



Neutral Citation Number: [2022] EWHC 803 (Fam)

Case No: FD20P00387

IN THE HIGH COURT OF JUSTICE

FAMILY DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 18th March 2022

Before:

Mr. A. Verdan QC (Sitting as a deputy high court judge)

Between:

LONDON BOROUGH OF ISLINGTON

Applicant

and

EF

Respondent

Mr Tony Harrop-Griffiths (instructed by The Legal Department of the local authority) for
the Applicant

Ms Eleanor Keehan (instructed by Burke Niazi) for the Respondent

Hearing date: 9-11.03.22

JUDGMENT

Introduction

1. In this case I am concerned with a young woman called EF, who is aged 18 years old and will turn 19 on 29.05.22. She is therefore an adult.
2. The application is the local authority's (LA) for orders pursuant to the inherent jurisdiction specifically to prohibit her from travelling to Brazil for an initial further period of 6 months and for HM Passport Office to hold her passport for this period.
3. The objective of such orders is to stop EF from seeing GH, a man who lives there and who she loves and wants to be with. The LA suggest that the need for such orders can be reviewed in 5 months' time. The LA previously sought an order prohibiting any contact between EF and GH but that order was not pursued.
4. The LA seek a range of findings to justify the above orders.
5. EF opposes these orders. She is clear that she is not only capable of making these decisions herself but that she has the right to make them.
6. The LA accept that EF has capacity to make the relevant decisions for the purposes of the **Mental Capacity Act 2005** (MCA).
7. The case was listed for a final hearing.
8. I heard oral evidence from KL, the LA's manager; Dr D, the expert consultant forensic psychiatrist and EF herself.
9. I have also read the bundle of documents and in particular the statements and reports.
10. I am grateful to both counsel for the skilful and sensitive way they conducted this difficult case.
11. At the conclusion of the case I indicated that I would be reserving judgment as this was a complex and important case and I wished to give it further consideration. This judgment has been handed down by email.

Proceedings to date

12. The LA application first came before the court without notice to EF on 14.06.21 when the court stated that EF appeared to be a vulnerable adult and on the basis of the LA evidence made interim orders prohibiting EF from leaving the country and against the Passport Office to hold any passport.
13. On the substantive return date on 30.06.21 when EF was represented, the court sanctioned the instruction of an expert Dr D, to assess EF's capacity over a range of

various relevant decisions and to assess whether she was vulnerable as set out in **Re SA** [2005] EWHC 2492.

14. Dr D subsequently concluded that EF did have capacity to make the relevant decisions for the purposes of the MCA.
15. At a hearing on 13.12.21 EF agreed not to have contact with GH from 1.1.22 to 4.2.22 to allow the LA to carry out further work with her to help her. Permission was also granted for Dr D to prepare an addendum report in answer to further questions from the parties.
16. It is therefore apparent that significant restrictions have been placed on EF for some 9 months already.

Background

17. I turn to the background which is set out fully in the documents and in the Agreed Chronology.
18. EF was born in 2003.
19. There were problems in her family home life. EF was a looked after child and known to the LA Children Social Care Department from 2010.
20. In 2015, when she was aged 12, EF's parents made contact with the police as they were concerned that she was having inappropriate sexual contact with an unknown male (not GH) over social media.
21. In 2017, when aged 14, EF met GH in a chat room. GH is 11 years older than EF. In 2018 when aged 15 she began a relationship with him online. EF says that she initially gave GH the impression she was an adult but whilst still 15 she told him her age. The relationship continued. GH did not bring it to an end on learning of EF's age. In October 2018 GH sent EF an engagement ring and told her he would come to England when she was 16 and that they would get married.
22. In 2019 EF ended the relationship with GH for a short period of time but then it resumed.
23. EF suffers mental ill-health. Between 2018-2020 she had 3 in-patient admissions suffering acute psychosis. She was diagnosed with a schizo-affective disorder, a lifelong serious mental illness presenting with psychotic and affective symptoms. She is in receipt of a care package including psychotic medication and psychiatric support. Of note the records show that when she has been unwell she has self-harmed and expressed suicidal ideation.

24. In September 2019 GH came to England and met EF. A physical in person sexual relationship developed although EF says they did not have intercourse.
25. On 27.09.19 GH was arrested in England on suspicion of possession of indecent images, namely child pornography, stated by the police to be images of “very young children.” He was bailed whilst the investigation continued.
26. GH returned to Brazil in 2020 where he is now. It is understood that if he returned to England the police would want to pursue their investigation and his liberty may be at risk and so he is not planning to do so.
27. EF’s family are Muslim but EF is now a Christian and attends Church regularly. She is estranged from her father and brothers but is in touch with her mother whom she sees every one to two weeks and she also speaks to her frequently.

Current situation

28. EF lives in semi-independent accommodation and by all accounts is doing well there. The plan is for her to move to independent accommodation in the next few months.
29. She is at college studying for a diploma in Art and proudly told the court that she was hoping for a distinction and would be disappointed only to get a merit. Her course ends on 5.7.22.
30. EF said that she intends to complete the course and she added that she would agree not to visit Brazil until after the course is over.
31. EF’s mental health is currently stable. She is engaging well with her support staff and taking her medication.
32. KL accepted that EF is doing remarkably well and has coped very well with recent stressors (such as moving and the proceedings).

GH

33. The concern at the heart of this case is GH and EF’s relationship with him, which is continuing. She says she wants to be with him.
34. He did not give evidence and has not produced a witness statement. He was spoken to once briefly by the social worker and not interviewed by Dr D. He has not been subject to any type of risk assessment. The information about him is limited and comes mainly from EF and I treat it with some caution as it is difficult to verify.
35. What is known is as follows. He is 11 years older than EF. He met her in a chat room when she was 14 and continued a relationship with her when he learnt she was 15. He

admits to EF that he is addicted to pornography and has downloaded child pornography including images of very young children. He told EF that this action was linked to his addiction. He knows about EF's mental ill health and her need for mental health support and so her vulnerability.

Law

36. I am grateful to both counsel for having prepared an **Agreed Statement as to the Law** and for the bundle of authorities that I have been referred to and considered. This document can be attached to this judgment if required but I now summarise the key points.
37. Section 2 of the MCA states that a person lacks capacity if and only if it is established at the material time that they are unable to make the decision for themselves in relation to the matter because of any impairment of or disturbance in the functioning of the mind or brain. As already mentioned it is agreed that EF has the capacity to make the relevant decisions.
38. The court's power to make protective orders is thus through its inherent jurisdiction. The test for its application in the case of vulnerable adults is set out in **Re SA** [ibid]. Munby J, as he then was, at paragraph 77 stated as follows:
“the inherent jurisdiction can be exercised in relation to a vulnerable adult who, even if not incapacitated by mental disorder or mental illness, is, or is reasonably believed to be, either (i) under constraint or (ii) subject to coercion or undue influence or (iii) for some other reason deprived of the capacity to make the relevant decision, or disabled from making a free choice, or incapacitated or disabled from giving or expressing a real and genuine consent.”
39. The exercise of the inherent jurisdiction in these circumstances is carefully circumscribed. As per Hayden J at paragraph 36 of **London Borough Redbridge Council v SNA** [2015] EWHC 2140 *“it is to be used sparingly.”*
40. In **LBL v RYJ v VJ** [2010] EWHC 2665 Macur J, as she then was, at paragraph 62 rejected the contention that the inherent jurisdiction could be used in respect of adults with capacity to impose on them decisions in respect of their welfare in contrast to using it *“to facilitate”* the process of decision making for such persons free from external pressure.
41. The court's approach in such cases was described again as *“facilitative”* rather than *“dictatorial”* by Macfarlane LJ, in **Re DL** [2012] EWCA Civ 253 at paragraph 67,

which approach was said to be consistent with protecting the individual's autonomous decision making and their Article 8 rights. At paragraph 76 he stated further that:

“the decided authorities show that there can be no power of public intervention simply because an adult proposes to make a decision, or to tolerate a state of affairs, which most would consider neither wise nor sensible. There has to be much more than simply that for any intervention to be justified: and any such intervention will indeed need to be justified as necessary and proportionate.”

42. Such a dictatorial order was made in **Southend-on-Sea BC v Meyers** [2019] EWHC 399 by Hayden J who made an order against the subject of the proceedings prohibiting him from living with his son. It is fair to say that this decision is very much an outlier.
43. Such a use of the inherent jurisdiction was described by Lieven J in **Croydon v KR** [2019] EWHC 298 at paragraphs 63-64 in obiter dicta as reserved for only “truly exceptional cases.”
44. Sir James Munby in a lecture dated 10.12.20 entitled ‘**Whither the Inherent Jurisdiction**’ opined that such orders could never be made against a ‘victim’ other than on an interim basis and to do so would “*ignore the fact that an adult who is vulnerable but capacitous is autonomous and, worse, to trample on that autonomy*” and expressed doubt that **Meyers** has been correctly decided.
45. The construction that the inherent jurisdiction cannot be used to make orders against the subject of the proceedings beyond the interim is supported in a number of other reported cases.
46. For example, **Redcar and Cleveland BC V PR & Others** [2019] EWHC 2305, where Cobb J at paragraph 43 described it as “*illogical*” to invoke the inherent jurisdiction to protect a vulnerable adult and yet injunct that person from doing what they wanted to do.
47. In **Re K (Forced Marriage: Passport Order)** [2020] EWCA Civ 19 the President stated that: ... “*an open-ended passport order or travel ban should only be imposed in the most exceptional of cases*” recognising that such orders were highly intrusive.
48. I was also referred to **Articles 2, 3, 5 and 8 of the ECHR**.
49. I apply the above law to the facts of this case.

The LA case

50. The LA are extremely concerned that EF is far too vulnerable to make decisions about her relationship with GH and is a victim of his undue and malign influence and so

needs the court's protection. They say that her decision to move to Brazil is an 'ultra-unwise' one.

51. They rely on their own social work assessment of her but also the psychiatric assessment of Dr D.
52. I consider KL's evidence to be sincere and well-intentioned. She is clearly worried about EF and in my judgement is right to be. It was a shame EF said in evidence that the LA's motivation was simply to cover themselves. She is wrong about this.
53. The LA case is that EF is a victim of grooming and exploitation by GH and needs protecting from him.
54. Further that if she moves to Brazil there is a real possibility that her mental health will deteriorate and then a high risk that without access to mental health support she will harm herself and possibly kill herself.
55. The LA plan is to offer EF a number of further social worker sessions dealing with a range of subjects including healthy relationships, support, life in the UK and life in Brazil. Such sessions could be weekly or if that was too much for EF then less frequently. The course could take as little as 6 weeks but could take as long as 6 months but is most likely to take 3-4 months. The objective of the work is to make EF safe or at least give her greater understanding of the risks.
56. The LA accept that EF currently is doing very well in semi-independent living, at college and managing her mental health and deserves credit for this.
57. The LA accept that the success of the work depends on EF's willingness to do the work but consider that she does have the capacity to complete the work and gain further from it. They say it is difficult to predict how long the work will take or its outcome. It may take a long time. It may not succeed. There is a chance that if it does not the LA will be asking the court to make further protective orders.
58. They say the circumstances of this case are exceptional and so justify the use of the inherent jurisdiction given the limited scale of the interference, a 6 month travel ban and the justification for the same, namely the risk of death.

Expert

59. Dr D produced two lengthy and comprehensive reports. She spent 6 hours interviewing EF.
60. Her oral evidence was considered, thoughtful and impressive. She had clearly given the case a great deal of time and obviously took her role very seriously.

61. Dr D's written evidence is clear that EF has capacity for the purposes of the MCA and specifically to litigate, to decide where to live, to decide as to the care and support she receives, to manage her finances, to have contact with GH, to marry, to relocate abroad and to engage in sexual relations.
62. Dr D questioned in oral evidence whether EF's history and presentation made her so vulnerable as to be possibly lacking capacity but accepted in her oral evidence that for the purposes of the MCA she had capacity albeit that she was, in her view, very vulnerable.
63. Dr D's view is that EF is unable to understand the nature of her relationship with GH and limited evidence that she can weigh up the necessary information to make decisions about contact with him.
64. She is of the opinion that EF has been groomed given that the relationship with GH was sexually inappropriate, GH's interest in pornography and child pornography, EF was underage and vulnerable and the relationship isolated her and made her more reliant on GH.
65. In Dr D's addendum report she elaborates that EF's "*limited understanding of the nature of the relationship impacts on her ability to weigh up the necessary information about her contact with GH*" and that this is "*a consequence of her trauma history and subsequent vulnerability.*"
66. Dr D says that EF found it difficult to understand the risk that GH posed.
67. In her first report Dr D opines that EF "*was able to demonstrate a good understanding of the information provided to her in regard to the services available in Brazil. EF also demonstrated a good understanding of the challenges of moving to Brazil in the context of her mental health needs. In addition, she was able to weigh up the necessary information. Whilst she prioritised her wish to pursue a relationship over her own personal safety, she was nonetheless able to consider the different factors that were relevant to the decision. In addition, she was able to retain and communicate the necessary information.*"
68. Dr D states that EF's motivation to continue to proceed to move to Brazil is "*not motivated by any form of disordered thinking or the influence of her mental illness on her ability to understand or weigh up the necessary information. Her motivation to decide to leave the country is related to the pursuit of a relationship that she considers to be important and the protection of GH from prosecution.*"

69. Further Dr D opines that “*like many young women her age, she is likely to prioritise this above her own needs and her own welfare, making this an unwise as opposed to incapacitous decision.*”
70. Her oral evidence confirmed that EF could not understand the nature of her relationship with GH, the risks to her from the relationship nor weigh up all the competing factors.
71. Dr D gave clear and compelling evidence of the risks to EF if she went to Brazil, namely the risk of exploitation by GH and the high risk of a significant deterioration in her own mental health, describing EF as at “*very significant*” risk of suicide in Brazil.
72. In oral evidence she also stated that the work with EF could take years and had no certain outcome.

EF’s case

73. EF opposes the LA applications and is clear that she can make her own decisions.
74. I listened very carefully to EF’s evidence. She is clearly intelligent but also came across as trusting and in that sense somewhat naive.
75. She was a very impressive young woman and in most respects her evidence was open and honest. I say that because when she was asked difficult questions about GH she had a tendency to say she could not remember e.g. not remembering that GH said that he would come to England when she was 16 to marry her, which I considered was not truthful and more likely to be because she did not want to answer difficult follow up questions.
76. I accept her evidence that she takes her mental health very seriously, that it is her first priority and that she does not want to go back to places that she has previously been to.
77. However the nature of her illness, which is both serious and chronic, is such that its progress is not always in her control.
78. I also accept that she is doing very well at college and her evidence that she fully intends to remain at college to complete her course.
79. I agree with Dr D and KL that EF’s understanding of the risks posed from GH is superficial/minimal and that she has asked insufficient questions of GH e.g. in relation to the details of his downloading of child pornography and was too willing to make excuses for his behaviour. Her oral evidence confirmed this.
80. Paradoxically she accepted that if a young female friend of hers told her of a plan to go to Brazil to live with someone like GH, she too would be concerned, saying “*of course*

it does not sound like a sensible plan". However she could not see the very same risks for herself.

81. In my judgment and as confirmed by her own evidence EF does not appreciate the risks to her physical safety nor the risks to her mental health.

Findings

82. I turn to the findings sought by the LA and state my conclusions.

83. I do not find that that GH has groomed and continues to groom EF. There is insufficient evidence for me to do so. However the label used to describe the behaviours is less important than the behaviours themselves. There are features about GH and his relationship with EF which are very troubling and should cause EF significant concern as a result of which there is in my judgment a real possibility that he will exploit her by taking advantage of her. These features are EF's age when the relationship started, GH continuing the relationship despite her age, his addiction to porn, him downloading child pornography, her mental ill health and vulnerability and him being willing for her to move to Brazil despite the risks to her health.

84. I do not find that GH has a sexual preoccupation with children as again I do not have enough information about him to do so but the fact that he downloaded child pornography, which he accepted to EF and did not suggest to her was an accident, is extremely concerning and indicates a sexual interest in children as it was linked to his porn addiction which I am entitled to assume is linked to sexual gratification. EF, although she is no longer a child, does not seem to be concerned about this fact and tended to makes excuses for him.

85. I find that GH continued to pursue the relationship once he knew EF was aged 15 and mentally unwell and vulnerable. Given their age difference this is concerning.

86. I find that GH has sought to gain EF's trust and make an emotional connection by sending her an engagement ring in about October 2018. Given her age that was an extraordinary thing to do for a man so much older than her.

87. Whilst I accept that EF had difficulties with her family before she met GH, I also find that GH has probably sought to isolate EF from her family as indicated by him saying that if Islam stands against their union he would have to destroy it. In contrast there is no evidence that he is supportive of EF's family.

88. I am unclear as to the extent to which EF considered herself as a positive influence in managing his pornography addiction by her engaging in sexual activity but do conclude that EF's understanding of GH's addiction is limited.
89. I accept that EF is a vulnerable person in that she has a troubled family history, a chronic schizoaffective disorder and a fragile personality. This clearly makes her more at risk to exploitation.
90. I find that the dynamic of GH's relationship with EF is one of undue influence but I do not find that EF is deprived or disabled from being able to make decisions but rather that the relevant decisions she is making are unwise ones.
91. My conclusion based on Dr D's evidence is that if EF travels to Brazil there is firstly a significant risk that she would suffer a deterioration in mental state, and secondly that if that happened there is a real risk that deterioration could become severe and thirdly that in that event she would probably be unable to access the care and support she needs, and so would be at risk of exploitation by others and would be at serious risk of suicide. Although I have expressed each of the above separate stages as a likelihood I cannot say whether the serious risk of suicide is in itself a likelihood as there are a number of stages that need to occur although I do accept it is a real possibility. Nor can I say that the risk of suicide is an immediate one as the timing of it depends on a wide range of factors.

Discussion

92. The first point to reiterate is that it is clear from Dr D's evidence and the parties agree that EF has capacity and that therefore the court's jurisdiction is not the MCA.
93. I am also mindful of the statutory principles set out in section 1 of the MCA namely that a person must be assumed to have capacity unless it is established that she lacks it and that a person is not to be treated as unable to make a decision merely because she makes an unwise one.
94. As EF has capacity the only jurisdiction that this court has to make the orders the LA seeks is pursuant to the court's inherent jurisdiction but the exercise of this is carefully circumscribed as set out above and the power must be used sparingly.
95. Although the MCA does not apply I think the above principles apply equally in this case, namely that I should assume EF is able to make her own decisions and should not be treated as being unable to merely because she is making unwise ones.

96. I have considered all the cases that I have been referred but in my judgement the weight of the authorities clearly indicates that this jurisdiction should be used rarely and in any event should be facilitative and not dictatorial and that the court should not make orders against the subject of the proceedings prohibiting them from acting in accordance with their wishes.
97. The orders that the LA seek are dictatorial and aimed at the victim namely EF. The LA is expressly seeking to impose such decisions upon EF, namely prohibiting her from visiting or living with her partner, prohibiting her from travelling to Brazil and prohibiting her from having her passport without the permission of the court. The net effect of these prohibitions is also to stop EF from seeing GH. The LA are seeking for decisions of the utmost significance to be imposed upon EF. On that basis alone I should not make them.
98. If I am wrong about that and there is a jurisdiction to make such orders against victims it only exists in truly exceptional circumstances. I am not satisfied that those exist in this case. The scale of interference is significant and not in reality time limited to 6 months as it is by no means certain that in 6 months' time the court will be in a different position as there is every chance that despite the work that EF will carry out with the LA her views will not have changed. The justification for the inference is the risk to EF's health and wellbeing and in the worst case her life. I have already dealt with my assessment of that risk.
99. Moreover, EF is an adult with capacity and wants to be in a relationship with GH. She has known him for 3 years and separated from him once. She has received advice from professionals not to go and is intelligent enough to understand that advice and act on it if she so wishes. She plans to visit Brazil at least once before moving there permanently. She has saved up a reasonable sum so that she will have a degree of independence once over there. She plans to take a second mobile phone with her as another level of security. She has researched the medical and health facilities in Brazil and is aware of its shortcomings. She has agreed not to travel to Brazil until her course is completed. She has agreed to continue to work with the LA before she leaves. These are sensible decisions which show a degree of independence and critical thinking.
100. In addition I have very much in mind EF's Article 8 right to respect for her private and family life which if I were to make the orders sought by the LA would be breached as she would be prevented from pursuing the relationship she wants and living the life she wants. As already stated the purpose of invoking the inherent jurisdiction in

respect of a vulnerable adult should be to enhance a person's Article 8 rights not limit them. Article 8 protects and obligates the State to "respect" both "family life" and "private life"; this includes a person's right to live their personal life as they choose and establish and develop relationships including intimate relationships. The orders the LA seek would fundamentally breach EF's Article 8 rights. Moreover, as already referred to, whilst the LA only seek orders for a further 6 months, such orders have been in place for 9 months already and there is a real chance and KL

101. accepted that in 6 months the LA's position will not have changed and they will seek further orders.

102. Lastly to impose what would be a worldwide travel ban for any further period of time would be a highly intrusive step by the court would and only be justified in exceptional circumstances. I am not satisfied those exist in this case.

103. I am conscious of the fact that the only reason why court intervention is possible in this case to stop EF's relationship with GH is because he lives in another continent. If EF was associating with a man who lived in London who the LA thought was unsuitable they would not be able to protect her from that save by depriving her of her liberty which step they obviously would not take.

Conclusion

104. This is a difficult case but I have therefore reached the clear conclusion that the court should not continue to invoke its inherent jurisdiction to stop EF from travelling to Brazil and so having a relationship with GH.

105. In the Court of Protection in the case of **LB Tower Hamlets v PB** [2020] EWCOP 34 Hayden J, VP, stated that:

"The healthy and moral human instinct to protect vulnerable people from unwise, indeed, potentially catastrophic decisions must never be permitted to eclipse their fundamental right to take their own decisions where they have the capacity to do so. Misguided paternalism has no place in the Court of Protection."

In my judgement this general principle has application in this case.

106. I have therefore decided to end the protective orders that have been in place.

107. I do that on the basis that EF has undertaken to this court that she will not travel abroad before the end of her college course on 5.07.22 and that in the meantime she will attend the proposed sessions of work arranged by the LA.

Postscript

108. I end this judgment with a plea to EF. I have accepted that the LA and Dr D are right to be very worried about her because I have found that there are real risks to EF's wellbeing from moving to Brazil and living with GH.
109. I have concluded that the professionals in this case have EF's best interest at heart and want to protect her and keep her safe.
110. The court's view is that EF would be making a very unwise decision to move to Brazil.
111. I urge her to work with them between now and July when her course finishes.
112. I urge EF to attend all the sessions that the LA arrange for her.
113. I ask EF to listen carefully to the advice given and think more deeply about the issues in this case.
114. EF told me she would be worried if a friend of hers was about to embark on a similar trip. She needs to think about her own case as if she were that friend.