



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

Case No: 10370284

[2012] EWHC 2714 (COP)

Preston Combined Court Centre

Date: 9 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: 9 October 2012

JUDGMENT
(Approved for Publication)

This judgment consists of 42 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:

Introduction

1. This judgment should be read together with an earlier judgment under reference [2012] EWHC 2256 (COP). By that judgment and order dated 31 July 2012 it was declared that:
 - (1) Mrs Ann Clarke had the mental capacity to make a will;
 - (2) Whether or not Mrs Clarke has the mental capacity to manage her income from her state pension and other state benefits it is lawful and in her best interests for these to be paid to her carer(s) to be applied for her benefit, and
 - (3) Mrs Clarke does not have the mental capacity to decide whether or not her Blackpool property should be sold.
2. I directed the parties to file concise evidence on this question of whether it is in Mrs Clarke's interests for the Blackpool property to be sold, how her future income and housing needs are to be met, and indicate whether they sought an oral hearing on those issues.
3. Written submissions have now been filed by Mr Michael Clarke, Mr Heapy on behalf of Ms Wild and Mr Kevin Clarke, and Mr Jones on his own behalf. No party seeks an oral hearing (in Mr Michael Clarke's case, he says that he does not accept the jurisdiction of the court) and I shall accordingly reach a decision on the basis of the information supplied, being satisfied that there is nothing to be gained by an oral hearing.
4. Pursuant to Rule 91(2) of the Court of Protection Rules 2007, I authorise the publication of this judgment and its predecessor. The proceedings took place in private, but the manner in which Mr Michael Clarke has breached his mother's entitlement to privacy has been so comprehensive and long-standing that nothing is now to be gained by delivering the judgments in private for Mrs Clarke's protection. On the contrary, in the light of Mr Michael Clarke's conduct, it is better that the court's reasons are made known.

The law

5. Section 4 of the Mental Capacity Act 2005, fully set out at paragraph 28 of the earlier judgment, provides that an assessment of best interests requires consideration of all the relevant circumstances, with consideration, so far as is reasonably ascertainable, of —

- (a) the person's past and present wishes and feelings
 - (b) the beliefs and values that would be likely to influence her decision if she had capacity, and
 - (c) the other factors that she would be likely to consider if she were able to do so.
6. I must also take into account, the views of anyone engaged in caring for Mrs Clarke or interested in her welfare, and any Deputy appointed for her by the court. This accordingly encompasses the family members participating in the proceedings and the Deputy.
 7. In considering best interests, I take account of financial and non-financial considerations.

Mrs Clarke's situation

8. I first address financial matters.
9. Mrs Clarke's free capital, administered by the Deputy, will be exhausted within a month.
10. The Blackpool property is worth £200000-£250000.
11. Mrs Clarke's income needs have historically been met by means of state benefits, by payments through the Deputy to Mrs Clarke for her spending and to Mr Michael Clarke for the care he provides. Mrs Clarke's funds have also been expended on payment of bills on the Blackpool property.
12. Mrs Clarke currently receives Disability Living Allowance of £77.45 per week and State Pension of £108.60 pw. This amounts to some £9700 pa.
13. The Deputy currently makes payments to Mrs Clarke at the rate of c.£9000 pa and to Mr Michael Clarke at the rate of just under £8000 pa. These sums are much reduced from previous times (when tens of thousands of pounds a year were paid) and will shortly dry up altogether. Payments will not be made after November 2012.
14. The bills on the Blackpool property come to about £5000 pa.
15. The expenditure currently supporting Mrs Clarke's current lifestyle therefore amounts to a minimum of some £31700 pa. I call this a minimum because Mr Michael Clarke has engaged in letting rooms at the Blackpool property, these sums not having been accounted for. He says that these lettings can bring in £13,000 pa, a sum the Deputy accepts is achievable.

16. The position that imminently faces Mrs Clarke is that her income will drop to £9700 pa plus any net income that can be gained from the Blackpool property – perhaps £8000 pa. This total of about £18000 pa represents a major reduction from her historic expenditure, even in the more straitened recent times and entails no payments to Mr Clarke for the care that he provides. There is a shortfall of at least £14,000 pa, probably more.
17. Turning away from financial issues, Mrs Clarke's daily life is spent with Mr Michael Clarke and his partner, her time being divided between Spain and Blackpool. She has been cared for by Mr Michael Clarke in this way for the past 16 years.
18. She sees her other children and her grandchildren from time to time, but this is not easy as a result of her frequent absences abroad and the extremely poor relationship between Mr Michael Clarke and the other children.
19. Mrs Clarke identifies the Blackpool property as her home. As to her wishes and feelings, there is no indication that she would want it to be sold. I am unable to discern any beliefs or values, either now or held when she had capacity many years ago, that might bear on the present question. I am not assisted by Mr Michael Clarke's insistent account of his mother's wishes, which almost invariably accord with his own.

Mrs Clarke's will

20. On 28 August 2012 Mrs Clarke made a will. It includes the following provisions:
 3. I APPOINT my son, the human being Michael Raymond Clarke/Michael of the Clarke family of 31 Cherry Tree Road, Blackpool as my sole Executor and Trustee of this my Last Will.
 4. That, in consideration of my son KEVIN ANTHONY CLARKE & my daughter ANGELA WILD to celebrate my life after my death I bequeath the sum of £500 each, I further bequeath the sum of £100 each to all my grandchildren.
 5. That, in consideration of my many Moral Obligations to my son, the real life Human being Michael Raymond Clarke, known as Michael of the Clarke family, for all his past & present love and caring and also his promise to me of his future love and care until my death, I GIVE all my property absolutely both real and personal whatsoever and wheresoever situated to my son the real human being MICHAEL RAYMOND CLARKE/Michael of the Clarke family.
21. The will, which bears the hallmarks of being prepared by Mr Michael Clarke, contains additional provisions designed to prevent the sale of the property during Mrs Clarke's lifetime and to ensure that it comes into the hands of Mr Michael Clarke on her death.

The views of others

22. Mr Michael Clarke, in a long and often abusive statement, opposes the sale of the Blackpool property. He devotes much of his statement to his views about the Court of Protection, the Office of the Public Guardian and the Deputy, although there is no indication that these issues trouble Mrs Clarke herself.
23. Addressing himself to the matter in hand, he says that Mrs Clarke benefits from the comfort of this familiar home, which is adapted to her needs, and which allows her to enjoy the experience of being a landlady:

“Ms Clarke’s privacy is intact within her property inclusive of its current lodgers. Ms Clarke enjoys the company of Lodgers and equally it provides some additional sense of security and comfort to Ms Clarke whilst also being paid for the privilege. Ms Clarke property was in fact definitely taken into account with her damages award and where also allowances were made for structural alterations for disability i.e., a disabled bathroom and bath fitted to that property that is ideally adapted for her use and thus to sell this property would remove those facilities to place her in her old age in unfamiliar surroundings possibly causing shock and distress that might lead intentionally or unintentionally as the case may be to her demise. We advocate that current rental income levels can be exceeded to £16,000 and we include current room license of showing proof of current income arrangements.”

and

“The Aggrieved [i.e. Mr Michael Clarke himself] cannot emphasize enough that it is not in Ms Clarke’s interests for the property to be sold, indeed we believe it is a sincere breach of her Human Rights Article 8 entitlement to a private life that is also affecting Ms Clarke’s dignity and health by having to fight these levels of systematic abuse on her mentally, to attempt to remove her such dignity in this manner.”

24. Mr Michael Clarke also writes as follows (emphasis added):

‘Technically, because of her being denied those rights whilst also actually having capacity to make these decisions and also combined with what we believe to be a total miscarriage of justice from the very outset, the property I consider to be mine, that I, am being deprived of unjustly and in a discriminatory fashion to suit what will only be more continued mal administration, theft, fraud and criminal neglect.’

and

*‘We submit that I am entitled as you all are to own my own home that has been gifted.
We submit that my mother is entitled to continue to live in her home that she wants to gift.*

We submit there is no rational, sane reason to sell or dispose of this property that's providing income that comes under tax thresholds for lodgers.

We submit as EXECUTOR to mums living will that this property cannot be sold.'

25. With unintended irony (given the terms of Mrs Clarke's will and his own statements), he also criticises his siblings in this manner:

'In short the relatives are hell bent on what they see as inheritance. There was no money awarded for inheritance.'

26. The Deputy confines his submissions to financial issues, as opposed to wider welfare considerations. He considers that the priority must be to provide Mrs Clarke with continued income and housing during her lifetime, as opposed to preserving an inheritance for her to pass on.
27. Mrs Angela Wilde and Mr Kevin Clarke support the Deputy's position. They argue that Mrs Clarke's welfare will be compromised by reduction in income and her privacy invaded by the need to take lodgers. They believe that a property should be rented for Mrs Clarke by the Deputy with funds raised from the sale of the property. They accuse Mr Michael Clarke of, in effect, spending Mrs Clarke's money on himself.
28. The parties seeking a sale rely on these observations by the Senior Judge of the Court of Protection in Re JDS (No. 1033447), a judgment given on 19 January 2012:

"39. As I have said, the court is generally sympathetic towards family members who take on a caring role and dedicate their lives to looking after an injured relative. It seeks to support them so far as is possible and practicable and in the best interests of the person concerned, and it does so in a variety of ways. However, it is not the function of the court to anticipate, ring-fence or maximise any potential inheritance for the benefit of family members on the death of a protected party, because this is not the purpose for which the compensation for personal injury was intended. The position would be different, of course, if the individual concerned had substantial funds surplus to his requirements that were derived from another source, such as an inheritance or a lottery win."

Discussion

29. There is no satisfactory solution to the present situation.
30. The difficulty in identifying where Mrs Clarke's best interests lie is compounded by the family situation. For better or worse, Mrs Clarke's future is inextricably bound up with Mr Michael Clarke, whose strident voice threatens to drown out all others.

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31. No party has argued for a loan, to be raised on the security of the property and administered by the Deputy. It is also agreed by all that it is not in Mrs Clarke's interests to live in a care home.
32. If the Blackpool property is sold, Mrs Clarke's income needs would be met for a number of years, but she would lose her familiar home and would be unlikely to find a substitute that she would recognise as such, still less one adapted to her needs. In large measure this may be because Mr Michael Clarke would not willingly co-operate with a sale and a resettlement. In the process, the present letting income would be lost. The Deputy would continue to administer her funds, at some cost.
33. If the property is not sold, there would be an immediate shortfall in the income available for Mrs Clarke's maintenance. It is not clear how this could be made up, even if there was an increase in letting income.
34. There is therefore a balance to be struck between the consequences of retaining the property and leaving Mrs Clarke on a low income, or selling the property and maintaining a higher standard of living for Mrs Clarke until the funds are exhausted, with her having no familiar home and, if she lived long enough, no money either.
35. From a purely financial perspective, the case for a sale of the property is unanswerable. However, the property is not simply an asset but a home for Mrs Clarke and for her carer (Mr Michael Clarke) for at least part of the time. If it is sold, both will lose their home. In my view, this outcome would only be justified from Mrs Clarke's point of view if it was apparent that her daily needs were not in fact being met.
36. As to that, it is quite possible that the income from benefits and lettings will be insufficient: the current figures do not make encouraging reading. However, it is also possible that Mr Michael Clarke, spurred on by his commitment to his mother and by considerations of self-interest, will find the means to make up the shortfall, perhaps with the help of his partner. He expresses himself willing to do this, even though a sale of the property would allow him to continue to receive at least some immediate payment for the care he provides.
37. I am not persuaded that a sale of the Blackpool property is in Mrs Clarke's interests at the present time. I do not think that it is right to sell her home to make up an income shortfall that might be made up in other ways. Mr Michael Clarke will have the opportunity to manage Mrs Clarke's finances and to support her. If her way of life is deteriorating unacceptably as a result of inadequate income, a fresh application can be made for a sale of the property. I reserve any future applications to myself.

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38. Whatever the side-effects of my decision, it is no part of my purpose to *'anticipate, ring-fence or maximise any potential inheritance for the benefit of family members'*. Not can my decision be influenced by the dismay of the other family members that Mr Michael Clarke's questionable sense of entitlement to his mother's property has, at least at this stage, prevailed. I have been guided only by my assessment of Mrs Clarke's best interests at the present time.
39. I direct that the Blackpool property is not to be sold or charged within Mrs Clarke's lifetime without an order of the court.
40. I discharge the deputyship as now being redundant.
41. My order is attached.
42. These proceedings are concluded.

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

Case No. 10370284

Before Mr Justice Peter Jackson
Sitting at Preston Combined Court Centre
On 9 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 decision of the court dated 31 July 2012;

IT IS ORDERED THAT

1. Mrs Clarke's Blackpool property shall not be sold or charged during her lifetime without an order of this Court.
2. The deputyship in respect of Mrs Clarke is discharged.
3. Pursuant to Rule 91(2) of the Court of Protection Rules 2007, the judgments given on 31 July 2012 and 9 October 2012 may be published.
4. Any future application to the Court of Protection relating to Mrs Clarke is reserved to Mr Justice Peter Jackson, wherever sitting, if available.
5. Any party wishing to make submissions as to costs shall do so in writing (maximum 3 pages) no later than 19 October 2012. In the absence of submissions, there shall be no order for costs.

Ordered on 9 October 2012