



Neutral Citation Number: [2019] EWCOP 43

Case No: 13236854

IN THE COURT OF PROTECTION

Date: 08/05/2019

Before :

MR JUSTICE KEEHAN

Between :

LINCOLNSHIRE COUNTY COUNCIL

- and -

MR AB

Applicant

Respondent

Ms Kohn (instructed by **Lincolnshire County Council**) for the **Applicant**
Miss Twist (instructed by **Donovan Newton Solicitors**) for the **Respondent**

Hearing dates:

Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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MR JUSTICE KEEHAN

The Hon. Mr Justice Keehan :

Introduction

1. These proceedings in the Court of Protection are brought by Lincolnshire County Council in relation to a man, AB, whom I shall refer to as ‘P’ in this judgment. He is a 51-year-old man with a diagnosis of moderate learning disabilities, autistic spectrum disorder, harmful use of alcohol and psychosis due to solvent abuse. He suffered, sadly, a chaotic childhood. He had difficulties engaging in mainstream education and spent much of his childhood in boarding schools, due to concerns about his behaviour, which are recorded as having been inappropriately sexualised from a young age.
2. He was first detained under the Mental Health Act 1983 in 1985. Thereafter, he was detained on a further 10 occasions between 1985 and 2003, generally as a result of interpersonal conflicts, alcohol abuse or withdrawal hallucinations and seizures. In 2000, P moved into his own property and began a relationship with a woman, who was noted to have exerted significant influence over him. The pair are recorded as falling into a pattern of drinking and engaging in antisocial behaviour in public. In July 2003, P was evicted from his flat, having caused significant and substantial structural damage.
3. In October 2003, he was admitted to hospital. Thereafter, he was detained under section 3 of the Mental Health Act and he remained in various psychiatric facilities for the next seven years. On his discharge in October 2010, P moved to another placement. It was here that he developed a friendship with a local prostitute and thereafter, began his fascination with female sex workers. He has since lived at a number of residential properties and during this time he has been facilitated to access sex workers, and then on occasions, to travel to the Netherlands to have sex with prostitutes there. In November 2008, he moved to his new supported placement. In April 2018, Lincolnshire County Council made an application for the court to determine P’s capacity and best interests, specifically with regard to contact with sex workers.

Analysis

4. Evidence was sought from Dr Lisa Rippon, who concluded that P lacked capacity in all relevant domains, save the capacity to consent to sex. On the issue of contact, and particularly contact with sex workers, she said as follows:

“P has limited insight into the risks that others might pose to him, including sex workers, and overestimated his ability to keep himself safe. He could not think through the potential consequences of visiting sex workers, including the possibility of financial exploitation or involvement with the criminal justice system. I believe that P failed to both understand the information necessary to make decisions about contact and was unable to weigh up the benefits and risks. It is therefore my opinion, that P lacks capacity in this area and this is as a result of his learning disability and autism.”

Dr Rippon concluded, and all parties accepted, that P lacked capacity

- i) to conduct these proceedings;
 - ii) to make decisions about his residence;
 - iii) to make decisions about his care and treatment;
 - iv) to manage his property and affairs; and
 - v) to make decisions about his contact with others.
5. The position now, is that the local authority do not intend to facilitate P's access to sex workers, whether in this country or abroad, in particular in the Netherlands. They set out their reasons in a detailed and helpful position statement. P's litigation friend has visited him on a number of occasions in the recent past to gain his views. P, it is said by his litigation friend, has a high sex drive and finds the lack of access to sex workers frustrating. He has stated that self-pleasuring using pornography, sex dolls and toys, is not the same as having physical contact with a woman. He would wish to continue his past conduct of having and being permitted to have sexual relations with sex workers, here and in the Netherlands.

Conclusion

6. I have due regard to P's wishes and desires. But I have come to the clear conclusion that the local authority have adopted the right decision and approach, in not seeking to facilitate his contact with sex workers either here or abroad.
7. In coming to that conclusion, I have had regard to s.2 of the Mental Capacity Act 2005. There has been no change in the P's circumstances, namely that he lacks capacity as I had set out above. I have also had regard to ss.3 and 4 of the 2005 Act. I note that a care worker who causes or incites sexual activity by an individual for payment, with another person, commits a criminal offence, pursuant to ss. 39,42 and 53A of the Sexual Offences Act 2003.
8. If care workers who look after and support P, were to facilitate such activity, they would be committing a criminal offence and any declaration by me, would not alleviate their liability to be prosecuted. In the Netherlands, of course, prostitution and payment for sexual services are not illegal. But in my judgment, there is a very real risk that if a care worker here, supporting P, made arrangements for him to travel to the Netherlands for the purposes of having sexual activity with a woman for payment, they would be at risk of being prosecuted for a breach of the Sexual Offences Act 2003.
9. Accordingly, I would not be minded to make any declaration permitting care workers or the local authority to arrange for P to have sexual activity in exchange for payment with a woman, either in this country or in the Netherlands. Secondly, and in any event, I consider it would be wholly contrary to public policy for this court and for this local authority, to endorse and sanction P having sexual relations with a woman for payment. Thirdly, and in any event, notwithstanding P's clearly expressed wishes and his clear desires to continue to meet prostitutes for sexual activity, I do not consider it is in his best interests to do so. I have well in mind, his expressed views that he does not consider that he would otherwise be able to have a relationship with a

woman and therefore, he sees no alternative but to seek to use the services of prostitutes.

10. I have regard to the fact that he finds self-pleasuring is not of the same enjoyment or satisfaction as having sexual relations with a woman. In light of the opinion of Dr Rippon, however, it is clear that P does not understand all of the implications of having sexual relations with a woman for payment. He puts himself at risk to his health, his welfare and his safety and he puts himself at risk of exploitation: none of which he accepts or understands. In those circumstances, I am entirely satisfied that it is wholly contrary to his best interests for him to have sexual relations with prostitutes. Still less, is it appropriate for this court to sanction the same. On behalf of P, his litigation friend through counsel, Miss Twist, acknowledged those factors, not least the impact of the criminal law and did not seek to pursue an application for the court to grant such declarations. In my judgment, that was an entirely right and appropriate decision.
11. I have been asked to give this short extempore judgment, so that it may be transcribed and a copy given to P, so that he may know why the court has come to the above conclusions. I entirely accept that P will be, to put it mildly, disappointed by and he will undoubtedly not agree with my decision. Nevertheless, I am satisfied that the conclusions I have reached are in his best interests.