



**IN THE COURT OF PROTECTION
IN THE MATTER OF THE MENTAL CAPACITY ACT 2005**

Case No: 10370284

[2012] EWHC 2947 (COP)

Preston Combined Court Centre

Date: 24 October 2012

Before :

THE HONOURABLE MR JUSTICE PETER JACKSON

**IN THE MATTER OF
MRS ANN CLARKE**

Written submissions were received from:

Mr Michael Clarke in person

Mr Simon Heapy on behalf of Ms Angela Wild and Mr Kevin Clarke

Mr Hugh Jones (Deputy) in person

Judgment date: 24 October 2012

JUDGMENT (COSTS)

This judgment consists of 11 paragraphs. Pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken and copies of this version as handed down may be treated as authentic.

Mr Justice Peter Jackson:

1. The order of 9 October invited any party seeking an order for costs to lodge written submissions.
2. The family members (Ms Angela Wilde and Mr Kevin Clarke) and the Deputy submit that their costs should be charged to Mrs Clarke's estate.
3. Mr Michael Clarke asks the court to postpone a decision and in the interim to make orders for disclosure and for the production of further accounts by the Deputy and the Office of the Public Guardian. He opposes the other parties' applications. In a passage that sums up his general approach, he writes:

'The property is held in trust for the benefit of the beneficiary (me) and as Executor (also me) of the living will due to continued claims of incapacity on my mother; I instruct that this property cannot be charged. You the Judge are in fact a trustee and in fact are being ordered to act accordingly as that trustee for the beneficiary by the executor.'

4. Rules 156 and 159 of the Court of Protection Rules 2007 state that:

Property and affairs – the general rule

156. Where the proceedings concern P's property and affairs the general rule is that the costs of the proceedings or of that part of the proceedings that concerns P's property and affairs, shall be paid by P or charged to his estate.

Departing from the general rule

159.—(1) The court may depart from rules 156 to 158 if the circumstances so justify, and in deciding whether departure is justified the court will have regard to all the circumstances, including—

- (a) the conduct of the parties;
- (b) whether a party has succeeded on part of his case, even if he has not been wholly successful; and
- (c) the role of any public body involved in the proceedings.

(2) The conduct of the parties includes—

- (a) conduct before, as well as during, the proceedings;
- (b) whether it was reasonable for a party to raise, pursue or contest a particular issue;
- (c) the manner in which a party has made or responded to an application or a particular issue; and
- (d) whether a party who has succeeded in his application or response to an application, in whole or in part, exaggerated any matter contained in his application or response.

(3) ...

5. In this case there is no basis for departure from the general rule. My overall conclusions in relation to Mrs Clarke's capacity did not favour any party. While a sale of the Blackpool property has not been ordered at this time, the manner in which Mr Michael Clarke has conducted the proceedings more than wipes out any weight that might be attached to that factor. I identify his use of his mother's case as a vehicle for his political views, his aggressive disrespect towards anyone with whom he disagrees, and his complete lack of regard for his mother and family's right to privacy.
6. In contrast, the conduct of the proceedings by the family members and the Deputy has been entirely reasonable in trying circumstances. Their costs shall be charged to Mrs Clarke's estate and become payable upon her death.
7. Pursuant to CPR Rule 164:
 - (i) I summarily assess the costs of the family members at £3500 + VAT (a reduction from the £4400 +VAT estimated to have been actually incurred).
 - (ii) I summarily assess the costs of the Deputy at £7000 +VAT (a reduction from the £8500 + VAT estimated to have been actually incurred).
8. I further order a detailed assessment of the Deputy's management charges for the year commencing March 2011, so that the amounts paid to him on account (£5081.92) can be assessed and if appropriate ratified. It is noted that the Deputy proposes to raise no further charges in respect of his work for that year, which in fact amounted to £14300 plus VAT, nor any charges for work carried out in the current year.
9. Paragraph 1 of the order of 9 October provides that.

Mrs Clarke's Blackpool property shall not be sold or charged during her lifetime without an order of this Court.

My orders in relation to the costs of the family members and the costs and management charges of the Deputy constitutes a court order within the meaning of that paragraph.
10. The applications by Mr Michael Clarke are refused. There is no basis for delaying the conclusion of the proceedings.
11. In the light of the one-sided publicity that Mr Michael Clarke gives to the affairs of the family, I shall place my three judgments into the public domain.

**IN THE COURT OF PROTECTION
MENTAL CAPACITY ACT 2005**

Case No. 10370284

Before Mr Justice Peter Jackson
Sitting at Preston Combined Court Centre
On 24 October 2012

**IN THE MATTER OF
ANN CLARKE**

Upon reading written submissions by Mr Michael Clarke (on behalf of himself and Mrs Ann Clarke), by Mr Simon Heapy for Ms Angela Wilde and Mr Kevin Clarke, and by Mr Hugh Jones (Deputy);

And further to the decisions of the court dated 31 July 2012 and 9 July 2012;

IT IS ORDERED THAT

1. The costs of Ms Angela Wilde and Mr Kevin Clarke and of the Deputy shall be charged to the estate of Mrs Ann Clarke.
2. Pursuant to CPR Rule 164:
 - (i) The costs of Ms Angela Wilde and Mr Kevin Clarke are summarily assessed at £3500 + VAT;
 - (ii) The costs of the Deputy are summarily assessed at £7000 + VAT.
3. The Deputy's costs for the year commencing March 2011 shall be subject to a detailed assessment.
4. The applications made by Mr Michael Clarke in his statements dated 10 and 22 October 2012 are refused.

Ordered on 24 October 2012