmed that she will follow medical advice as to whether or not she is fit or not fit for discharge from hospital. She made it plain that "I don't mind the doctor keeping me a few more days if he thinks that's best."
- 10 Thirdly, in relation to intervention from the council, she appreciates that the council are concerned about her wellbeing, although she was mildly sceptical about that, but nonetheless felt that she would be safe and well at home. In relation, fourthly, to whether she would accept discharge to a respite setting rather than going home, she said she could not accept transfer to a respite setting and made it clear that she wished to return home, to resume her residence with her husband, and she gave a number of reasons for that, notably her concern for him because he has cancer and is profoundly unwell.
- 11 Fifth, Mr Kennedy addressed whether or not FH felt she would be at risk of violence from her husband on returning home, to which she said that her husband had hit her "just around the face, that's all – not hard. A while back," and further commented that "He gets as much back." She told Mr Kennedy that they shout at each other, and she felt that it was six of one, half a dozen of the other. Sixthly, she was asked whether her husband could be overbearing, dominant, exerting undue influence on her and her decision making, to which she responded that she felt she had a mind of her own. She rejected the suggestion that her husband was

overbearing. She told Mr Kennedy that she would say to him, “Just shut up.” Finally, that she had once agreed to go into respite, and she said yes, she agreed but then she had thought, “The poor bugger, he’s got to face it on his own and he’s a lovely guy.”

- 12 Mr Kennedy in his submissions emphasised the point that FH, albeit vulnerable, does have capacity to make decisions. She does appreciate the risks of returning. She is prepared to take that risk. She does defer to medical advice, as is apparent from the assessment that I have just read, but does not feel in the circumstances that she should be compelled to be transferred to a care home. In that sense, she would depart from what the local authority says would be best for her. Further, says Mr Kennedy, there is a concern that there is no care home formally identified for FH at this stage and that the case for deprivation of her liberty is not made out.
- 13 MH, as I earlier indicated appearing in person at this hearing, told me the following things: that he has enjoyed sixty years of marriage with FH and there is no problem with her. In relation to her hoist and the installation of a hoist, which I mention only because it was raised by Mr Davies as a point of concern of the local authority, that there was resistance to the installation of such equipment, MH told me that it was not him who was objecting to the installation of the hoist, but FH herself was frightened of it. MH told me that if FH did not want to come home, she would say so but she has not. She has her faculties, he told me. He told me, as I have earlier indicated, that he has cancer and he wants to have the ability to die in her arms. He told me that FH is “my princess and I love her to bits.”
- 14 The jurisdiction of the court to act in relation to a vulnerable but capacitous adult has been discussed in two notable cases before the courts. The first is a decision of Munby J, as he then was, in a case called *Re SA (Vulnerable adult with capacity: marriage)* [2005] EWHC 2942 Fam, and secondly the case of *DL v A Local Authority* [2012] EWCA Civ 253. That is, as the neutral citation would reveal, a decision of the Court of Appeal. *Re SA* is a case which represents the high point in a series of first instance decisions which describe the extent of the inherent jurisdiction in relation to vulnerable adults, and in particular illuminates the margins of that jurisdiction in so far as it relates to adults who do not lack capacity as a result of impairment or disturbance in the functioning of the mind or brain.
- 15 *Re SA* focused upon the plight of an eighteen-year-old woman and was the authority the most notably cited by Mr Davies in his submissions. *Re DL*, of course, a Court of Appeal decision, reviews *Re SA*, and in the lead judgment given by McFarlane LJ he makes this point at para.63 of that judgment:

“My conclusion that the inherent jurisdiction remains available for use in cases to which it may apply that fall outside the Mental Capacity Act 2005 is not merely arrived at on the negative basis that the words of the statute are self-limiting and there is no reference within it to the inherent jurisdiction. There is, in my view, a sound and strong public policy justification for this to be so. The existence of 'elder abuse', as described by Professor Williams, is sadly all too easy to contemplate. Indeed the use of the term 'elder' in that label may inadvertently limit it to a particular age group whereas, as the cases demonstrate, the will of a vulnerable adult of any age may, in certain circumstances, be overborne. Where the facts justify it, such individuals require and deserve the protection of the authorities and the law so that they may regain the very autonomy that the appellant rightly prizes.”

- 16 At para.66, McFarlane LJ went on:

“In terms of the European Convention on Human Rights, the use of the inherent jurisdiction in this context is compatible with Article 8 in just the same manner as the Mental Capacity Act 2005 is compatible. Any interference with the right to respect for an individual's private or family life is justified to protect his health and/or to protect his right to enjoy his Article 8 rights as he may choose without the undue influence (or other adverse intervention) of a third party. Any orders made by the court in a particular case must be only those which are necessary and proportionate to the facts of that case, again in like manner to the approach under the Mental Capacity Act 2005.”

- 17 On the evidence that I have read, and I am conscious that of course the evidence that I have read has not been subject to testing or other live scrutiny, and on the submissions that I have heard from the local authority, from Mr Kennedy on FH's behalf, and from MH himself, I declare myself satisfied that this is a case in which the court could, and indeed should, exercise exceptionally its inherent jurisdiction in respect of FH. The narrative statement of JS, summarising a history of coercion, control and abuse over a number of years, was, I must emphasise, brought vividly and worryingly to life by the content of the audio recording which I heard before the hearing began. That audio recording, in my judgment, revealed an unacceptable and, in some measure, shocking level of intolerance, abuse and lack of empathy and care on the part of MH towards his wife. While the circumstances in which that recording were taken may have been circumstances of very considerable stress and pressure to MH, that does not in my judgment explain or excuse that which I heard, including the language and the offensive names which he called FH during the course of fifteen minutes of fairly unrestrained abuse.
- 18 In my judgment, FH requires the protection of the court at this stage to ensure that she does not return, *at this stage*, I emphasise, to the home which she shares with her husband and into his primary care. I am satisfied that the local authority has made out its case for an order which will ensure that FH remains at Dewsbury Hospital until she is fit for discharge, and that upon that stage being reached in her recovery, that she then be transferred to a care home, probably HH Care Home, for the immediate future.
- 19 I am satisfied that where it is necessary, it is indeed proportionate for modest forms of restraint to be used to ensure that FH is enabled to make that journey and then remain at the care home. I am comforted to know that arrangements will be made for MH regularly to visit FH, subject to him testing negative for Coronavirus through the lateral flow tests, and that short visits will be permitted to enable them to see each other. In the meantime, further assessment can and should be made of her care and support needs so that plans for her return home can be contemplated, evaluated and, as appropriate, implemented.
- 20 I will authorise Wakefield Metropolitan District Council to convey and place FH at such a care home as I have indicated, because I am satisfied that it is necessary, proportionate and plainly in her best interests. I propose to direct that, within seven days of FH's placement at an appropriate care home, the local authority shall serve a statement updating the court as to MH and FH's views, wishes and feelings, whether she has settled, providing details of the care and support FH is in receipt of, and filing an interim care plan for her future care.
- 21 I propose to direct that the matter is restored before me in the week commencing 10 May, on a date which will be the subject of discussion with my clerk, Mr Beris, on Tuesday, and I shall invite Mr Davies to communicate with Mr Beris to secure an hour of court time in the week

of 10 May. That hearing will necessarily be conducted remotely on the MS Teams platform or by telephone.