

COURT OF PROTECTION

Manchester Civil Justice Centre, 1 Bridge Street West,
Manchester, M60 9DJ

Date: 22/08/2024

Before :

DISTRICT JUDGE MATHARU (Tier 1)

Between :

Stockport MBC	<u>Applicant</u>
- and -	
NN (by her litigation friend, the Official Solicitor)	<u>First</u>
- and -	<u>Respondent</u>

Greater Manchester ICB	<u>Second</u>
	<u>Respondent</u>

Mr Wenban-Smith (instructed by **Hempsons solicitors**) for the **Applicant and Second Respondent**
Miss Jagadesham (instructed by **Bindmans**) for the **Official Solicitor (First Respondent)**

Hearing dates: 22nd August 2024

JUDGMENT

District Judge Matharu :

1. In my list this morning is the case of “NN”. There have been a number of hearings conducted by me on this matter. There is the benefit of significant judicial continuity, and some continuity of Counsel where Mr Wenban-Smith who appears for the Applicant and second Respondent has also appeared before me previously in hearings on this matter.
2. I set out what has arisen. Today is listed as a directions hearing listed as being in public with reporting restrictions, with a Transparency Order in place. I have already been advised that NN will be attending the hearing. The hearing has been listed to be heard remotely in order that NN’s attendance can be facilitated as she is not currently in the locality. There was an “observer request” made late last night where an observer wished to be permitted to join the hearing. That email request was picked up this morning by the court office when it opened and the request was sent to me.
3. The starting point is that this is a public hearing with reporting restrictions. However, it was important that I notify the parties’ lawyers of the observer request. That was in the knowledge that NN has been very actively involved in her case, and her participation in court hearings has been regular and frequent. She will often speak with me during any hearing, to make her views known to me and the lawyers.
4. For those reasons it was important that NN be informed of the request. I requested that the lawyers for NN consider the request and discuss it with NN considering NN’s active involvement in her own case.
5. I have been told by Ms Jagadesham, Counsel for the Official Solicitor, that having been informed of the observer’s request to join the hearing, NN’s agitation has been “heightened”. I was informed that NN’s instructions were that she did not want the observer to attend.
6. Whilst NN’s wishes and feelings about this specific issue are not determinative they should and are taken into account.

7. The presumption or starting point is that a Court of Protection hearing should be in public. To deviate from this could, in absence of good reasons, contravene the openness and transparency of such proceedings.
8. Before making any decision about this, that is to say to prevent access to an independent observer, I must have regard to NN's best interests. Miss. Jagadesham, Counsel for the Official Solicitor for NN has said that NN's best interests will not be served by any participator observing these proceedings.
9. I say this as it cannot be contentious: NN is a very private lady. She attaches a great deal of weight to being treated with dignity. Her voice is often heard at the hearings, she actively participates in hearings as this is encouraged by the Court of Protection Rules. Will her participation in today's hearing be impeded in any way by the observer joining the hearing?
10. These decisions require a balance between the need for open justice and the interests of the protected party not being adversely impacted in any way. I am told that merely knowing that the observer had asked for permission to join the hearing caused her to be very anxious and it was submitted that involvement in the hearing was likely to cause her distress. I am told that her behaviours became "heightened". Mr. Wenban - Smith whilst adopting a neutral stance to the request, confirmed that he did not wish NN's engagement to be affected in any way and did not challenge or seek to disagree with Miss. Jagadesham.
11. The observer was at this stage "on the call" and was given the opportunity to respond, if she so wished. The public observer, having heard all of this, graciously said that she was willing to leave the hearing as she did not want to cause NN distress.
12. The court welcomes observers to hearings, as do Counsel. On the particular facts of this case, both Counsel say that it will not be in NN's best interests. NN does not want the observer to join her hearing.
13. The Civil Procedure Rules are imported into the Mental Capacity Act 2005. Hearings are generally to be in public unless any of the matters under CPR r.39.2(3)(a)–(g) apply and that it is necessary to sit in private to secure the proper administration of

justice. Rule 39.2(3)(c) is one of the exceptions if the hearing will involve confidential, personal, financial matters; which it will do in this hearing as we will be discussing NN's financial position in respect of here care arrangements.

14. Rule 39.2(3)(d) is one of the other exceptions which can apply where a private hearing is necessary to protect the interests of any child or protected party. The mere fact of being a protected party does not automatically mean that the hearing is to be private; however, this protected party is at risk of not being able to participate fully in a "private" environment where she has fully participated in earlier remote hearings where there was no observer. Her voice should be heard when she has made it clear she does not want an observer to be involved in her hearing. Therefore, and for those reasons, I will accede to NN's request and will proceed on a private basis because it is necessary to secure the proper administration of justice for NN.

15. I am very grateful to Counsel for their prompt provision of an agreed note of my ex-tempore decision on this issue in order that I may publish this judgement as required by the Court Rules.

END

