

IN THE COURT OF PROTECTION

Case No. 11952926

**IN THE MENTAL CAPACITY ACT OF 2005
AND IN THE MATTER OF JM (DATE OF BIRTH 13.5.1932)**

Priory Courts
33 Bull Street
Birmingham
B4 6DS

Friday 31st August 2012

Before:

HIS HONOUR JUDGE CARDINAL

Between:

SCC

Applicant

-v-

JM

**(the person to whom the matter relates
by his litigation friend, the Official Solicitor)**

(2) IM

(3) WM

(4) EM

Respondents

Counsel for the Applicant: _____

MISS KHALIQUE

Solicitor 1 for the First Respondent: _____

MR GRIPTON

The Second, Third and Fourth Respondents did not attend and were not represented

JUDGMENT APPROVED BY THE COURT

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JUDGMENT

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1. THE JUDGE: I have this morning to revisit the case of JM, an elderly man suffering from Alzheimers and from a degree of vascular dementia, who was born on 13th May 1932. He currently lives at AH, a care home, in the area operated by the applicant Local Authority, which is some 50 to 60 miles away from this court.

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2. JM has four children, three of whom were respondents to the proceeding before me which concluded at Easter of this year. The proceedings related to the future of JM and, in particular, where he should reside. During the trial, two of the three respondents, IM and WM, attended before me. IM gave short evidence, but was not present for the majority of the hearing. WM was present and represented herself. My reflections as to her behaviour and the way in which I dealt with her evidence can be seen in the transcript of my judgment dated 12th April 2012, to be seen at page A88 and following of the bundle before me today. Although I had grounds for severely criticising WM's conduct during the course of the proceedings, the way in which she behaved in litigation is in no way reflected in the judgment to which I now come and she is, of course, not punished for that in one iota.

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3. Judgment was to be given by me on the Thursday of Easter week of this year in the afternoon. On that day a message reached me to the effect that JM had been brought to the court. With the assistance of my clerk and of court security I was able to separate JM from IM and WM and with the further assistance of the Local Authority social worker, JM was cared for, kept separate and ultimately collected by members of staff at the AH home. I am told that he was unwell in returning home and that had been brought about, it is thought, in no small part by the stress involved in attending court unnecessarily.

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4. There is a history of the family being difficult with the Local Authority and the court being forced to grant injunctive relief. On 19th May District Judge Owen made an order that the respondents should not encourage JM to leave or to ask to leave his placement, or discuss with him the possibility of moving back home, or remove him from the jurisdiction of the court. The reason why that order was made was because there was a history on one occasion of JM being removed from the Home where he was situated and, indeed, taken to Turkey for a short period. That, I think, in contravention of Deprivation of a Liberty safeguards order.

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5. On 19th May District Judge Owen made a fuller order restraining, *inter alia*, WM, the third respondent, from using or threatening violence against her father or any employee of the applicant or the AH home, or instructing, encouraging or in any way suggesting any other person should do so. She was further forbidden from intimidating, harassing or pestering her father or any employee of the applicant Local Authority or the AH home. It is mistyped as AR home in the orders, but that matters not as she knew full well what was involved.

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6. The matter was renewed by me on 17th June of 2011 and the orders continued to be renewed and were still in existence in that form by the time of the final hearing. WM attended at nearly every hearing and was served with the injunction orders so knew perfectly well that she was not to interfere with her father nor discuss with him any of the aspects of the case, still less was she to cause difficulties to members of the AH home or, indeed, to the Local Authority. It therefore came as unpleasant news,

A but, sadly, perhaps, no real surprise to know that she had breached those orders in very substantial respects.

B 7. I have before me two helpful, but pithy affidavits from L W, who is the practice lead social worker of the older person's mental health team for the Local Authority. In those affidavits she refers to a number of matters causing this court concern and about which I find WM to be in contempt of court. First, on 12th April WM and IM took JM to see a solicitor in Birmingham to discuss his placement. They did so by WM persuading or causing IM and his partner to collect JM for what was initially reportedly a contact visit and to bring him from the Local Authority home to Birmingham to see a solicitor. Although IM told me when the case was last before me on 10th July he had told his solicitor that WM should not be seeing JM unsupervised, she nonetheless did and JM was with her whilst the discussions took place with the solicitor and whilst he was brought over to this court. I accepted at the last hearing the account of IM that it was his sister's idea and that she was the initiator. Indeed, she prevailed upon her brother to bring the father, JM, to this court.

C 8. In addition to that, WM had produced and distributed a leaflet prior to and during the final hearing giving details of the case, containing a photograph of her father and other information so as to identify him and that is in breach of rule 90/91 of the Court of Protection Rules. There is clear fth that WM has spoken to her father on numerous occasions about the proceedings, even though she has been told that in doing so she has caused him distress. There is evidence too of WM abusing and threatening Ms LW, contrary to the court's orders. In that context I know because I have been told that LW was abused at court on the day of the judgment and I have seen, of course, the leaflet that she produced.

D 9. Since LW's first affidavit was sworn the behaviour of WM has not improved. On 14th May WM left a long, abusive message for LW on her voicemail, referring to her as "you in your tarty little stuck up voice" and calling council staff "arrogant little wankers" and a lot of "arrogant little cunning bastards". On 25th May she left another voicemail saying:

E "I wish you all the bad luck. I put curses on you. I've got friends in [the area] who are capable of doing that and I will get my own back. I hope you all end up where my dad is and you all end up cursed. You will all be ill. You all deserve to be cursed".

F On 18th June she left a message saying, "You're not a social worker, you're a witch, you're a flipping cold bitch".

G 10. Perhaps worse than that because this does not physically harm, on 27th June she gave her father a wooden cross at a visit, saying he should keep it on him at all times to prevent the evil in the Home hurting him. She asked him again if he wanted to go home with her. She caused him to cry and JM even complained "she never shuts up".
H On 7th July she spoke to her father on the telephone, urging him to tell people that he wants to go home and causing him, again, to cry. On 11th July she had a detailed discussion with him about his case with someone not involved in the proceedings, despite the fact that there had been a committal application I think the day before.

- A 11. It seems to me, having looked at the totality of those emails and read what she has to say, she has no intention of obeying court orders. It perhaps is helpful to quote her voicemail message to LW of 14th May about the first committal hearing.
- “I’ve had a total enough now. I don’t give a shit if there’s a court case coming up in July. I’ve taken enough shit so it’s going to the papers. Human Rights will be in touch. I don’t give a toss what happens to me”.
- B That’s the attitude of someone who is simply not going to obey court orders.
- C 12. Therefore, I am satisfied: one, that there have been a considerable number of breaches; two, that this lady has no intention, unless restrained by a severe measure by this court, of obeying the orders herself. I have already been addressed this morning as to the issues of service and it is my view that this lady has been seeking to evade service. I refer, in particular, to the statement of service of the process server that has been put before me. He tells me that he made two attempts two weeks ago today, so there would have been 14 days clear notice, to serve WM with the application for her committal for contempt and she would not let him into the property and she would not even let him try and post documents through her letterbox, although postal service, of course, would not have done in any event. He made further attempts to serve on 20th August when WM would not accept service.
- D 13. However, on the 22nd she collected documents from the applicant Local Authority and I have before me a certificate of service by a ZG from the reception at the relevant office of the Local Authority. She, therefore, has the documents. She has known about the application for her committal since the spring of this year. In her letter to me of 28th August she referred particularly to the hearing today, in which letter again she recites a number of wholly irrelevant matters and indicates an unwillingness to accept the findings of this court about her total incapacity in terms of being able to look after her father and inappropriateness as a carer.
- E 14. This matter came before me, as I have already alluded, on 10th July. On that date I made an order for her committal on the basis of persistent breaches of court orders and, in particular, the very serious breach on 12th April when she caused her father to be brought to this court. I have stayed that order and will not act upon that on the basis that upon that date the COP29 form had not been properly served. Today I am satisfied that the Local Authority has served its notices of application (two), its affidavits of evidence (two) and the COP29. I can dispense with the rule that says there must be 14 days clear service where I am satisfied that there have been attempts to evade service and I am fortified in the knowledge that WM knew what was going on in any event and knew there were proceedings for her committal, so I am satisfied as to service. I am satisfied that she will not come to this court, no matter how many times she is served, to face up to the application that has been made. In those circumstances I can again revisit the question of punishment.
- F 15. I first say that I am sure that she has breached the orders in the way in which I have set out. Secondly, I look at the terms of punishment. Miss Khalique has properly reminded me that the court’s purpose is not to express outrage, but simply to express the court’s concern as to breach of its orders and not in fact to punish unnecessarily, it is not a criminal court. I bear in mind the guidance given by the leading case of *Hale v Tanner*, but in the circumstances it seems to me that there is no alternative other
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than to commit this lady to prison. I realise, of course, that in doing so I would be punishing JM to a degree because in some small way he still appreciates visits from his daughter, although she seems to ruin part or all of most of the visits and telephone calls, but the court cannot allow this situation to continue whereby she abuses LW, she abuses staff at AH Home and she defies the court order by bringing her father to court. She is causing him very considerable grief. In those circumstances it seems to be only right she should go to prison.

16. I have thought very carefully about the punishment. Last time I proposed imprisonment for five months. There have been other incidents, but I am satisfied that those incidents took place simply because she had not appreciated that I was going to send her to prison for breaches and she just continued her behaviour. I do not think it is a case for increasing the punishment so in the circumstances for each and every one of the breaches I will send her to prison for a further period of five months to be served concurrently. I am not sure I have said so clearly, but I make it clear that the telephone calls by WM have been not just to LW, but, of course, also to staff at AH Home and I want to make it clear that this order is made to protect them just as much as it is to protect staff of the Local Authority direct.

[Judgment ends]