

IN HER MAJESTY'S COURT OF APPEAL IN NORTHERN IRELAND

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JMCA

Appellant;

-v-

THE BELFAST HEALTH AND SOCIAL CARE TRUST

Respondent;

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Before: Morgan LCJ, Coghlin LJ and Horner J
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MORGAN LCJ

[1] This is an appeal from a decision of Treacy J concerning the extent to which a Trust can impose a supervision and support plan on foot of a guardianship order made under the Mental Health (Northern Ireland) Order 1986 (the 1986 Order). Mr Potter appeared for the appellant and Mr Toner QC and Ms Smyth for the Trust. We are grateful to all counsel for their helpful submissions.

Background

[2] The appellant has a learning disability and a history of serious aggression. He has received treatment for an unadjudicated sexual offence against a child. The evidence indicates that he becomes anxious when he comes into unexpected contact with children.

[3] At the time of the hearing before Treacy J a guardianship order under Article 21 of the 1986 Order had been made in respect of the appellant. He resided in supported accommodation in the North Down area with two other gentlemen. The appellant was content to live there. He participated in the running of the household and had complete freedom of movement within the household. He also attended a

works skills programme run by the 'Praxis' organisation from Mondays to Fridays at a local Day Centre and engaged well in this programme.

[4] He had a supervision and support plan which facilitated his independence by enabling him to walk to the local shop from his home without any supervision twice per week, to go to the local shopping centre for approximately half an hour without supervision once per week and to go to the shop from his Day Centre unsupervised once a week if he needed to make a purchase. He has social and sporting interests and enjoys travelling. He had attended various sporting events in England, Scotland and the Republic of Ireland.

[5] The appellant asserted his right to leave his home address at any time of his choosing and unaccompanied. He challenged the legal authority of the respondent to impose conditions on his right to leave his place of residence or Day Care Centre, and in particular the condition that, with the above exceptions, he may not do so unless accompanied by a person approved by the Trust.

[6] Treacy J held that the supervision of this appellant was with legal authority and lawful and that the 1986 Order did authorise the guardian to take the impugned measures in the circumstances of this case. Subsequent to his decision the Supreme Court examined the concepts of deprivation of liberty and restriction of liberty in the case of patients suffering from mental health difficulties in P and others v Chester West and Chester Council [2014] UKSC 19.

[7] It is unnecessary for us to set out the facts or reasoning in that decision. It is, however, now accepted by the Trust that the guardianship order did not provide any mechanism for the imposition of any restriction on the entitlement of the appellant to leave the home at which he was residing for incidental social or other purposes. That did not, however, prevent the appellant entering into agreed care plan arrangements designed to assist him in achieving independent living to the greatest extent possible.

[8] In respect of any arrangements concerning the entitlement of the appellant to leave his place of residence for incidental social purposes the learned trial judge correctly recognised that the guardianship arrangement was based upon consensus and cooperation. We wish to make it clear that such an order does not provide any legal power to impose restrictions on such activities.

[9] Mr Potter on behalf of the appellant in this case recognised that this left a lacuna in the law. That gap had been filled by Schedule 7 of the Mental Health Act 2007 in England and Wales which introduced deprivation of liberty legislation into the Mental Capacity Act 2005 providing a mechanism for the lawful restriction on or deprivation of liberty of a person such as the appellant. It is clear that urgent consideration should now be given to the implementation of similar legislation in this jurisdiction.

[10] The guardianship order in respect of the appellant ceased to apply from 13 January 2014. From that date the Trust had no order in respect of the appellant and accepts that it now has no legal power in respect of his activities. The Trust has, however, on a consensual basis continued to assist the appellant by agreeing a care plan which is entirely dependent upon the agreement of the appellant. We can well understand why the appellant may consider that such a plan is to his advantage.

[11] For all these reasons there is now no issue between the parties as to the applicable law. In light of that and the changed circumstances of the appellant this is a case in which the principle in ex parte Salem [1999] 2 WLR 483 applies.