

IN THE COURT OF APPEAL

Case no: 10370284

[2012] EWHC 2947 (COP)

JUDGEMENT DATE 24 OCTOBER 2012

ON APPEAL FROM THE HONORABLE MR JUSTICE JACKSON SITTING IN
THE COURT OF PROTECTION IN THE MATTER OF PROFESSIONAL COSTS.

IN THE MATTER OF

MS ANN CLARKE

V

THE COURT OF PROTECTION

THE APPELLANT: MS ANN CLARKE, assisted by her Son & Executor Mr Michael Clarke.

THE RESPONDENTS: The Court of Protection. Professional Panel Receiver/Deputy solicitor Mr Hugh Jones as the agent for the Court of Protection under a First General Order of Master Denzil Anton Lush dated 20th March 2001 and Mr Alan Eccles, the CEO of the Public Guardian.

The Skeleton Grounds for Appeal:

1] Mental Capacity Act 2005. Part 1 The principles (5)

a) The Court of Protection and its own appointed professional agent have failed to act within the most overriding and fundamental principals of the Mental Capacity Act 2005. Failure to act in the overriding principle of the best interests of Ms Ann Clarke, instead making her a milch cow, lining the pockets of the Court of Protections own professional agent/deputy and as demonstrated in other Court of Protection cases exhibiting the Court of Protection as a professional place of business as a racket and pizzo for the legal profession.

2] Human Rights Act 1998. Article 6.

a) Failure to provide the appellant with the most basic fundamental principles to ensure a fair and proper hearing.

1) Failure to ensure the protected party has full and proper disclosure between the parties before the court.

2) Failure to ensure a protected party has legal representation against the agent/deputy for the Court of Protection who refuses to disclose to Ms Ann Clarke detailed accounts for income and expenditure for each and every year associated with his receivership/deputyship.

b) Independence and impartiality of the Court of Protection.

Both the Court of Protection the Public Guardian refuses full and proper disclosure between the parties before the court of the detailed accounts of income and expenditure.

The Court of Protection has the ultimate liability of public authority for the courts own appointed professional panel agent/deputy. This fact ensures that the court fails as an independent and impartial tribunal as it will be ultimately liable for all compensation and damages due to Ms Ann Clarke for the conduct of its own appointed professional panel agent/deputy in any claims for wrong doing or mal-administration.

The bias shown in favour of the Court of Protections own professional panel agent/deputy are demonstrated in judgements, ignoring fundamental principals for fair and proper hearing as the Court of Protection is liable for the conduct and activities of its agent/deputy.

What reasonable person would want to entrust their finances to solicitors who claim that they can then hide detailed accounts behind the privacy of that protected person. The Court of Protection and its agents/deputies are claiming the privacy of the claimed incapacitated person for the purpose of not providing detailed accounts to that person, Ms Ann Clarke.

A fool and his money can be easily parted by professionals in secrecy behind the closed doors of the Court of Protection. Ms Clarke has clearly won her case to retain her home yet despite winning her case she finds she has orders against her to pay the costs of those who have lost their case against her when the principle of loser pays should apply.

Ms Clarke has evidently waived her own right to privacy and maintains along with her advisors her right to be supplied detailed accounts for her own money. The Court of Protection and its agent/deputy are hiding behind what is her right to privacy to conceal their own conduct.

3] Human Rights Act & the Convention. Article 8

a) For the purpose of further financing the Court of Protections professional panel agent/deputy the appellants have been forced to suffer ongoing professional threats to interfere with Ms Clarkes right to respect for her private life, family life and to live in the peaceful enjoyment of her own home.

4) THE LAW

a) The Fraud Act 2006

3. Fraud by Failing to Disclose Information

A person is in breach of this section if he –

- (a) dishonestly fails to disclose to another person information which he is under a legal duty to disclose, and
- (b) intends, by failing to disclose the information –
 - (i) to make a gain for himself or another, or
 - (ii) to cause loss to another or to expose another to loss.

4. Fraud by Abuse of Position

(1) A person is in breach of this section if he –

- (a) Occupies a position in which he is expected to safeguard, or not to act against, the financial Interests of another person,
- (b) Dishonestly abuses that position, and
- (c) intends, by means of the abuse of that position –
 - (i) To make a gain for himself or another person, or
 - (ii) To cause loss to another or to expose another to risk of loss.

(2) A person may be regarded as having abused his position even though his conduct consisted of an Omission rather than an act.

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