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IN THE HIGH COURT OF JUSTICE

CASE NO: J90NE001

FAMILY DIVISION

NEWCASTLE DISTRICT REGISTRY

In the matter of the Inherent Jurisdiction of the High Court

AND

In the Court of Protection

CASE NUMBER: 12404513

IN THE MATTER OF THE MENTAL CAPACITY ACT 2005

Re TT (Injunctive Relief)
(by his litigation friend, the Official Solicitor)

Mr Abid Mahmood, Counsel instructed on behalf Newcastle City Council

Mr Simon Garlick, Counsel (instructed by EMG Solicitors) on behalf of TT acting via the Official Solicitor

ST appearing in person

JUDGMENT

1. I am concerned with the best interests of TT, a 46-year-old man of Asian heritage with a diagnosed mild learning disability. TT lived with his parents until 2019, when the

Court of Protection sanctioned his move from the family home into supported living accommodation, which I shall refer to as ‘the placement’.

2. TT has been in a relationship with his girlfriend, who I shall refer to as Miss Y, since 2015. Miss Y also has a diagnosed mild learning disability. She does not share the same ethnicity as TT.
3. Within these and in earlier proceedings, finely balanced assessments have concluded that TT has capacity to make decisions as to his contact with his family, contact with Miss Y, including the capacity to engage in sexual relations and to an extent, capacity as to his finances. In the case of the latter, the local authority acts as his appointee and assists TT in the management of his finances. It provides him with a solid allowance from his income, over which he has control and the capacity to decide how it is expended. At present, he is not assessed as having capacity to decide where he lives. In the fullness of time, further assessments will be undertaken to ascertain the extent to which TT’s capacity or lack of capacity to decide where he lives is consequent upon his learning disability or is being impeded by undue influence and interference by his mother, ST.
4. The discrete hearing before me this week has been to determine applications by the local authority for injunctive orders, both within the Court of Protection and under the inherent jurisdiction of the High Court, to prevent ST from interfering with the exercise of TT’s personal autonomy. This is not the first time that such parallel proceedings have been issued in respect of TT, the first being in 2019, when it was held, inter alia:
 - i. In the Court of Protection, that TT lacked capacity to conduct the proceedings, but had capacity to make decisions about his accommodation, his care and support and his contact with others;
 - ii. And in the High Court, that TT was a vulnerable adult, subject to undue influence by ST and that it was in his best interests that he should move to live at the placement. Injunctions were made to prohibit ST from interfering with his living arrangements, his care and support.

5. Within those proceedings, Her Honour Judge Moir sitting in the High Court, found that ST had done her best to care for TT, but could not regard TT as an adult who was able to make decisions for himself or to live independently of her. To that end, HHJ Moir found, *“she has controlled TT, or sought to coerce TT, throughout his life, as she sees it, for his benefit and she has not made the transition from caring for a child, to supporting an adult to make the best of his life”*.
6. Unfortunately, the difficulties did not end there and by the Spring of 2021, TT’s social worker began raising concerns once again as to ST exerting pressure and influence on TT (and upon Miss Y) to secure TT’s return to the family home. Those concerns continued to escalate, culminating in the local authority issuing the parallel applications which are before me now. Interim declarations as to TT’s lack of capacity to conduct these proceedings and to make decisions as to where he lives were made, and the case has been timetabled to a final hearing later this year, again before me.
7. To determine the discrete issues before me today, I heard oral evidence from TT’s current allocated social worker, ‘Ms R’ and from TT’s mother, with the benefit of an interpreter, as well as having full regard to the written evidence including unchallenged witness statements from TT’s solicitor and a paralegal, as to numerous conversations recorded with TT and with ST.
8. I have also had the opportunity and pleasure to meet with TT at his request, prior to the hearing. I shall return to this meeting later in my judgment.

The legal Framework

9. I am grateful to the advocates for their helpful summaries of the law. I have been reminded of the principles enshrined in Sections 1 and 4 of the Mental Capacity Act 2005 as to the core principles of capacity and ‘best interests’ and the powers of the Court of Protection pursuant to S16 MCA in exercise of those best interests’ decisions. I have considered the relevant case law including the judgment of Keehan J in SF [2020] EWCOP 19 as to the power of the Court of Protection *“to grant injunctions to support and ensure compliance with its best interests’ decisions and its orders.”*

Per Keehan J at para 33:

I so find for the following reasons:

- i) [s.47\(1\)](#) of the 2005 Act is drafted in wide and unambiguous terms;*
- ii) it must follow that the Court of Protection has the power which may be exercised by the High Court pursuant to [s.37\(1\)](#) of the 1981 Act to grant injunctive relief;*
- iii) this conclusion is fortified by the terms of [s.17\(1\)\(c\)](#) of the 2005 Act which permits the court to prohibit contact between a named person and P;*
- iv) it is further fortified by the terms of [ss. 16\(2\)](#) & [\(5\)](#) of the 2005 Act. The provisions of [s.16\(5\)](#) are drafted in wide terms and enable the court to “make such further orders or give such directions....as it thinks necessary or expedient for giving effect to, or otherwise in connection with, an order....made by it under subsection (2)”;*
- v) finally, the 2017 Rules, [r.21](#) & PD21A , make provision for the enforcement of orders made by the Court of Protection including committal to prison for proven breaches of court orders.*

10. As to the exercise of the court’s powers under the inherent jurisdiction of the High Court and where the welfare of vulnerable adults is concerned, I have been directed to the case of Re SA [2005] EWHC 2492 (Fam).

Per Munby J at paragraphs 77, 78 and 79,

(77) ‘(the inherent jurisdiction is)...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 giving or expressing a real or genuine consent’.

(78) ‘Coercion or undue influence: what I have in mind here are the kind of vitiating circumstances referred to by the Court of Appeal in Re T (an adult: medical treatment) [[1992] 4 All ER 649, [1993] Fam 95], where a vulnerable adult's capacity or will to decide has been sapped and overborne by the improper influence of another. In this connection I would only add... that where the influence is that of a parent or other close and dominating relative, and where the arguments

and persuasion are based upon personal affection or duty, religious beliefs, powerful social or cultural conventions, or asserted social, familial, or domestic obligations, the influence may, as Butler-Sloss LJ put it, be subtle, insidious, pervasive and powerful. In such cases, moreover, very little pressure may suffice to bring about the desired result.'

(79) 'The inherent jurisdiction can be invoked wherever a vulnerable adult is, or is reasonably believed to be, for some 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. The cause may be, but is not for this purpose limited to, mental disorder or mental illness. A vulnerable adult who does not suffer from any kind of mental incapacity may nonetheless be entitled to the protection of the inherent jurisdiction if he is, or is reasonably believed to be, incapacitated from making the relevant decision by reason of such things as constraint, coercion, undue influence or other vitiating factors.'

11. In Wakefield MDC v Anor and DN [2019] EWHC 2306 (Fam) Cobb J said of the exercise of the inherent jurisdiction (at paragraph 19), that it provided “*a facilitative, as opposed to a dictatorial, approach aimed at re-establishing an individual’s autonomy to make decisions, thereby enhancing their Article 8 ECHR rights*”.

The Evidence

12. The local authority’s case, put succinctly, is that from April 2021, ST has repeatedly coerced and sought to influence TT’s expressed wishes to live at the placement and the time he spends with Miss Y. She has done so in a host of different ways: by telling him and by putting him in fear that she was going to remove him, by telling him he was “naughty” and threatening him that she would call the police if he did not return home, and at times, when TT has been to stay at the family home, by preventing him from leaving. TT has reported to his social worker, the staff at his placement, his legal team, and Miss Y, that ST challenges him repeatedly about why he returns to the placement, shouts at him and telephones with such frequency each day to ask about his movements, that “*it is really hard*” and “*like a barrier to me*”. Miss Y and her mother have complained to the local authority that ST has also repeatedly telephoned Miss Y,

urging her to tell TT to return home and not to spend time with TT. TT has expressed his frustration and unhappiness at the extent of ST's attempts to stop him spending time with and having overnight contact with Miss Y.

13. In her evidence, the social worker spoke at some length about TT's recent return to the family home, where he has been staying since March 2022, after it seems, ST told TT that his father had become very unwell. She described how he has, uncharacteristically, ceased to maintain regular contact with the support staff in placement and that, according to TT, his mother has sought to deter him from spending time overnight or for any length of time with Miss Y, to the point where she has been limiting his access to funds with the effect that he is not able to afford to travel to see or to stay with Miss Y. TT has reported increasing levels of frustration, causing him to shout and bang doors and has told the social worker that "*this is happening all the time*".
14. Earlier this year and in stark contrast to his very positive views in 2019 about moving to his placement, TT told the social worker that he had been "*forced*" to move there against his wishes. I was taken to multiple entries in the records from 2019 to evidence that these were not his expressed wishes at the time, but they are however, an accurate reflection of the views of ST, as expressed in 2019 and beyond.
15. The police have been called on multiple occasions in recent months to the family home, either by ST or TT, to arbitrate in their disputes. Ms R said that in one conversation alone with TT in July 2022, she noted that he used the words "*police*" 63 times and "*angry*" 43 times. This reflects similar reported conversations between TT and his advocate and are said to be words he commonly uses to indicate when he is angry or upset. On other occasions, he has left messages for the support staff late at night or has terminated calls when they have answered and then will not answer when they have attempted to call him back. On other occasions, he has spoken in hushed tones, suggesting that he was concerned about being overheard. Recently, ST has requested that staff give her TT's bank card, which was refused.
16. Miss R spoke of TT's personal autonomy. I asked her to explain in lay terms what she meant, for the benefit of the mother and the interpreter. She explained, "*personal*

autonomy is about enabling TT to make his own decisions as far as he is able., and to be encouraged and supported to do so”.

17. Accounts of similar conversations were documented within the witness statements of TT’s solicitor and her paralegal. I endeavoured to assist ST as best I could as to whether she had any questions for them. On the basis that she did not seek to challenge the accuracy of what they reported TT as saying, it was not necessary for me to hear from them.
18. Before turning to the evidence of ST, I return to my meeting with TT. It had been arranged a couple of weeks or so before the hearing that I would, in accordance with TT’s wishes, meet him at 10.00am on the morning of the hearing in the presence of his solicitor and advocate. I was notified shortly before 10.00am that he had not attended court but had informed his advocate and the paralegal late on the previous afternoon that he would not be coming to court as planned, as his mother had told him he was not come.
19. Efforts were made by his solicitor from court to contact him and ultimately the meeting did go ahead later in the morning. It was, as I have said, a pleasure to meet him. TT’s speech and language can at times be a little hard to follow, but we spoke about the things he likes, and which were important to him. He likes the placement but would ideally like to be closer to home and his local community. He misses engaging with others of his own ethnicity. He enjoys seeing his girlfriend, usually two or three times per week and does not wish to be encumbered as to when he sees her. He enjoyed going to college, but the location of his placement meant that he was reliant upon public transport, a journey which at times feels very onerous. His companions in placement are “ok” but he misses opportunities to engage with others who do not share their level of disability. He enjoys playing on his X box and would like to get another job. He was able to tell me a little about his income and what he pays towards his placement and said that his mother has asked for money for his board. He was somewhat preoccupied by an incident the night before, in which he alleged that he had been accused of taking money by ST (which he strenuously and repeatedly denied) and had thought of telephoning the police, but had not wanted to cause or possibly be, in any trouble.

20. Most all, TT spoke at some length about wanting to maintain his independence and having some direction and purpose in his daily life. He would spend time going into town and looking in shops, which he appeared to like, but he wanted to have other activities in his day, as otherwise this was a waste of his time. It was not clear to me whether that was a genuine point of view or one which had been suggested to him, as he also indicated that this was a point of view his mother had expressed. He also spoke several times of wanting his mother to change the way she behaved and resorted to asking if both I and his Solicitor thought that might happen.
21. It was understood that following our meeting TT had plans to meet his girlfriend. However, when the hearing commenced, TT was present in the courtroom seated next to his mother. ST insisted that TT remain for the duration of the hearing to hear the evidence about “*how much a problem it is and how I have to suffer*”. I was satisfied that it was not appropriate. As the local authority and Mr Garlick on behalf of the Official Solicitor submitted, TT had already expressed his views, would not be able to follow the evidence and the experience would most likely be distressing for him. Although ST argued that TT is said by others “*to be able to make decisions for himself*” and would only ask her many questions about it later, I refused her request.
22. Having heard from the social worker in chief and being mindful that ST was not legally represented, I urged her to think overnight about any matters she might wish to raise with the social worker in evidence before giving her own. As it transpired, she had no questions she wanted to ask.
23. In summary, ST’s evidence was that she does not and has not sought to control or exert pressure on her son. The social worker does not believe her when she says that TT has been responsible for deciding whether he returns to the placement. TT “*plays games*” with the staff and everyone else about where he wants to stay. He constantly rings the staff and her and then will hang up the call. He “*causes trouble for people*”. The police have advised her to let him stay with her, although the documents she produced from the witness box did not substantiate this. He has opened many different accounts for mobile phones, which she has had to close. TT makes up stories and lies about things she has said. He and Miss Y have “*caused trouble*”, although it was very difficult to unpick with ST what “trouble” she was alluding to, save that they “*fight*”, but I saw no reference to that as an issue elsewhere within the papers.

24. Whilst she denied trying to interfere with TT's relationship with Miss Y, it quickly became apparent that she regards this a problem on several levels. She conceded that she is concerned about them engaging in sexual relations. Accepting that they both very much like each other, she is worried about them conceiving a child. What, she asked, would happen then? She thought it might be different if they did not both have the "same disabilities", and one was more "intelligent" than the other.
25. I regarded it as very telling that at several points in her evidence, she referred to TT (and Miss Y) as "children", or "kids". She denied pressurising him not to see his girlfriend, "its ok if the kids are happy". She denied restricting his weekly income so that he is unable to afford to travel to meet, or to pay for a trip to a hotel with Miss Y.
26. Enduring themes within her evidence were that TT's mental health has worsened since he moved to the placement and he has not settled there, that the local authority fails to adequately care for TT, including a time when he was unwell and that only ST is equipped and best placed to afford him the care that he needs. She said that TT "can't even look after himself. I do everything for him". When I asked her what decisions she felt that TT could make for himself, she said that he could make small decisions such as washing his hands and face and eating food. He can go out, but not very far. He does not have the capacity to decide how much time he spends with Miss Y. These things were a worry for her. She denied that she bore any responsibility for the frequency with which TT complains about pressure from her or for the numerous times he has called the police.
27. She has been the one to arrange his college course. If he does not go, he will not get good marks and she has to tell him to go, otherwise "it will spoil his reputation. Over there (the placement), nobody does anything. He just goes out". She has also arranged for him to go to a gym.
28. ST denied that she continues to perceive him as a child and she wants him to have his independence. She would be happy if he stayed in his placement, provided that the staff took care of him.

29. She also denied any involvement in his decision not to attend court to meet the judge, reiterating that he has a habit of saying one thing to one person and something else to another. TT had changed his mind about meeting the judge on the morning of the hearing; an explanation which simply does not fit with his call to his advocate the previous afternoon to say that ST was not allowing him to attend. She conceded that she had put the phone down on his solicitor three times that afternoon because, *“sometimes they involve (her) and sometimes they don’t”*.
30. One of the saddest and most telling comments in her evidence was, *“if he was your child, what would you do? I spent 42 years with my child. You have spoiled my son’s life. My husband was working... where were you then? You have spoiled his life”*.
31. My clear impression of ST is of a mother who loves her son dearly and who believes that her actions are well founded. However, her evidence spoke volumes as to her fundamental belief that TT lacks capacity to decide all but the most basic things for himself. She is ever fearful for his safety in the community and in his intimate relationships. She is, I find, profoundly mistrustful of the local authority and the psychologists who have assessed TT repeatedly as having the capacity to make decisions around his care and support and who he spends time with. She is unswerving in her belief that only she knows TT and what is best for him and can keep him safe. She was invited to consider whether there was anything about her own behaviour that needed to change, but she did not.
32. At the heart of this case and the applications before me presently, is the issue of TT’s personal autonomy. ST is unable to see that TT has any real autonomy in respect of many decisions around his life or that he deserves the opportunities, as the social worker put it, to be supported and assisted where possible, to exercise that autonomy. Rather, and no doubt driven by her own assessment of what TT needs and is capable of, ST continues to frustrate those opportunities. Sadly, given the findings of HHJ Moir in 2019, the mother has not moved on from that viewpoint in any material way.
33. I remind myself once again of the words of Munby J above in Re SA.

“... that where the influence is that of a parent or other close and dominating relative, and where the arguments and persuasion are based upon personal

affection or duty, religious beliefs, powerful social or cultural conventions, or asserted social, familial, or domestic obligations, the influence may, as Butler-Sloss LJ put it, be subtle, insidious, pervasive and powerful. In such cases, moreover, very little pressure may suffice to bring about the desired result.'

34. In my judgment, this case falls squarely into that scenario. I am satisfied from the totality of the evidence, that the mother has attempted to control and influence TT's daily life and decisions in almost every respect: where he goes and what he does with his day-to-day life, who he sees and when, and most of all, where he shall live. To that end, as Mr Mahmood submits, she attempts to provide what she thinks TT requires and by-passes what TT wants, the advice of social workers, support staff and his lawyers. The chronology of events since November 2021 does indeed indicate that she has become emboldened in her decisions to ignore what the professionals say, to the point where she is now firmly of the belief that his life has been ruined by them all.
35. The Official Solicitor submits that I should grant the injunctive relief sought because there is evidence that TT is "palpably unhappy" and his genuine wishes for independence, to live at his placement, to spend time with his family when he chooses to do so, to see his girlfriend and to look after his own money and not be treated as a child, are being suppressed and controlled by ST. This reflects precisely what TT told me in our meeting.
36. I am satisfied, because it is in TT's best interests and as a vulnerable adult, that the court should properly exercise its jurisdiction, both within the Court of Protection so far as it is able and under the inherent jurisdiction, to grant the relief sought. I raise two matters before approving the orders as they are currently drafted. Firstly, the court has determined that on an interim basis, TT is to continue to live at his current placement. As TT has already of his own volition move back to the placement, I suggest that the injunction should explicitly state that ST is not to prevent him from living there, in addition to those preventing him from returning. Secondly, District Judge Temple, when hearing this case in June, authorised that TT was to live at the placement, but in accordance with his wishes, was permitted to spend a maximum of two nights per week staying overnight at the family home. This was aimed at striking a balance between preserving the placement as his place of residence and reflecting his desire to spend

time, including on occasions, time overnight, at his family home. As it is drafted, the Court of Protection injunction does not reflect the court's decision nor does it that opportunity for contact. As there is no indication that TT lacks the capacity to make decisions as to who he spends time with, I can see no basis upon which the court should interfere with that arrangement on his behalf. Subject therefore, to any representations from the local authority and the Official Solicitor, I propose to make the following injunctions against ST, the precise addresses and locations to be stated in the orders:

37. Within the Court of Protection, I approve orders in the following terms, that:

The court having deemed that TT shall reside at 'the placement', ST' shall not (whether by herself or instructing, encouraging or permitting any other person):

- a. Prevent TT from living at 'the placement', save that and solely subject to his wishes, he is at liberty to spend a maximum of two nights per week at his family's home
- b. Allow TT to live at the family home
- c. Seek to persuade or coerce TT into not returning to 'the placement'
- d. Take any action to prevent TT returning to 'the placement'
- e. Seek to persuade or coerce TT once he has returned to 'the placement' into moving back to the family home and/or to reside with ST anywhere, or to move to or reside at any property, premises or otherwise other than 'the placement'

38. Within the inherent jurisdiction of the High Court, I order that:

'ST' shall not (whether by herself or instructing, encouraging or permitting any other person):

- i. Prevent, restrict, or seek to persuade or coerce TT not to have, or to have less, contact with 'Miss Y'.
- ii. Contact by any means Miss Y or Miss Y's mother.
- iii. Request, demand or take from TT any sum of money by way of 'rent' or contribution to expenses save in circumstances when TT remains

overnight at ST's home when his contribution must be limited to a maximum of £5 per night.

39. This matter is already timetabled to a final hearing before me in November 2022, by which stage, further and updated capacity assessments will have been completed and final decisions will be made as to TT's residence and best interests as are appropriate.

40. I invite counsel for the local authority to draft for my approval those orders for service on ST and direct that the costs of translation of the orders and my judgment shall be borne equally by the local authority and upon TT's public funding certificate.

Her Honour Judge Scully

Sitting as a Judge of the High Court pursuant to s.9

Dated 4th August 2022