



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

Case No: 10370284

[2012] EWHC 2256 (COP)

Manchester Civil Justice Centre

Date: 31 July 2012

Before :

THE HONOURABLE MR JUSTICE PETER JACKSON

IN THE MATTER OF

MRS ANN CLARKE

Mr Michael Clarke and Mrs Ann Clarke appeared in person
Ms Angela Wild and Mr Kevin Clarke were represented by Mr Simon Heapy
Mr Hugh Jones represented himself

**Hearing date: 6 July 2012
Judgment date: 31 July 2012**

JUDGMENT
(Approved for Publication)

STATEMENT No.2 to take precedence over No.1 dated: 05.08.2012

This judgment consists of 43 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. **ALL WITHOUT ANY CONSENT?? UNLAWFUL**

Mr Justice Peter Jackson:

The facts by the Judge & AS WE SEE THEM highlighted under the Judge in yellow & it is for the purpose of common law claims that our names are of the human beings Mike and Ann not the legal fiction entity birth certificate corporations.

1. This is an application to discharge a deputyship that has been in existence since January 2010 in relation to the management of the property and affairs of Mrs Ann Clarke. The deputyship succeeded a receivership dating back to 2001.

We were never made aware of the application for HUGH JONES to become deputy in 2010 and so would potentially consider it "void".

2. Mrs Clarke is aged 72. Mr Michael Clarke (53), who brings the application, is her eldest child. The application is opposed by Mrs Clarke's other children, Mrs Angela Wilde (50) and Mr Kevin Clarke (49). It is also opposed by the Deputy, Mr Hugh Jones of the firm Pannone, who has acted on behalf of Mrs Clarke since being appointed her Receiver in March 2001.

Ann is aged 71. This was not an application brought by myself Mike, it was an application brought by my mother whom authorised my assistance in making this application, for her to be released from the Court of Protection/Office of the Public Guardian on the grounds that it is not fit for purpose due to its unwillingness to investigate thoroughly and openly, allegations of Fraud, theft, neglect and mal administration, we believe the deputy is responsible. These allegations are attached. These allegations are currently being investigated by the Parliamentary Health and Service Ombudsman. The deputy also is, as stated at court before you, breaching Mental Capacity Act section 5 with impunity where he is unlawfully pursuing the carer, legal fiction Mr Michael Clarke, for harassment charges in the mainstream court in the full view of the court of protection that is also failing to protect the legal fiction carer again repeating the grounds, it is unfit for purpose. This application was also brought on the basis of Ann now holding a total of 4 doctor's reports stating her capacity.

3. The background is that in 1995, Mrs Clarke suffered serious injuries, including brain injuries, in a road traffic accident. She later received damages of £775,000, calculated on the basis of a life expectancy of 70. Mr Jones was appointed as receiver because Mrs Clarke's children could not agree who should be appointed to administer this fund.

Ann suffers from injuries in our Doctors opinion that would not be considered "severe brain injuries". The damages awarded were calculated to cover a life expectancy of 83, not 70. Just because the children could not agree who should be receiver was no grounds in our opinion to appoint HUGH JONES, at the time it was also evident via 2 doctors reports that considered my mother held capacity to

manage her own affairs and it was only after what we would consider a corrupt special visitor doctor arrived to give his views did the process proceed to the appointment of HUGH JONES and Ann's incarceration.

4. For some years Mrs Clarke has lived with her son Michael and his partner. She owns a property in Blackpool, bought from her damages and now worth in the order of £200,000-£250,000. Since 2008, Mrs Clarke has in fact spent almost all of her time with Michael Clarke in rented accommodation in Spain. Michael Clarke says that this was intended to be a permanent move.

For 16 years Ann has been cared for by her son me, Mike. The property she owns is worth £250,000. Since her emigration to Spain Ann has lived in rented property but at some point chose to exchange her Blackpool property for a villa in Spain. This on 2 occasions was thwarted by the Deputy and obstructed its path causing untold unhappiness and distress to my mother whom in the end decided it best for her to return to live in her UK bungalow fearing the prospect of her own property in Spain might never be realised. The deputy did continue to imply that her bungalow would be sold and stated at some point he already had an order to sell it. This implied that my mother effectively had no home of her own to go to and has delayed her repatriation. This and these matters have been conveyed to your right honourable person via speech etc and via our website but for some reason we assume to be collusion and corruption are failing to give these matters any serious recognition therefore projecting a stance of corruption leading to our demand for a lawful hearing conducted under common law judged by my mother's peers. NOT as is the case where the "BAR" is judging the "BAR" clearly displaying a conflict of interests!

5. The Blackpool property is now Mrs Clarke's only substantial asset. Her remaining free capital now amounts to no more than £5,000. It has in effect run out.

Ann's property is not just her only substantial asset. She also has me her son! That now representing two, substantial assets. The first asset is also capable and is also as stated at court, currently generating Ann "£12,740" per annum revenue from 3 lodgers that hold licenses each to occupy 3 en-suite rooms of the current 5 bedrooms leaving ample space for Ann and her son to still enjoy her property for the remainder of her life with income taboo that correct me if I'm wrong are now currently Ann's sole wishes. The second asset, Mike, is also capable of opening yet other businesses to extend our household income portfolio without having to endure the hassle of dealing with 24hr protection of my mother from the failed, not fit for purpose, court of protection/office of public guardian!

6. Mrs Clarke's income consists of the state pension and Disability Living Allowance, amounting together to about £8,500 p.a. This has been supplemented by payment of a household allowance and living expenses from her capital fund. In addition, Michael Clarke has been paid for the care that he provides to his mother. By 2010 and 2011, the global amount being paid from the fund had risen to £60,000 p.a.

As above in section 5 Ann's income consists of more than the income stated by the Judge and he knows this, as it was stated at court verbally, please check the transcripts, so why has he omitted this, or is it just another convenient oversight on the part of the "not fit for purpose" Court of Protection!! Mr Michael Clarke the legal fiction, has never been paid for the care that his human self has provided and he would suggest the court to provide 'strict proof' of pay slips to state the legal fictions pay by the deputy whom has only ever used smoke screens and mirrors more recently in 2010 to try and portray a payment of gratuitous care of what was household income split into 2 bank accounts. Indeed it would be the legal fictions stance via his human self that he could not provide for himself a mortgage for his own property as he could never show an income for himself and has been denied this for the entire duration of HUGH JONES's deputyship rendering Mike the human, homeless upon his mother's demise. It is also a fact that Mr Hugh Jones also paid outside carers a total sum of £12 per hour proving his total discrimination and lack of equal opportunities to the legal fiction Mr Michael Clarke or indeed the human self, Mike, of a GAY relative carer! Me! It also has to be said and seriously noted that the increased levels to £60,000 p.a. were made simply because as stated on the website www.opposepredatoryguardians.com that HUGH JONES's failure and mal administration in an act of gross negligence failed to protect the devaluing of Ann's cash funds by not providing an account of the country of residence namely a euro account whereby its drop from 1.5 euro to the pound to 1 euro to the pound played havoc with our weekly income in which HUGH JONES's tried to play catch up by increasing income to match the devaluation. Mr HUGH JONES's fails to mention this and uses this to try and claim that in some way is the carer's fault via some other way. Let the court take note of this. It is also to be noted here that whilst in emigration HUGH JONES's claimed he had no jurisdiction upon Ann's welfare and one would ask the court to provide strict proof of what jurisdiction did the court have upon Ann's finances where the court demonstrates upon the website it's jurisdiction is only England and Wales!

7. Since the beginning of 2010, Michael Clarke has carried on an online campaign against the Deputy, the Office of the Public Guardian and the Court of Protection. He has routinely placed copies of confidential documents and expressions of his strong opinions on a website.

The legal fiction Mr Michael Clarke has done nothing, because it is a birth certificate of legal entity, in fact a corporation of the UNITED KINGDOM and as such is incapable of conducting a campaign against the deputy. The sovereign human beings with living souls Mike and Ann have conducted a campaign against the deputy for the obvious reasons that the not fit for purpose Office of the public Guardian/Court of protection has failed to investigate openly and or to protect the legal fictions Mrs Clarke and or Mr Clarke. The human beings conducting such a campaign are protected under the laws of this, UK land, that being common laws, are also sovereign laws that the current corrupt Judges feel they can undermine treasonously to facilitate their crimes before GOD. The so called 'confidential documents' are only so called, so as to protect the deputy, the court of protection

and the office of public guardian from their on-going acts of fraud, theft, Mal administration and corruption and these are the foundation cornerstones of the entire 'juristocracy corrupt racket'. These documents are the ownership of the human being Ann of the Clarke family and she has every right in her capacity proved that to publish these via myself with authority from her, to expose this on-going corruption we face alone!

8. In October 2010, following Mrs Clarke's move to Spain, the Deputy was authorised to sell the Blackpool property so as to release further funds for Mrs Clarke to live on. This was not put into effect because of a disagreement with Michael Clarke about the sale price.

This house sale was put into effect until the deputy, Hugh Jones, realising our return to Britain, after his successful attempts to obstruct Ann's wish to swap her UK home for a villa in Spain, whereby her return would stop the sale, he did gain via collusion an under valuation via the estate agents friends to try and make a sale quickly, devaluing Ann's asset by some £70,000 to which he and the agent was stopped by Ann's second asset, ME! Mike of the Clarke family

9. In April 2011, Michael Clarke proposed that he and Mrs Clarke should move back into the Blackpool property. He would care for her there "regardless of the diminishing funds drying up" and he said that his mother was "insistent that the property be vested in joint names as beneficial joint tenants" in exchange for his unpaid future care of her and so that he would not be homeless on her death. Despite this proposal, Michael Clarke and Mrs Clarke in fact continued to live in Spain.

In 2011 Ann wanted to move back to her home in Blackpool after two attempts to purchase a villa were thwarted by her deputy. It is indeed a fact we continue to live in exile from what can clearly be seen by all, as a judicial dictatorship that is evolving in what was a truly global recognition of trust in the UK justice system that's now evaporated to provide a heading towards a tyranny we want no part of! Hence our consent refused to be governed in this way of statute corruption! It is also a fact that my mother has been trying to make a will for 11 years as far back as 2001 where it was documented by my own mothers hand written letter to the judge requesting such that her property be placed into her son's name. 11 years is a long time to make any person suffer the lack of a will to facilitate her wishes in the event of her demise which continues today with this judge's order confirming the ambiguity of confirming her capacity to make her will but that it may be contested! Without offering her the statutory option WITHOUT FURTHER DELAY! It should also be noted that the courts continued support of Mr Hugh Jones and it fact backed by relatives their intention to incarcerate Ann into a care home against her wishes against her article 8 of Human Rights entitlement to a private family life has left her afraid of living in the UK equally the severe breach of Mental Capacity Act section 5 by the deputy in pursuit of potential prison for the carer in fraudulent unlawful harassment charges forming an injunction given by a judge committing perjury by her stance as a judge in a hearing refused consent, would it not be fair to

understand that both Mike and Ann have come to live in FEAR of losing both their liberties in view of the fact their civil liberties protection rights section 2 have clearly been violated!

10. In late 2011, the Deputy informed Michael Clarke that the current level of expenditure was unsustainable and he reduced the payments to an annual rate of about £17,000. This led to an escalation in Michael Clarke's internet campaign.

Let's hereby put the record straight once and for all and to also yet again remind the Judge as was the case in court, again conveniently forgotten to suit the protection of the 'court of protection'. The actual timeline of events in this particular event of a reduction in funds is conveniently placed when Ann recruited legal representation to extract the accounts from the deputy whom had been refusing her requests for them over 10 years and thereby financially restricted Ann's ability to pay for external legal help to extract what clearly showed up to be lies, deceit, dishonesty, theft and fraud to thousands of pounds. This, the deputy alongside the court of protection, clearly wanted to hide from Ann, in its attempt to continue its on-going frauds without exposure.

11. Capacity assessments of Mrs Clarke have been performed by Dr Donna Schelewa, Consultant Clinical Psychologist. She examined Mrs Clarke in December 2010 and found her to have neurological deficits predominantly characterised by very poor verbal expressive skills (dysphasia). She nonetheless concluded that Mrs Clarke had the capacity
 - to decide where and with whom to live
 - to manage a small income
 - to make a will
 - to appoint Michael Clarke to act as her deputy
 - to give her house to Michael Clarke

Take note that Dr Schelewa is not the only Dr to confirm these findings there are also 2 others that granted are also 10 years old back in 2001 but it confirms that in reality my mother held capacity way back then! Take also note of the 5 bullet points

12. Dr Schelewa reported again in November 2011. In the previous summer, Mrs Clarke may have had a minor stroke in August 2011. Dr Schelewa confirmed her opinions and emphasised that Mrs Clarke's dysphasia may give the wrong impression, and that it is crucial that care is taken to give her all opportunities to express herself.

Take note that the Judge has given Ann no, repeat NO opportunity to express herself!! Whether it be in private with the Judge or otherwise!

13. On 16 November 2011, the present application was issued and directions were given by the court. Michael Clarke immediately objected to the lawfulness of the proceedings on the basis that they have no legal authority. It is his fixed view that “*statute law*” has no effect and that the matter must be decided under “*common law*”.

This entry is a distortion of the facts by the Judge and it is obviously clear why? We are talking now about treasonous events. It is our view that the ‘BAR’ judging the ‘BAR’ to be a conflict of interest that would be clear to all and therefore it would not be unreasonable in this case to request a common law court with equal peers of 12 to judge matters to avoid such a conflict and thus to deny this sovereign right is a denial of due process and also a trespass of treason against our civil liberties protection rights section 2. Statute acts can only be given the force of law by the consent of the governed and considering the level of un-investigated corruption accusations, we believe no one in their right mind would consent to be governed this way as this is not being governed its being dictated to, representing potential tyranny. Sorry no! We do not consent. We waive all benefits. We claim common law jurisdiction & that has been ignored!! Let the public judge that!

14. Mrs Clarke’s other children have filed evidence opposing the discharge of the deputyship on the basis that if she were not protected, Michael Clarke would spend her money on himself. In response, Michael Clarke has filed evidence disputing this and making allegations against his siblings and the Deputy.

In short the relatives are hell bent on what they see as inheritance. There was no money awarded for inheritance. There also is no desire by my mother to leave them anything considering their support of trying to place her in a care home that she does not want. Ann sees her other son and daughter as people whom will not respect her privacy and her wishes which pains her deeply but that being the case is probably her reasoning behind her wishes not to leave them as beneficiary’s after her demise. I believe this in itself demonstrates her capacity where she has weighed up the matter in its entirety to decide on her actions. With regard to evidence of financial impropriety that I am supposedly guilty of I would like to put these relatives and or deputy to strict proof of such, as I have seen no evidence.

15. In January 2012, Michael Clarke’s activities (which included picketing Pannone’s offices with Mrs Clarke in a wheelchair) resulted in Mrs Justice Sharp making an injunction restraining him from further harrassment of the Deputy or his firm.

It is for the allegations contained here that activities took place by the human being’s Mike and Ann. The legal fiction’s played no role. Mrs Justice Sharp committed the offence of treason in this matter. Her injunction was invalid and unlawful as previously stated. She continued to act as a judge in proceedings not given any force of law without the consent of all parties and I would ask you the Judge Jackson to demonstrate the ability of an order that is in force without such consents granted in Star Chamber administrative hearings.

16. The matter came before me for directions on 12 March 2012. Using the provisions of s.49 Mental Capacity Act 2005 ('the MCA'), I ordered an assessment of Mrs Clarke's capacity by a psychiatrist acting as a Court of Protection Visitor who is a Special Visitor, with a report to be filed by 23 April 2012. The allocated psychiatrist was Dr Jonathan Waite, a consultant in the Psychiatry of Old Age.

If Judge Jackson you care to check over your order and the transcription of events at court you can clearly see there was more to this order than just simply what you have written above that's obviously to the clear advantage of the court of protection, protecting itself, you and the deputy. You also agreed that it would be someone independently agreed by all parties and this was not done. In the clear visible face of recent Channel 4 programs showing the corruption of Special visitor's reports we believe your verbal order of independence agreed by all would be respected but it was not. Indeed as you are aware an independent specialist was found in Liverpool by Psychology Direct but action was denied in favour of your none independent 'SPECIAL VISITOR'.

17. The issues to be assessed were whether Mrs Clarke has the capacity, within the meaning of the MCA, to:

- manage her property and financial affairs generally
- manage her day to day financial affairs
- appoint Michael Clarke to manage her property and financial affairs
- transfer her property at Blackpool to Michael Clarke
- make decisions about her financial affairs free from the undue influence of others

By an, independently agreed party. NOT DONE!

18. Michael Clarke was directed to make Mrs Clarke available for this assessment. Initially, he did not co-operate, and on 6 June a report was filed by Dr Waite, describing his unsuccessful efforts to examine Mrs Clarke and making some comments on Dr Schelewa's assessment.

Cooperation refused for reason listed in the above paragraph!

19. On 20 June, I listed a hearing for 6 July, directing Mr Clarke to co-operate with the examination and directing that if this did not happen, a final order (including one dismissing the application) might be made.

Upon further emails with Dr Waite we did cooperate but it was coerced and certainly not as per order made.

20. On 2 July, Dr Waite assessed Mrs Clarke and wrote a report. He diagnoses cognitive impairment following brain injury and ischaemic brain damage (ICD 10 F07.8). He advises that

- Mrs Clarke has severely limited abilities to manage her finances and that she cannot manage her financial affairs generally. *Not agreed*
- She cannot manage her day to day financial affairs. *Not agreed*
- She cannot understand and use information about transferring her property to Michael Clarke during her lifetime. *Not agreed*

Total unadulterated rubbish

21. Dr Waite further concludes that

- While there is no doubt that Mrs Clarke trusts Michael Clarke and wants him to act on her behalf in the management of her financial affairs, it is not possible to assess the level of influence that Mr Clarke has over his mother on a single visit: this would require an extended period of separation that is not in her best interests.
- Similarly, the possibility of undue influence upon Mrs Clarke cannot be confirmed or excluded on the basis of his assessment.

Not in her best interests

22. Dr Waite also says that

- Mrs Clarke clearly wishes to bequeath her Blackpool property to Michael Clarke, understanding that, by doing so, she will not leave anything to her other children or her grandchildren. He believes that she would have the capacity to make a will for this purpose.

Then why is none being offered on a statutory basis without delay or further hindrance is 11 years not long enough to wait??

23. As between Dr Schelewa and Dr Waite, there is therefore agreement that Mrs Clarke has the capacity to make a will, but apparent divergence about other matters.

In which your own order directs that a schedule of agreement and disagreement be discussed & drawn up, now shelved by you.

24. At the hearing on 6 July, I heard submissions from the family members and the Deputy.

25. Michael Clarke argues that Mrs Clarke has capacity generally and that in relation to her day to day affairs “we are talking about managing benefits”. In relation to undue influence, he noted that he and his partner would like to live in Thailand, but his mother would not, so they compromised on Spain.

I never stated that wanted to live in Thailand. I stated I would like to live in the Far East.

26. Mrs Wilde and Kevin Clarke believe that the property should be sold and the money spent on Mrs Clarke’s care and wellbeing during her lifetime, rather than being tied up for Michael Clarke’s ultimate benefit.

The ultimate benefit referred to here is their own mother’s choice in which I firmly believe as always she has a human right to and GOD help those whom suffer the same consequences in old age as their own mother is, having to fight for her rights.

27. The Deputy said that the question now is whether the property should be sold. If it is not, there is no purpose in the deputyship. If it is, he would be prepared to continue to act at a proportionate fixed cost.

The deputy will not be acting in any capacity as I believe my mother’s right to choice be respected under common law and thus as such his deputyship is hereby finished over, done!! If this matter is not respected then it is our clear and concise conviction that we will not return to live under that corrupt jurisdiction regardless of the property.

The law

28. The key provisions of the MCA 2005 in this context are Sections 1-4.

1 The principles

- (1) *The following principles apply for the purposes of this Act.*
- (2) *A person must be assumed to have capacity unless it is established that he lacks capacity.*
- (3) *A person is not to be treated as unable to make a decision unless all practicable steps to help him to do so have been taken without success. **It is obvious she can make decisions***
- (4) *A person is not to be treated as unable to make a decision merely because he makes an unwise decision. **Take note***
- (5) *An act done, or decision made, under this Act for or on behalf of a person who lacks capacity must be done, or made, in his best interests.*

This has never been done

- (6) *Before the act is done, or the decision is made, regard must be had to whether the purpose for which it is needed can be as effectively achieved in a way that is less restrictive of the person's rights and freedom of action.*

My Mother's rights have been infringed for 11 years

2 People who lack capacity

- (1) *For the purposes of this Act, a person lacks capacity in relation to a matter if at the material time he is unable to make a decision for himself in relation to the matter because of an impairment of, or a disturbance in the functioning of, the mind or brain.*

Ambiguous to the benefit of fraud

- (2) *It does not matter whether the impairment or disturbance is permanent or temporary.*
- (3) *A lack of capacity cannot be established merely by reference to—*
- (a) *a person's age or appearance, or*
 - (b) *a condition of his, or an aspect of his behaviour, which might lead others to make unjustified assumptions about his capacity.*
- (4) *In proceedings under this Act or any other enactment, any question whether a person lacks capacity within the meaning of this Act must be decided on the balance of probabilities.*
- (5,6) ...

3 Inability to make decisions

- (1) *For the purposes of section 2, a person is unable to make a decision for himself if he is unable—*
- (a) *to understand the information relevant to the decision, she does*
 - (b) *to retain that information, she does*
 - (c) *to use or weigh that information as part of the process of making the decision, or she does*
 - (d) *to communicate his decision (whether by talking, using sign language or any other means). she does*
- (2) *A person is not to be regarded as unable to understand the information relevant to a decision if he is able to understand an explanation of it given to him in a way that is appropriate to his circumstances (using simple language, visual aids or any other means).*

- (3) *The fact that a person is able to retain the information relevant to a decision for a short period only does not prevent him from being regarded as able to make the decision.*
- (4) *The information relevant to a decision includes information about the reasonably foreseeable consequences of—*
 - (a) *deciding one way or another, or*
 - (b) *failing to make the decision.*

4 Best interests

- (1) *In determining for the purposes of this Act what is in a person's best interests, the person making the determination must not make it merely on the basis of—*
 - (a) *the person's age or appearance, or*
 - (b) *a condition of his, or an aspect of his behaviour, which might lead others to make unjustified assumptions about what might be in his best interests.*
- (2) *The person making the determination must consider all the relevant circumstances and, in particular, take the following steps.*
- (3) *...*
- (4) *He must, so far as reasonably practicable, permit and encourage the person to participate, or to improve his ability to participate, as fully as possible in any act done for him and any decision affecting him.*

This has not been done by the court

- (5) *...*
- (6) *He must consider, so far as is reasonably ascertainable—*
 - (a) *the person's past and present wishes and feelings (and, in particular, any relevant written statement made by him when he had capacity),*
This has not been done by the court
 - (b) *the beliefs and values that would be likely to influence his decision if he had capacity, and*
 - (c) *the other factors that he would be likely to consider if he were able to do so.*
- (7) *He must take into account, if it is practicable and appropriate to consult them, the views of—* *This has not been done by the court*

- (a) *anyone named by the person as someone to be consulted on the matter in question or on matters of that kind,*
- (b) *anyone engaged in caring for the person or interested in his welfare,*
- (c) *any donee of a lasting power of attorney granted by the person, and*
- (d) *any deputy appointed for the person by the court,*

as to what would be in the person's best interests and, in particular, as to the matters mentioned in subsection (6).

(8)-(11)...

- 29. By s.19 MCA 2005, a deputy can be appointed to make decisions on behalf of a person who lacks capacity. Paragraph 8.26 of the MCA Code of Practice records two further principles: that where possible the court should make a decision itself rather than appointing a deputy to take it; and that the appointment of a deputy should be as limited in scope and for as short a time as possible.
- 30. Rule 3 of the Court of Protection Rules 2007 provides that court should exercise its powers under the rules with the overriding objective of dealing with a case justly. This includes dealing with it expeditiously and fairly, in a way that ensures that the protected person's interests are properly considered, and in a way that is proportionate to the issues, and by saving expense.

This has not been done by the court

Discussion

- 31. This situation calls for a firm application of the overriding objective. A wide-ranging investigation of the issues between the family members or between Michael Clarke and the Deputy would be disproportionate and impractical, and contrary to Mrs Clarke's interests. Any further medical or legal costs would have to be paid for from her funds, now locked up in her Blackpool property.
- 32. I have considered and rejected the possibility of pursuing a direction that I made in March, under which Dr Waite and Dr Schelewa were to discuss their assessments with a view to producing a schedule of agreement and disagreement. This would itself cause further expense, which would rise further if the doctors were required to attend court, and I think it unlikely that such a process would produce an agreed position. The same applies to any course that led to the court submitting further questions to the doctors.

33. Dr Waite and Dr Schelewa agree that Mrs Clarke has a permanent impairment of the brain as a result of her injury (MCA s.2(1)). They do not agree about whether she can use or weigh information relevant to certain decisions (MCA s. 3(1)(c)).
34. The MCA requires consideration to be given to a person's capacity to make a particular decision at a particular time. I identify the key decisions that arise at this stage in relation to Mrs Clarke's capacity as being:
- (1) Capacity to manage her benefits
 - (2) Capacity to make a will
 - (3) Capacity to decide whether to retain or sell her Blackpool property.
35. It is unnecessary to decide whether Mrs Clarke has capacity to manage her benefits, as I am clear that it is anyhow in her best interests for these to be managed on her behalf by her carer(s), who happens to be Michael Clarke. As Michael Clarke and the Deputy both say, there is no need for a deputyship for this purpose.
36. As to making a will, based on the views of the doctors I find that Mrs Clarke is able to reach a capacitous decision. The concept of leaving her estate to Michael Clarke, or anyone else, on her death is not a complex one. Like Dr Waite, I cannot exclude the possibility that Michael Clarke exerts influence on Mrs Clarke, but I do not find that this currently invalidates her general testamentary capacity. Whether any particular will that she may make could subsequently be challenged is not a matter for this court at this time.

So in reality a statutory will is to be placed on hold= would that be for another 11 years???

37. The position in relation to the Blackpool property is, in my view, different. The decision here requires an understanding by Mrs Clarke of the interplay between several factors:

- Whether she should live in England in Spain

She has answered this, what more does she have to do??

- The consequences of retaining the property and reducing her standard of living to state benefit levels

She has answered this also in court by the lodgers giving further income of £12,740

- The consequences of selling the property and maintaining a higher standard of living until the funds are exhausted

She has answered this also in the court where she clearly does not want a sale??

- The impact upon her decision of Michael Clarke's strong view that she wants him to inherit her property on her death, and that this should rightly happen.

What is wrong with you Judge Jackson?? All the evidence is there??

38. A decision of this kind would be a difficult one for someone of undoubted capacity. It requires a quite sophisticated ability to understand and weigh the competing factors. *Rubbish..* On the basis of the overall assessments of Dr Schelewa and Dr Waite, I am clear that Mrs Clarke lacks that capacity, even if she were given careful assistance. *Rubbish..* She cannot weigh up the financial and welfare risks involved in each course of action. *Rubbish..* In 2010, Dr Schelewa reported that *"With regard to financial judgments, Mrs Clarke was not able to select the correct explanation of financial risk associated with investments."* and her wider assessment showed no evidence of Mrs Clarke having the capacity to weigh up advantages and disadvantages of this kind. In my view an inability to assess risk is inconsistent with any conclusion that Mrs Clarke has the capacity to decide whether to retain or sell her Blackpool property. *Rubbish..* I find the assertion that she lacks capacity in this respect to be made out. *Complete and utter Rubbish..*

39. The court will now decide whether or not the Blackpool property should be sold. It does not at this point have sufficient information. I will therefore direct the parties to file concise statements of evidence setting out their cases on

- Whether or not it is in Mrs Clarke's interests for the property to be sold
- How Mrs Clarke's future income and housing needs are to be met.

How stupid can one be??
These were mentioned in court. What game are you playing Judge Jackson??

40. Each party will have the right to file a statement in reply to the other party's evidence and must in any event notify the court as to whether a further hearing is requested, or whether the court is invited to make its decision on the basis of the statements. All evidence should be filed with the court and copied to my clerk. Having read it, I will determine whether there should be a further hearing. *Well done more trauma for my mother??*

41. In the meantime, I will make declarations about the issues that I have decided, namely management of Mrs Clarke's benefits by her carer and her capacity to make a will. *Well done!! Thanks for nothing!! Why would she make will about something you may decide to sell?? you exude AMBIGUITY is that a court of protection judge trait!*

42. The deputyship will remain in existence, though largely in abeyance until the decision about the property has been taken. In fairness to the Deputy, I record that during my dealings with this matter I have seen nothing to justify

the vitriolic attacks that have been made upon him and his firm by Michael Clarke. *Well Judge Jackson – you must be blind & deaf, as well as corrupt!!*

Additional; Could this also be to do with the fact that;

- a) You commented that in the first hearing there is not enough money for this?*
- b) You commented there was not enough time for this hearing or the last??*
- c) This hearing was for release of my mother on medical grounds?*
- d) You did not ask for it?? And when I tried to speak you cut me short??*
- e) You were told about the breach of mental capacity act 5 & did nothing??*

43. My order is attached.

Your order is in invalid. Your order corrupt. Your court has no authority. Consent-less

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

Case No. 10370284

Before Mr Justice Peter Jackson
Sitting at Manchester Civil Justice Centre
On 6 and 31 July 2012

**IN THE MATTER OF
ANN CLARKE**

Upon hearing Mr Michael Clarke (accompanying Mrs Ann Clarke), Ms Angela Wilde and Mr Kevin Clarke, and Mr Hugh Jones (Deputy) on 6 July 2012;

And upon handing down judgment on 31 July 2012 in relation to the application to discharge the deputyship in relation to Mrs Ann Clarke's property and affairs;

IT IS DECLARED THAT

1. Mrs Ann Clarke has the mental capacity to make a will.
2. Whether or not Mrs Ann Clarke has the mental capacity to manage her income from her state pension and other state benefits (such as Disability Living Allowance) it is lawful and in her best interests for these to be paid to her carer(s) to be applied for her benefit.
3. Mrs Ann Clarke does not have the mental capacity to decide whether or not her Blackpool property should be sold. *So why make a will??*

AND IT IS ORDERED THAT

4. The application to discharge the deputyship is adjourned to await the Court's decision on whether or not it is in Mrs Ann Clarke's interests for her Blackpool property to be sold. *Corruption at its best!*

5. The parties shall no later than 28 August 2012 file concise statements of evidence setting out their cases on the following matters:
 - a. Whether or not it is in Mrs Clarke's interests for the property to be sold
already this is within this hearing there is no need
 - b. How Mrs Clarke's future income and housing needs are to be met.
Already within this hearing there is no need
6. Any party who wishes to file a concise reply to the statements of evidence of the other parties may do so, and shall in any event inform the court whether a further hearing is requested, or whether the court is invited to make its decision on the basis of the statements filed, in each case no later than 11 September 2012.

Ordered on 31 July 2012
Mr Justice Peter Jackson

Thanks for nothing